G

COMPANIES FORM No. 155(6)a

Declaration in relation to assistance for the acquisition of shares.



Please do not write in this margin

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

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

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

*Insert full name of company

Tinsert name(s) and address(es) of all the directors

To the Registrar of Companies

For official use	Company number	
	03116322	
		

Name of company

* English Welsh & Scottish Railway Holdings Limited (hereinafter referred to as "the company")

₩et

Hamdi Conger of 7 Briar Road, Newthorpe, Nottinghamshire, NG16 2BN;

Carl Ferenbach of 87 Pinckney Street, Boston, Massachusetts, MA 02114, USA;

Sean Finn of 935 de la Guacheterie Street West, Floor 16, Montreal, Quebec H3B 2M9, Canada;

Keith Heller of 56 Scarsdale Villas, London, W8 6PP;

Lord Griffiths of Fforestfach of 133 Fleet Street, London, EC4A 2BB;

Claude Mongeau of 935 de la Guacheterie Street West, Floor 16, Montreal, Quebec H3B 2M9, Canada; and David Richwhite of Appartment 16 Hale House, 34 De Vere Gardens, London, W8 5AQ.

Delete as appropriate

https://documents.com/documents/indexed/second and sincerely declare that:
The business of the company is:

‡Delete whichever is inappropriate (a) that of a // recognised bank (b) ioenseak institution (b) within the case an ing of the Banking Assal (a) that of a // recognised banking as a // rec

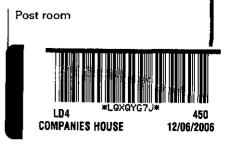
(c) something other than the above ‡

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

The number and class of the shares acquired or to be acquired is: (i) 5,921,765 ordinary shares of £1.00 each in the company, acquired by UK Railway Holdings (BVI) Limited, and (ii) 736,212 ordinary shares of £1.00 each in the company, acquired by MJ UK Railway Holdings LLP.

Presentor's name, address and reference (if any):
FRESHFIELDS BRUCKHAUS
DERINGER
65 FLEET STREET, LONDON
ENGLAND EC4Y 1HS
DX 23 LONDON/CHANCERY
LANE

For official use General Section



]‡

Page 1

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

(i) UK Railway Holdings (BVI) Limited of Craigmuir Chambers, PO Box 71, Road Town, Tortola, British Virgin Islands; (ii) MJ UK Railway Holdings LLP of 9E Lockerman Street, Suite 1B, Dover DE 19901, County of Kent, USA and (iii) English Welsh & Scottish Railway Limited of McBeath House, 310 Goswell Road, London, EC1V 7LL.

Please do not write in this margin

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

The assistance will take the form of:	ż	

See appendix 1	

The person who (has acquired | with a reprint | * the shares is:

(i) UK Railway Holdings (BVI) Limited of Craigmuir Chambers, PO Box 71, Road Town, Tortola, British Virgin Islands; and (ii) MJ UK Railway Holdings LLP of 9E Lockerman Street, Suite 1B, Dover DE 19901, County of Kent, USA

*Delete as appropriate

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

See appendix 2	 -		
			j

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 See appendix 3

19

Page 2

Please do not write in this margin

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

†Delete either (a) or (b) as appropriate

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) [#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) litriscinstanded to commence the winding support the company within x12 months refuted date, and the characteristic and the commence of the company will be able to pay its debte in full within 12 months and the commence of the control in group. It (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.

Declarants to sign below

Declared at soussigné, Maître Xarria BRUNET

Notaire associé à Annecy (FRANCE) certifie sincère et véritable la signature

the appodes of-contre

no thoughto Mino hundred and

Fait à Annecy le 5/6/06

before me

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

a Commissioner for Oaths.

NOTES

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

ENGLISH WELSH & SCOTTISH RAILWAY HOLDINGS LIMITED (EWS)

The assistance in this transaction (where applicable in respect of each relevant party) will take the form of:

- (a) EWSR, EWSI (each as a seller of its debts and EWSR as a borrower) and EWS entering into new financing facilities with LTSBCF (which facilities will then be subparticipated to Lloyds TSB Bank plc and certain other banks or financial institutions) totalling (in aggregate with the BVI Facility as defined below) up to £150 million (the EWS Facilities). The EWS Facilities will comprise Debt Purchase Agreements (individually with each of EWSR and EWSI as seller of its respective debts) and a Property Loan Agreement and a Plant and Machinery Loan Agreement (each with EWSR as borrower). At the same time as entering into the EWS Facilities, EWS cancelling its existing bank facilities with Barclays Bank plc, Lloyds TSB Bank plc and The Royal Bank of Scotland plc.
- (b) the providing of guarantees and the giving of indemnities in respect of the EWS Facilities and the BVI Facility (as defined below) in favour of LTSBCF by EWS, EWSR, EWSI and RES (together the *Guarantors*) entering into a composite guarantee and indemnity (the *Guarantee*).
- (c) the Guarantors entering into a security deed in connection with the EWS Facilities and the BVI Facility, under which security will be granted in favour of LTSBCF by each of them over all of their assets and undertakings (the Security Deed)
- (d) E&W, RD and B&A, each entering into a security document in connection with the EWS Facilities and the BVI Facility granting a charge in favour of LTSBCF over all of the shares in EWSI, RES and EWSR respectively (the *Share Charges*).
- (e) EWS (together with EWSR, EWSI, RES, B&A, RD, E&W and BVI) and LTSBCF entering into an enforcement agreement (the *Enforcement Agreement*).

APPENDIX 2 – PRINCIPAL TERMS ON WHICH THE ASSISTANCE WILL BE GIVEN

- (a) Pursuant to the EWS Facilities, EWSR and EWSI paying certain fees to LTSBCF in connection with the EWS Facilities and the BVI Facility.
- (b) Pursuant to the Guarantee, EWS (together with EWSI, EWSR and RES on a joint and several basis) will enter into obligations as Guarantors in relation to the EWS Facilities and the BVI Facility to:
 - (i) guarantee to LTSBCF punctual performance by EWS, EWSR, EWSI and BVI of each of their respective obligations under or in connection with the EWS Facilities and the BVI Facility;
 - (ii) undertake with LTSBCF that whenever EWS, EWSR, EWSI and BVI does not pay any amount when due under or in connection with the EWS Facilities and the BVI Facility, it shall immediately on demand pay that amount as if it was the principal obligor; and
 - (iii) indemnify LTSBCF immediately on demand against any cost, loss or liability suffered by LTSBCF if any obligation guaranteed by EWS, EWSR, EWSI and BVI is or becomes unenforceable, invalid or illegal,

on the terms agreed.

- (c) Pursuant to the Security Deed, EWS (together with EWSR, EWSI and RES):
 - (i) will covenant to pay to LTSBCF all Liabilities when due in accordance with its terms or, if they do not specify the time for payment, immediately on demand by LTSBCF;
 - (ii) will create fixed and floating charges over its assets and undertakings as security for their respective Liabilities under the Finance Documents;
 - (iii) will undertake to do all such acts or execute all such documents as LTSBCF requires to:
 - (A) perfect or protect the Charges or the priority of the Charges; and/or
 - (B) facilitate the realisation of the Charged Assets or the exercise of any rights vested in LTSBCF or any receiver; and
 - (iv) will promptly execute and deliver to LTSBCF a Charge of such of its real property from time to time in England and/or Wales as LTSBCF requires,

on the terms agreed.

- (d) Pursuant to the Share Charges, B&A, RD and E&W, amongst other things:
 - (i) will covenant to pay to LTSBCF all Liabilities when due in accordance with its terms or, if they do not specify the time for payment, immediately on demand by LTSBCF; and
 - (ii) will create fixed charges over the shares they hold in the capital of EWSR, RES and EWSI respectively,

LD930877/5 105522-0230

on the terms agreed.

(e) Pursuant to the Enforcement Agreement, EWS (together with EWSR, EWSI and RES) and LTSBCF will enter into arrangements relating to (amongst other things) security issues relating to the New Security Documents, the Guarantee and Indemnity Document, the EWS Facilities and the BVI Facility.

DEFINITIONS

BVI Facility means a £20 million loan facility which BVI proposes enter with LTSBCF (in which Lloyds Bank plc and certain other banks or other banks or other financial institutions will again sub-participate);

B&A means Boreal & Austral Railfreight Limited (company number 3164272);

BVI means UK Railway Holdings (BVI) Limited (registered in the British Virgin Islands with the number 565232);

Charged Assets means the assets of EWS, EWSR, EWSI, RES and/or any assets from time to time subject, or expressed to be subject, to the Charges or any part of those assets;

Charges means all or any of the security created or expressed to be created by or pursuant to the Security Deed by EWS, EWSR, EWSI and/or RES;

EWSI means English Welsh & Scottish Railway International Limited (company number 3232475);

EWS means English Welsh & Scottish Railway Holdings Limited (company number 3116322);

EWSR means English Welsh & Scottish Railway Limited (company number 2938988);

E&W means East & West Railway Limited (company number 3180966);

Finance Documents means each of the Debt Purchase Agreements (individually with each of EWSR and EWSI as seller of its respective debts), the Property Loan Agreement and the Plant and Machinery Loan Agreement, the Guarantee, the Security Deed, the Share Charges, the Enforcement Agreement, any accession letters, any resignation letter and any other document designated as such by the relevant parties;

Liabilities means all present and future moneys, debts and liabilities due, owing or incurred by it to any secured party under or in connection with any Finance Document (in each case, whether alone or jointly, or jointly and severally, with any other person, whether actually or contingently and whether as principal, surety or otherwise);

LTSBCF means Lloyds TSB Commercial Finance Limited (company number 733011);

New Security Documents means the Share Charges and the Security Deed together;

RD means Res December Limited (company number 3134604); and

RES means Rail Express Systems Limited (2938991).

APPENDIX 3 – DATE ON WHICH FINANCIAL ASSISTANCE IS TO BE GIVEN

A date being not later than eight weeks from the date hereof.



KPMG LLP
1 The Embankment
Neville Street
Leeds LS1 4DW
United Kingdom

Tel +44 (0) 113 231 3000 Fax +44 (0) 113 231 3665 DX 724440 Leeds

The Directors
English Welsh & Scottish Railway Holdings
Limited
McBeath House
310 Goswell Road
London ECIV 7LL

Our ref rf/218

Dear Sirs

Auditors' report to the directors of English Welsh & Scottish Railway Holdings Limited pursuant to Section 156(4) of the Companies Act 1985

We have examined the attached statutory declaration of the directors dated 5 June 2006 in connection with the proposal that the company should give financial assistance for the purpose of reducing or discharging a liability previously incurred for the purpose of the purchase of the company's ordinary shares.

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

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 LLP

Registered Auditor



COMPANIES FORM No. 155(6)a

Declaration in relation to assistance for the acquisition of shares.



Please do not write in this margin

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

For official use	Company number	
	03116322	

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

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

*Insert full name of company

Tinsert name(s) and address(es) of all the directors

To the Registrar of Companies

Name of company

* English Welsh & Scottish Railway Holdings Limited (hereinafter referred to as "the company")

₩Wet

Hamdi Conger of 7 Briar Road, Newthorpe, Nottinghamshire, NG16 2BN;

Carl Ferenbach of 87 Pinckney Street, Boston, Massachusetts, MA 02114, USA;

Sean Finn of 935 de la Guacheterie Street West, Floor 16, Montreal, Quebec H3B 2M9, Canada;

Keith Heller of 56 Scarsdale Villas, London, W8 6PP;

Lord Griffiths of Fforestfach of 133 Fleet Street, London, EC4A 2BB;

Claude Mongeau of 935 de la Guacheterie Street West, Floor 16, Montreal, Quebec H3B 2M9, Canada; and David Richwhite of Appartment 16 Hale House, 34 De Vere Gardens, London, W8 5AQ.

Delete as appropriate [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:ofca:/xecogniced:bank#filicenses/institution/fourithin:the:meaning:ofche:Banking:Act:#975;\$ (b)xthatxofxxxpersonxeuthorisedcundarsectionx3xexx4xofdoctasurancex6ompaniexx4etx4962xexansx kanologoixkbotinkkodtxaixeeznieudeoaneaueakaax

(c) something other than the above ‡

The company is proposing to give financial assistance in connection with the acquisition of shares in the [company] boompany/scholding:company/x

]‡

The assistance is for the purpose of [that/2004] [reducing or discharging a liability incurred for the purpose of that acquisition].

The number and class of the shares acquired or to be acquired is: (i) 5,921,765 ordinary shares of £1.00 each in the company, acquired by UK Railway Holdings (BVI) Limited, and (ii) 736,212 ordinary shares of £1.00 each in the company, acquired by MJ UK Railway Holdings LLP.

Presentor's name, address and reference (if any): FRESHFIELDS BRUCKHAUS DERINGER 65 FLEET STREET, LONDON ENGLAND EC4Y 1HS DX 23 LONDON/CHANCERY LANE

For	offi	cial	use
Gen	eral	Sec	tion

Post room

Page 1

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

(i) UK Railway Holdings (BVI) Limited of Craigmuir Chambers, PO Box 71, Road Town, Tortola, British Virgin Islands; (ii) MJ UK Railway Holdings LLP of 9E Lockerman Street, Suite 1B, Dover DE 19901, County of Kent, USA and (iii) English Welsh & Scottish Railway Limited of McBeath House, 310 Goswell Road, London, EC1V 7LL.

Please do not write in this margin

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

The	:			
ıne	assistance	will take	the form	OT:

See appendix 1		

The person who (has acquired [twitixaespuixe]* the shares is:

(i) UK Railway Holdings (BVI) Limited of Craigmuir Chambers, PO Box 71, Road Town, Tortola, British Virgin Islands; and (ii) MJ UK Railway Holdings LLP of 9E Lockerman Street, Suite 1B, Dover DE 19901, County of Kent, USA

*Delete as appropriate

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

See appendix 2		<u>.</u>	
;			

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 See appendix 3

19

Please do not write in this margin

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

†Delete either (a) or (b) as appropriate

k/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) [#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) bisissintended to common contending upod the company withing to common a substitution of the common contending upod the company withing the common contending upod the company withing the common contending upod the company withing the common contending upod the common contending upod the company withing the common contending upod the company withing the common contending upod the company withing the common contending upod the contending nidtiuotluttoisatdelesativaagsatseldeseddiivevynegmeesedtatediagosedelegemaatsevenksunktora

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 Boston Massachusetts

Declarants to sign below

day of June, 2006

before me

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

gabet I. Loca

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.

ENGLISH WELSH & SCOTTISH RAILWAY HOLDINGS LIMITED (EWS)

The assistance in this transaction (where applicable in respect of each relevant party) will take the form of:

- (a) EWSR, EWSI (each as a seller of its debts and EWSR as a borrower) and EWS entering into new financing facilities with LTSBCF (which facilities will then be subparticipated to Lloyds TSB Bank plc and certain other banks or financial institutions) totalling (in aggregate with the BVI Facility as defined below) up to £150 million (the EWS Facilities). The EWS Facilities will comprise Debt Purchase Agreements (individually with each of EWSR and EWSI as seller of its respective debts) and a Property Loan Agreement and a Plant and Machinery Loan Agreement (each with EWSR as borrower). At the same time as entering into the EWS Facilities, EWS cancelling its existing bank facilities with Barclays Bank plc, Lloyds TSB Bank plc and The Royal Bank of Scotland plc.
- (b) the providing of guarantees and the giving of indemnities in respect of the EWS Facilities and the BVI Facility (as defined below) in favour of LTSBCF by EWS, EWSR, EWSI and RES (together the *Guarantors*) entering into a composite guarantee and indemnity (the *Guarantee*).
- (c) the Guarantors entering into a security deed in connection with the EWS Facilities and the BVI Facility, under which security will be granted in favour of LTSBCF by each of them over all of their assets and undertakings (the Security Deed)
- (d) E&W, RD and B&A, each entering into a security document in connection with the EWS Facilities and the BVI Facility granting a charge in favour of LTSBCF over all of the shares in EWSI, RES and EWSR respectively (the *Share Charges*).
- (e) EWS (together with EWSR, EWSI, RES, B&A, RD, E&W and BVI) and LTSBCF entering into an enforcement agreement (the *Enforcement Agreement*).

APPENDIX 2 – PRINCIPAL TERMS ON WHICH THE ASSISTANCE WILL BE GIVEN

- (a) Pursuant to the EWS Facilities, EWSR and EWSI paying certain fees to LTSBCF in connection with the EWS Facilities and the BVI Facility.
- (b) Pursuant to the Guarantee, EWS (together with EWSI, EWSR and RES on a joint and several basis) will enter into obligations as Guarantors in relation to the EWS Facilities and the BVI Facility to:
 - (i) guarantee to LTSBCF punctual performance by EWS, EWSR, EWSI and BVI of each of their respective obligations under or in connection with the EWS Facilities and the BVI Facility;
 - (ii) undertake with LTSBCF that whenever EWS, EWSR, EWSI and BVI does not pay any amount when due under or in connection with the EWS Facilities and the BVI Facility, it shall immediately on demand pay that amount as if it was the principal obligor; and
 - (iii) indemnify LTSBCF immediately on demand against any cost, loss or liability suffered by LTSBCF if any obligation guaranteed by EWS, EWSR, EWSI and BVI is or becomes unenforceable, invalid or illegal,

on the terms agreed.

- (c) Pursuant to the Security Deed, EWS (together with EWSR, EWSI and RES):
 - (i) will covenant to pay to LTSBCF all Liabilities when due in accordance with its terms or, if they do not specify the time for payment, immediately on demand by LTSBCF;
 - (ii) will create fixed and floating charges over its assets and undertakings as security for their respective Liabilities under the Finance Documents;
 - (iii) will undertake to do all such acts or execute all such documents as LTSBCF requires to:
 - (A) perfect or protect the Charges or the priority of the Charges; and/or
 - (B) facilitate the realisation of the Charged Assets or the exercise of any rights vested in LTSBCF or any receiver; and
 - (iv) will promptly execute and deliver to LTSBCF a Charge of such of its real property from time to time in England and/or Wales as LTSBCF requires,

on the terms agreed.

- (d) Pursuant to the Share Charges, B&A, RD and E&W, amongst other things:
 - (i) will covenant to pay to LTSBCF all Liabilities when due in accordance with its terms or, if they do not specify the time for payment, immediately on demand by LTSBCF; and
 - (ii) will create fixed charges over the shares they hold in the capital of EWSR, RES and EWSI respectively,

LD930877/5 105522-0230 Page 2

on the terms agreed.

(e) Pursuant to the Enforcement Agreement, EWS (together with EWSR, EWSI and RES) and LTSBCF will enter into arrangements relating to (amongst other things) security issues relating to the New Security Documents, the Guarantee and Indemnity Document, the EWS Facilities and the BVI Facility.

DEFINITIONS

BVI Facility means a £20 million loan facility which BVI proposes enter with LTSBCF (in which Lloyds Bank plc and certain other banks or other banks or other financial institutions will again sub-participate);

B&A means Boreal & Austral Railfreight Limited (company number 3164272);

BVI means UK Railway Holdings (BVI) Limited (registered in the British Virgin Islands with the number 565232);

Charged Assets means the assets of EWS, EWSR, EWSI, RES and/or any assets from time to time subject, or expressed to be subject, to the Charges or any part of those assets;

Charges means all or any of the security created or expressed to be created by or pursuant to the Security Deed by EWS, EWSR, EWSI and/or RES;

EWSI means English Welsh & Scottish Railway International Limited (company number 3232475);

EWS means English Welsh & Scottish Railway Holdings Limited (company number 3116322);

EWSR means English Welsh & Scottish Railway Limited (company number 2938988);

E&W means East & West Railway Limited (company number 3180966);

Finance Documents means each of the Debt Purchase Agreements (individually with each of EWSR and EWSI as seller of its respective debts), the Property Loan Agreement and the Plant and Machinery Loan Agreement, the Guarantee, the Security Deed, the Share Charges, the Enforcement Agreement, any accession letters, any resignation letter and any other document designated as such by the relevant parties;

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LTSBCF means Lloyds TSB Commercial Finance Limited (company number 733011);

New Security Documents means the Share Charges and the Security Deed together;

RD means Res December Limited (company number 3134604); and

RES means Rail Express Systems Limited (2938991).

APPENDIX 3 – DATE ON WHICH FINANCIAL ASSISTANCE IS TO BE GIVEN

A date being not later than eight weeks from the date hereof.

LD930877/5 105522-0230 Page 4



KPMG LLP

1 The Embankment
Neville Street
Leeds LS1 4DW
United Kingdom

Tel +44 (0) 113 231 3000 Fax +44 (0) 113 231 3666 DX 724440 Leeds

The Directors
English Welsh & Scottish Railway Holdings
Limited
McBeath House
310 Goswell Road
London ECIV 7LL

Our ref rf/218

Dear Sirs

Auditors' report to the directors of English Welsh & Scottish Railway Holdings Limited pursuant to Section 156(4) of the Companies Act 1985

We have examined the attached statutory declaration of the directors dated 5 June 2006 in connection with the proposal that the company should give financial assistance for the purpose of reducing or discharging a liability previously incurred for the purpose of the company's ordinary shares.

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

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 LLP

Registered Auditor

G

COMPANIES FORM No. 155(6)a

Declaration in relation to assistance for the acquisition of shares.



Please do not write in this margin

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

Please complete	To the Registrar of Companies		For official use	Company number	
egibly, preferably in black type, or				03116322	
bold block lettering	Name of company		'		
Note Please read the notes on page 3 before completing this form	* English Welsh & Scottish Railway I	Holdings Limited (her	einafter referred to	as "the company")	
*Insert full name	t/Wet				
of company Tinsert name(s) and address(es) of all the directors	Hamdi Conger of 7 Briar Road, Newthorpe, Nottinghamshire, NG16 2BN; Carl Ferenbach of 87 Pinckney Street, Boston, Massachusetts, MA 02114, USA; Sean Finn of 935 de la Guacheterie Street West, Floor 16, Montreal, Quebec H3B 2M9, Canada; Keith Heller of 56 Scarsdale Villas, London, W8 6PP; Lord Griffiths of Fforestfach of 133 Fleet Street, London, EC4A 2BB; Claude Mongeau of 935 de la Guacheterie Street West, Floor 16, Montreal, Quebec H3B 2M9, Canada; and David Richwhite of Appartment 16 Hale House, 34 De Vere Gardens, London, W8 5AQ.				
Delete as	[thansobereineopor][all the directors] of the above con	npany do solemr	nly and sincerely declare that:	
‡Delete whichever is inappropriate	The business of the company is:				
	(a) that xxfxa/xaxxycrised bankit/lioensed institution is the control of the cont				
	·			(XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX	
	Analognik botin klastinik asanisud sanonusnikus				
•	(c) something other than the above	<u>'e</u> ‡			
	The company is proposing to give		nce in connection	ı with the acquisition of shares	
]‡	
i	The assistance is for the purpose	of [that/socquisitio	ואו] [reducing or e	discharging a liability incurred	
! •	for the purpose of that acquisition	1.			
ŧ	The number and class of the shares acquired or to be acquired is: (i) 5,921,765 ordinary shares of £1.00 each in the company, acquired by UK Railway Holdings (BVI) Limited, and (ii) 736,212 ordinary shares of £1.00 each in the company, acquired by MJ UK Railway Holdings LLP.				
	Presentor's name, address and reference (if any): FRESHFIELDS BRUCKHAUS DERINGER 65 FLEET STREET, LONDON ENGLAND EC4Y 1HS	For official use General Section	Pos	st room	

DX 23 LONDON/CHANCERY

LANE

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

(i) UK Railway Holdings (BVI) Limited of Craigmuir Chambers, PO Box 71, Road Town, Tortola, British Virgin Islands; (ii) MJ UK Railway Holdings LLP of 9E Lockerman Street, Suite 1B, Dover DE 19901, County of Kent, USA and (iii) English Welsh & Scottish Railway Limited of McBeath House, 310 Goswell Road, London, EC1V 7LL.

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

The assistance will take the form	The	assistance	will tal	ke the	form o	f:
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See appendix I	

The person who [has acquired] twitk as spring]* the shares is:

(i) UK Railway Holdings (BVI) Limited of Craigmuir Chambers, PO Box 71, Road Town, Tortola, British Virgin Islands; and (ii) MJ UK Railway Holdings LLP of 9E Lockerman Street, Suite 1B, Dover DE 19901, County of Kent, USA

*Delete as appropriate

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

See appendix 2		
·		1

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 See appendix 3

19

Please do not write in this margin

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

†Delete either (a) or (b) as appropriate

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) [#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) blick intended to a common control and ingraph of the association within and the advantage of the advant

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 Contract

Declarants to sign below

Slan Finn

the 5th day of

Gne thousand nine hundred and

before me

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



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.

ENGLISH WELSH & SCOTTISH RAILWAY HOLDINGS LIMITED (EWS)

The assistance in this transaction (where applicable in respect of each relevant party) will take the form of:

- entering into new financing facilities with LTSBCF (which facilities will then be sub-participated to Lloyds TSB Bank plc and certain other banks or financial institutions) totalling (in aggregate with the BVI Facility as defined below) up to £150 million (the EWS Facilities). The EWS Facilities will comprise Debt Purchase Agreements (individually with each of EWSR and EWSI as seller of its respective debts) and a Property Loan Agreement and a Plant and Machinery Loan Agreement (each with EWSR as borrower). At the same time as entering into the EWS Facilities, EWS cancelling its existing bank facilities with Barclays Bank plc, Lloyds TSB Bank plc and The Royal Bank of Scotland plc.
- (b) the providing of guarantees and the giving of indemnities in respect of the EWS Facilities and the BVI Facility (as defined below) in favour of LTSBCF by EWS, EWSR, EWSI and RES (together the *Guarantors*) entering into a composite guarantee and indemnity (the *Guarantee*).
- (c) the Guarantors entering into a security deed in connection with the EWS Facilities and the BVI Facility, under which security will be granted in favour of LTSBCF by each of them over all of their assets and undertakings (the Security Deed)
- (d) E&W, RD and B&A, each entering into a security document in connection with the EWS Facilities and the BVI Facility granting a charge in favour of LTSBCF over all of the shares in EWSI, RES and EWSR respectively (the *Share Charges*).
- (e) EWS (together with EWSR, EWSI, RES, B&A, RD, E&W and BVI) and LTSBCF entering into an enforcement agreement (the *Enforcement Agreement*).

APPENDIX 2 – PRINCIPAL TERMS ON WHICH THE ASSISTANCE WILL BE GIVEN

- (a) Pursuant to the EWS Facilities, EWSR and EWSI paying certain fees to LTSBCF in connection with the EWS Facilities and the BVI Facility.
- (b) Pursuant to the Guarantee, EWS (together with EWSI, EWSR and RES on a joint and several basis) will enter into obligations as Guarantors in relation to the EWS Facilities and the BVI Facility to:
 - (i) guarantee to LTSBCF punctual performance by EWS, EWSR, EWSI and BVI of each of their respective obligations under or in connection with the EWS Facilities and the BVI Facility;
 - (ii) undertake with LTSBCF that whenever EWS, EWSR, EWSI and BVI does not pay any amount when due under or in connection with the EWS Facilities and the BVI Facility, it shall immediately on demand pay that amount as if it was the principal obligor; and
 - (iii) indemnify LTSBCF immediately on demand against any cost, loss or liability suffered by LTSBCF if any obligation guaranteed by EWS, EWSR, EWSI and BVI is or becomes unenforceable, invalid or illegal,

on the terms agreed.

- (c) Pursuant to the Security Deed, EWS (together with EWSR, EWSI and RES):
 - (i) will covenant to pay to LTSBCF all Liabilities when due in accordance with its terms or, if they do not specify the time for payment, immediately on demand by LTSBCF;
 - (ii) will create fixed and floating charges over its assets and undertakings as security for their respective Liabilities under the Finance Documents;
 - (iii) will undertake to do all such acts or execute all such documents as LTSBCF requires to:
 - (A) perfect or protect the Charges or the priority of the Charges; and/or
 - (B) facilitate the realisation of the Charged Assets or the exercise of any rights vested in LTSBCF or any receiver; and
 - (iv) will promptly execute and deliver to LTSBCF a Charge of such of its real property from time to time in England and/or Wales as LTSBCF requires,

on the terms agreed.

- (d) Pursuant to the Share Charges, B&A, RD and E&W, amongst other things:
 - (i) will covenant to pay to LTSBCF all Liabilities when due in accordance with its terms or, if they do not specify the time for payment, immediately on demand by LTSBCF; and
 - (ii) will create fixed charges over the shares they hold in the capital of EWSR, RES and EWSI respectively,

LD930877/5 105522-0230 Page 2

on the terms agreed.

(e) Pursuant to the Enforcement Agreement, EWS (together with EWSR, EWSI and RES) and LTSBCF will enter into arrangements relating to (amongst other things) security issues relating to the New Security Documents, the Guarantee and Indemnity Document, the EWS Facilities and the BVI Facility.

DEFINITIONS

BVI Facility means a £20 million loan facility which BVI proposes enter with LTSBCF (in which Lloyds Bank plc and certain other banks or other banks or other financial institutions will again sub-participate);

B&A means Boreal & Austral Railfreight Limited (company number 3164272);

BVI means UK Railway Holdings (BVI) Limited (registered in the British Virgin Islands with the number 565232);

Charged Assets means the assets of EWS, EWSR, EWSI, RES and/or any assets from time to time subject, or expressed to be subject, to the Charges or any part of those assets;

Charges means all or any of the security created or expressed to be created by or pursuant to the Security Deed by EWS, EWSR, EWSI and/or RES;

EWSI means English Welsh & Scottish Railway International Limited (company number 3232475);

EWS means English Welsh & Scottish Railway Holdings Limited (company number 3116322);

EWSR means English Welsh & Scottish Railway Limited (company number 2938988);

E&W means East & West Railway Limited (company number 3180966);

Finance Documents means each of the Debt Purchase Agreements (individually with each of EWSR and EWSI as seller of its respective debts), the Property Loan Agreement and the Plant and Machinery Loan Agreement, the Guarantee, the Security Deed, the Share Charges, the Enforcement Agreement, any accession letters, any resignation letter and any other document designated as such by the relevant parties;

Liabilities means all present and future moneys, debts and liabilities due, owing or incurred by it to any secured party under or in connection with any Finance Document (in each case, whether alone or jointly, or jointly and severally, with any other person, whether actually or contingently and whether as principal, surety or otherwise);

LTSBCF means Lloyds TSB Commercial Finance Limited (company number 733011);

New Security Documents means the Share Charges and the Security Deed together;

RD means Res December Limited (company number 3134604); and

RES means Rail Express Systems Limited (2938991).

APPENDIX 3 – DATE ON WHICH FINANCIAL ASSISTANCE IS TO BE GIVEN

A date being not later than eight weeks from the date hereof.

LD930877/5 105522-0230 Page 4



KPMG LLP

1 The Embankment
Neville Street
Leeds LS1 4DW
United Kingdom

Tel +44 (0) 113 231 3000 Fax +44 (0) 113 231 3655 DX 724440 Leeds

The Directors
English Welsh & Scottish Railway Holdings
Limited
McBeath House
310 Goswell Road
London ECIV 7LL

Our ref rf/218

Dear Sirs

Auditors' report to the directors of English Welsh & Scottish Railway Holdings Limited pursuant to Section 156(4) of the Companies Act 1985

We have examined the attached statutory declaration of the directors dated 5 June 2006 in connection with the proposal that the company should give financial assistance for the purpose of reducing or discharging a liability previously incurred for the purpose of the purchase of the company's ordinary shares.

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

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 LLP

Registered Auditor

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COMPANIES FORM No. 155(6)a

Declaration in relation to assistance for the acquisition of shares.



Please do not write in this margin Pursuant to section 155(6) of the Companies Act 1985

Please complete
legibly, preferably
in black type, or

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

*Insert full name of company

Tinsert name(s) and address(es) of all the directors

To the Registrar of Companies

For official use	Company number	
	03116322	
· — — — — J		

Name of company

* English Welsh & Scottish Railway Holdings Limited (hereinafter referred to as "the company")

₩et

Hamdi Conger of 7 Briar Road, Newthorpe, Nottinghamshire, NG16 2BN;

Carl Ferenbach of 87 Pinckney Street, Boston, Massachusetts, MA 02114, USA;

Sean Finn of 935 de la Guacheterie Street West, Floor 16, Montreal, Quebec H3B 2M9, Canada;

Keith Heller of 56 Scarsdale Villas, London, W8 6PP;

Lord Griffiths of Fforestfach of 133 Fleet Street, London, EC4A 2BB;

Claude Mongeau of 935 de la Guacheterie Street West, Floor 16, Montreal, Quebec H3B 2M9, Canada; and David Richwhite of Appartment 16 Hale House, 34 De Vere Gardens, London, W8 5AQ.

Delete as appropriate

[thansolexilizeotor][all the directors] of the above company do solemnly and sincerely declare that:

The business of the company is:

‡Delete whichever is inappropriate

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(b)kitak.of.axperson:europariosekundarsection:3xexkofathe.desurence:Gomeaniasidekininthekmeeningkofathe.
*aniosuseriusekundarsekundarsection:3
*aniosuseriusekundarsekundarsection:3
*aniosuseriusekundarsekundarsection:3

(c) something other than the above ‡

The company is proposing to give financial assistance in connection with the acquisition of shares in the [company] toompany's halding companyx

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

The number and class of the shares acquired or to be acquired is: (i) 5,921,765 ordinary shares of £1.00 each in the company, acquired by UK Railway Holdings (BVI) Limited, and (ii) 736,212 ordinary shares of £1.00 each in the company, acquired by MJ UK Railway Holdings LLP.

Presentor's name, address and reference (if any):
FRESHFIELDS BRUCKHAUS DERINGER
65 FLEET STREET, LONDON ENGLAND EC4Y 1HS DX 23 LONDON/CHANCERY LANE

For	οπι	ciai	use
Gen	eral	Sec	tion

Post room

1‡

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

(i) UK Railway Holdings (BVI) Limited of Craigmuir Chambers, PO Box 71, Road Town, Tortola, British Virgin Islands; (ii) MJ UK Railway Holdings LLP of 9E Lockerman Street, Suite 1B, Dover DE 19901, County of Kent, USA and (iii) English Welsh & Scottish Railway Limited of McBeath House, 310 Goswell Road, London, EC1V 7LL.

Please do not write in this margin

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

The assistance will take the form of:

See appendix 1		
		1
		}
	 <u>-</u>	

The person who [has acquired] ** the shares is:

(i) UK Railway Holdings (BVI) Limited of Craigmuir Chambers, PO Box 71, Road Town, Tortola, British Virgin Islands; and (ii) MJ UK Railway Holdings LLP of 9E Lockerman Street, Suite 1B, Dover DE 19901, County of Kent, USA

*Delete as appropriate

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

See appendix 2	· ·		1
			:
			ı

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 See appendix 3

19

Please do not write in this margin

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

†Delete either (a) or (b) as appropriate

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) [#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) blais intended to commence the winding-up of the company within x 12 x00 anthrochae commence the winding that the company will be able to pay its debts in full within 12 x00 anthrochae commence mentocat the winding cup. [† (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.

Declarants to sign below

Declared at

Lander

211/ 24

before me

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

OGUN SOLICITORS

391 CITY ROAD LONDON EC1V 1NE

TEL: +44 (020)7 833 8828 FAX: +44 (020)7 713 7474 DX 400212 FINSBURY 2

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.

ENGLISH WELSH & SCOTTISH RAILWAY HOLDINGS LIMITED (EWS)

The assistance in this transaction (where applicable in respect of each relevant party) will take the form of:

- entering into new financing facilities with LTSBCF (which facilities will then be subparticipated to Lloyds TSB Bank plc and certain other banks or financial institutions) totalling (in aggregate with the BVI Facility as defined below) up to £150 million (the EWS Facilities). The EWS Facilities will comprise Debt Purchase Agreements (individually with each of EWSR and EWSI as seller of its respective debts) and a Property Loan Agreement and a Plant and Machinery Loan Agreement (each with EWSR as borrower). At the same time as entering into the EWS Facilities, EWS cancelling its existing bank facilities with Barclays Bank plc, Lloyds TSB Bank plc and The Royal Bank of Scotland plc.
- (b) the providing of guarantees and the giving of indemnities in respect of the EWS Facilities and the BVI Facility (as defined below) in favour of LTSBCF by EWS, EWSR, EWSI and RES (together the *Guarantors*) entering into a composite guarantee and indemnity (the *Guarantee*).
- (c) the Guarantors entering into a security deed in connection with the EWS Facilities and the BVI Facility, under which security will be granted in favour of LTSBCF by each of them over all of their assets and undertakings (the Security Deed)
- (d) E&W, RD and B&A, each entering into a security document in connection with the EWS Facilities and the BVI Facility granting a charge in favour of LTSBCF over all of the shares in EWSI, RES and EWSR respectively (the *Share Charges*).
- (e) EWS (together with EWSR, EWSI, RES, B&A, RD, E&W and BVI) and LTSBCF entering into an enforcement agreement (the *Enforcement Agreement*).

APPENDIX 2 – PRINCIPAL TERMS ON WHICH THE ASSISTANCE WILL BE GIVEN

- (a) Pursuant to the EWS Facilities, EWSR and EWSI paying certain fees to LTSBCF in connection with the EWS Facilities and the BVI Facility.
- (b) Pursuant to the Guarantee, EWS (together with EWSI, EWSR and RES on a joint and several basis) will enter into obligations as Guarantors in relation to the EWS Facilities and the BVI Facility to:
 - (i) guarantee to LTSBCF punctual performance by EWS, EWSR, EWSI and BVI of each of their respective obligations under or in connection with the EWS Facilities and the BVI Facility;
 - (ii) undertake with LTSBCF that whenever EWS, EWSR, EWSI and BVI does not pay any amount when due under or in connection with the EWS Facilities and the BVI Facility, it shall immediately on demand pay that amount as if it was the principal obligor; and
 - (iii) indemnify LTSBCF immediately on demand against any cost, loss or liability suffered by LTSBCF if any obligation guaranteed by EWS, EWSR, EWSI and BVI is or becomes unenforceable, invalid or illegal,

on the terms agreed.

- (c) Pursuant to the Security Deed, EWS (together with EWSR, EWSI and RES):
 - (i) will covenant to pay to LTSBCF all Liabilities when due in accordance with its terms or, if they do not specify the time for payment, immediately on demand by LTSBCF;
 - (ii) will create fixed and floating charges over its assets and undertakings as security for their respective Liabilities under the Finance Documents;
 - (iii) will undertake to do all such acts or execute all such documents as LTSBCF requires to:
 - (A) perfect or protect the Charges or the priority of the Charges; and/or
 - (B) facilitate the realisation of the Charged Assets or the exercise of any rights vested in LTSBCF or any receiver; and
 - (iv) will promptly execute and deliver to LTSBCF a Charge of such of its real property from time to time in England and/or Wales as LTSBCF requires,

on the terms agreed.

- (d) Pursuant to the Share Charges, B&A, RD and E&W, amongst other things:
 - (i) will covenant to pay to LTSBCF all Liabilities when due in accordance with its terms or, if they do not specify the time for payment, immediately on demand by LTSBCF; and
 - (ii) will create fixed charges over the shares they hold in the capital of EWSR, RES and EWSI respectively,

on the terms agreed.

(e) Pursuant to the Enforcement Agreement, EWS (together with EWSR, EWSI and RES) and LTSBCF will enter into arrangements relating to (amongst other things) security issues relating to the New Security Documents, the Guarantee and Indemnity Document, the EWS Facilities and the BVI Facility.

DEFINITIONS

BVI Facility means a £20 million loan facility which BVI proposes enter with LTSBCF (in which Lloyds Bank plc and certain other banks or other banks or other financial institutions will again sub-participate);

B&A means Boreal & Austral Railfreight Limited (company number 3164272);

BVI means UK Railway Holdings (BVI) Limited (registered in the British Virgin Islands with the number 565232);

Charged Assets means the assets of EWS, EWSR, EWSI, RES and/or any assets from time to time subject, or expressed to be subject, to the Charges or any part of those assets;

Charges means all or any of the security created or expressed to be created by or pursuant to the Security Deed by EWS, EWSR, EWSI and/or RES;

EWSI means English Welsh & Scottish Railway International Limited (company number 3232475);

EWS means English Welsh & Scottish Railway Holdings Limited (company number 3116322);

EWSR means English Welsh & Scottish Railway Limited (company number 2938988);

E&W means East & West Railway Limited (company number 3180966);

Finance Documents means each of the Debt Purchase Agreements (individually with each of EWSR and EWSI as seller of its respective debts), the Property Loan Agreement and the Plant and Machinery Loan Agreement, the Guarantee, the Security Deed, the Share Charges, the Enforcement Agreement, any accession letters, any resignation letter and any other document designated as such by the relevant parties;

Liabilities means all present and future moneys, debts and liabilities due, owing or incurred by it to any secured party under or in connection with any Finance Document (in each case, whether alone or jointly, or jointly and severally, with any other person, whether actually or contingently and whether as principal, surety or otherwise);

LTSBCF means Lloyds TSB Commercial Finance Limited (company number 733011);

New Security Documents means the Share Charges and the Security Deed together;

RD means Res December Limited (company number 3134604); and

RES means Rail Express Systems Limited (2938991).

APPENDIX 3 – DATE ON WHICH FINANCIAL ASSISTANCE IS TO BE GIVEN

A date being not later than eight weeks from the date hereof.



KPMG LLP 1 The Embankment Neville Street Leeds LS1 4DW United Kingdom Tel +44 (0) 113 231 3000 Fax +44 (0) 113 231 3656 DX 724440 Leeds

The Directors
English Welsh & Scottish Railway Holdings
Limited
McBeath House
310 Goswell Road
London ECIV 7LL

Our ref rf/218

Dear Sirs

Auditors' report to the directors of English Welsh & Scottish Railway Holdings Limited pursuant to Section 156(4) of the Companies Act 1985

We have examined the attached statutory declaration of the directors dated 5 June 2006 in connection with the proposal that the company should give financial assistance for the purpose of reducing or discharging a liability previously incurred for the purpose of the purchase of the company's ordinary shares.

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

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 LLP

Registered Auditor

G

COMPANIES FORM No. 155(6)a

Declaration in relation to assistance for the acquisition of shares.



Please do not write in this margin

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

lease complete	To the Registrar of Companies		Company number
egibly, preferably n black type, or oold block lettering			03116322
Note	Name of company		
vote Please read the	English Welsh & Scottish Railway Holdings	Limited (hereinafter referred to a	s "the company")

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

*Insert full name of company

finsert name(s) and address(es) of all the directors

l/We†

Hamdi Conger of 7 Briar Road, Newthorpe, Nottinghamshire, NG16 2BN;

Carl Ferenbach of 87 Pinckney Street, Boston, Massachusetts, MA 02114, USA;

Sean Finn of 935 de la Guacheterie Street West, Floor 16, Montreal, Quebec H3B 2M9, Canada;

Keith Heller of 56 Scarsdale Villas, London, W8 6PP;

Lord Griffiths of Fforestfach of 133 Fleet Street, London, EC4A 2BB;

Claude Mongeau of 935 de la Guacheterie Street West, Floor 16, Montreal, Quebec H3B 2M9, Canada; and David Richwhite of Appartment 16 Hale House, 34 De Vere Gardens, London, W8 5AQ.

Delete as appropriate

(bhaseolexelizeocor)[all the directors] of the above company do solemnly and sincerely declare that: The business of the company is:

‡Delete whichever is inappropriate

(c) something other than the above ‡

The company is proposing to give financial assistance in connection with the acquisition of shares in the [company] toompany's halding company:

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

The number and class of the shares acquired or to be acquired is: (i) 5,921,765 ordinary shares of £1.00 each in the company, acquired by UK Railway Holdings (BVI) Limited, and (ii) 736,212 ordinary shares of £1.00 each in the company, acquired by MJ UK Railway Holdings LLP.

Presentor's name, address and reference (if any):
FRESHFIELDS BRUCKHAUS DERINGER
65 FLEET STREET, LONDON ENGLAND EC4Y 1HS
DX 23 LONDON/CHANCERY LANE

For official use	
General Section	Post room
,	

1#

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

(i) UK Railway Holdings (BVI) Limited of Craigmuir Chambers, PO Box 71, Road Town, Tortola, British Virgin Islands; (ii) MJ UK Railway Holdings LLP of 9E Lockerman Street, Suite 1B, Dover DE 19901, County of Kent, USA and (iii) English Welsh & Scottish Railway Limited of McBeath House, 310 Goswell Road, London, EC1V 7LL.

Please do not write in this margin

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

The assistance will take the form of:

See appendix 1	
	}

The person who [has acquired] ** the shares is:

(i) UK Railway Holdings (BVI) Limited of Craigmuir Chambers, PO Box 71, Road Town, Tortola, British Virgin Islands; and (ii) MJ UK Railway Holdings LLP of 9E Lockerman Street, Suite 1B, Dover DE 19901, County of Kent, USA

*Delete as appropriate

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

See appendix 2	-	·	

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 See appendix 3

19

Page 2

Please do not write in this margin

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

†Delete either (a) or (b) as appropriate

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) [#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) blisis intended to commence the winding up of the company within x12 younths of thet determed the commence the winding up of the company will be able to pay its debte in full within \$2 younths of the commence ment 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

Declarants to sign below

Brun holths

133 FLEET STREET ECAA 288

the 05 day of June 2006

Genthausand nina hundred and.

before me occurriou

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

EVERSHEDS LLP 85 QUEEN VICTORIA ST. LONDON, ECAV 9JL

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.

ENGLISH WELSH & SCOTTISH RAILWAY HOLDINGS LIMITED (EWS)

The assistance in this transaction (where applicable in respect of each relevant party) will take the form of:

- entering into new financing facilities with LTSBCF (which facilities will then be sub-participated to Lloyds TSB Bank plc and certain other banks or financial institutions) totalling (in aggregate with the BVI Facility as defined below) up to £150 million (the EWS Facilities). The EWS Facilities will comprise Debt Purchase Agreements (individually with each of EWSR and EWSI as seller of its respective debts) and a Property Loan Agreement and a Plant and Machinery Loan Agreement (each with EWSR as borrower). At the same time as entering into the EWS Facilities, EWS cancelling its existing bank facilities with Barclays Bank plc, Lloyds TSB Bank plc and The Royal Bank of Scotland plc.
- (b) the providing of guarantees and the giving of indemnities in respect of the EWS Facilities and the BVI Facility (as defined below) in favour of LTSBCF by EWS, EWSR, EWSI and RES (together the *Guaranters*) entering into a composite guarantee and indemnity (the *Guarantee*).
- (c) the Guarantors entering into a security deed in connection with the EWS Facilities and the BVI Facility, under which security will be granted in favour of LTSBCF by each of them over all of their assets and undertakings (the Security Deed)
- (d) E&W, RD and B&A, each entering into a security document in connection with the EWS Facilities and the BVI Facility granting a charge in favour of LTSBCF over all of the shares in EWSI, RES and EWSR respectively (the *Share Charges*).
- (e) EWS (together with EWSR, EWSI, RES, B&A, RD, E&W and BVI) and LTSBCF entering into an enforcement agreement (the *Enforcement Agreement*).

APPENDIX 2 – PRINCIPAL TERMS ON WHICH THE ASSISTANCE WILL BE GIVEN

- (a) Pursuant to the EWS Facilities, EWSR and EWSI paying certain fees to LTSBCF in connection with the EWS Facilities and the BVI Facility.
- (b) Pursuant to the Guarantee, EWS (together with EWSI, EWSR and RES on a joint and several basis) will enter into obligations as Guarantors in relation to the EWS Facilities and the BVI Facility to:
 - (i) guarantee to LTSBCF punctual performance by EWS, EWSR, EWSI and BVI of each of their respective obligations under or in connection with the EWS Facilities and the BVI Facility;
 - (ii) undertake with LTSBCF that whenever EWS, EWSR, EWSI and BVI does not pay any amount when due under or in connection with the EWS Facilities and the BVI Facility, it shall immediately on demand pay that amount as if it was the principal obligor; and
 - (iii) indemnify LTSBCF immediately on demand against any cost, loss or liability suffered by LTSBCF if any obligation guaranteed by EWS, EWSR, EWSI and BVI is or becomes unenforceable, invalid or illegal,

on the terms agreed.

- (c) Pursuant to the Security Deed, EWS (together with EWSR, EWSI and RES):
 - (i) will covenant to pay to LTSBCF all Liabilities when due in accordance with its terms or, if they do not specify the time for payment, immediately on demand by LTSBCF;
 - (ii) will create fixed and floating charges over its assets and undertakings as security for their respective Liabilities under the Finance Documents;
 - (iii) will undertake to do all such acts or execute all such documents as LTSBCF requires to:
 - (A) perfect or protect the Charges or the priority of the Charges; and/or
 - (B) facilitate the realisation of the Charged Assets or the exercise of any rights vested in LTSBCF or any receiver; and
 - (iv) will promptly execute and deliver to LTSBCF a Charge of such of its real property from time to time in England and/or Wales as LTSBCF requires,

on the terms agreed.

- (d) Pursuant to the Share Charges, B&A, RD and E&W, amongst other things:
 - (i) will covenant to pay to LTSBCF all Liabilities when due in accordance with its terms or, if they do not specify the time for payment, immediately on demand by LTSBCF; and
 - (ii) will create fixed charges over the shares they hold in the capital of EWSR, RES and EWSI respectively,

Page 2

LD930877/5 105522-0230

on the terms agreed.

(e) Pursuant to the Enforcement Agreement, EWS (together with EWSR, EWSI and RES) and LTSBCF will enter into arrangements relating to (amongst other things) security issues relating to the New Security Documents, the Guarantee and Indemnity Document, the EWS Facilities and the BVI Facility.

DEFINITIONS

BVI Facility means a £20 million loan facility which BVI proposes enter with LTSBCF (in which Lloyds Bank plc and certain other banks or other banks or other financial institutions will again sub-participate);

B&A means Boreal & Austral Railfreight Limited (company number 3164272);

BVI means UK Railway Holdings (BVI) Limited (registered in the British Virgin Islands with the number 565232);

Charged Assets means the assets of EWS, EWSR, EWSI, RES and/or any assets from time to time subject, or expressed to be subject, to the Charges or any part of those assets;

Charges means all or any of the security created or expressed to be created by or pursuant to the Security Deed by EWS, EWSR, EWSI and/or RES;

EWSI means English Welsh & Scottish Railway International Limited (company number 3232475);

EWS means English Welsh & Scottish Railway Holdings Limited (company number 3116322);

EWSR means English Welsh & Scottish Railway Limited (company number 2938988);

E&W means East & West Railway Limited (company number 3180966);

Finance Documents means each of the Debt Purchase Agreements (individually with each of EWSR and EWSI as seller of its respective debts), the Property Loan Agreement and the Plant and Machinery Loan Agreement, the Guarantee, the Security Deed, the Share Charges, the Enforcement Agreement, any accession letters, any resignation letter and any other document designated as such by the relevant parties;

Liabilities means all present and future moneys, debts and liabilities due, owing or incurred by it to any secured party under or in connection with any Finance Document (in each case, whether alone or jointly, or jointly and severally, with any other person, whether actually or contingently and whether as principal, surety or otherwise);

LTSBCF means Lloyds TSB Commercial Finance Limited (company number 733011);

New Security Documents means the Share Charges and the Security Deed together;

RD means Res December Limited (company number 3134604); and

RES means Rail Express Systems Limited (2938991).

APPENDIX 3 - DATE ON WHICH FINANCIAL ASSISTANCE IS TO BE GIVEN

A date being not later than eight weeks from the date hereof.



KPMG LLP 1 The Embankment Neville Street Leeds LS1 4DW United Kingdom Tel +44 (0) 113 231 3000 Fax +44 (0) 113 231 3655 DX 724440 Leeds

The Directors
English Welsh & Scottish Railway Holdings
Limited
McBeath House
310 Goswell Road
London ECIV 7LL

Our ref rf/218

Dear Sirs

Auditors' report to the directors of English Welsh & Scottish Railway Holdings Limited pursuant to Section 156(4) of the Companies Act 1985

We have examined the attached statutory declaration of the directors dated 5 June 2006 in connection with the proposal that the company should give financial assistance for the purpose of reducing or discharging a liability previously incurred for the purpose of the purchase of the company's ordinary shares.

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

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 LLP

Registered Auditor

COMPANIES FORM No. 155(6)a

Declaration in relation to assistance for the acquisition of shares.



Please do not write in this margin

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

Please complete
egibly, preferably
n black type, or
hold block lettering

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

*Insert full name of company

Tinsert name(s) and address(es) of all the directors

To the Registrar of Companies

For official use	Company number
	03116322
	L,

Name of company

* English Welsh & Scottish Railway Holdings Limited (hereinafter referred to as "the company")

l/We†

Hamdi Conger of 7 Briar Road, Newthorpe, Nottinghamshire, NG16 2BN;

Carl Ferenbach of 87 Pinckney Street, Boston, Massachusetts, MA 02114, USA;

Sean Finn of 935 de la Guacheterie Street West, Floor 16, Montreal, Quebec H3B 2M9, Canada;

Keith Heller of 56 Scarsdale Villas, London, W8 6PP;

Lord Griffiths of Fforestfach of 133 Fleet Street, London, EC4A 2BB;

Claude Mongeau of 935 de la Guacheterie Street West, Floor 16, Montreal, Quebec H3B 2M9, Canada; and

David Richwhite of Appartment 16 Hale House, 34 De Vere Gardens, London, W8 5AQ.

Delete as appropriate

‡Delete whichever

is inappropriate

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

The business of the company is:

takthatxofxaxxecogorieedxbanktillioensexkinstitutionifxutitunitenneeningxofithexBankingxAstxf979.x (b)xthatxofxaxpersonxeuthoriaedkundarsectionx3xexx4xofxbextasureooex5ompanieax4etx3982xtexearsy Avanalagoisk batiatik artixai caaniaud concensorie acc

(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/sxbaldingxxoropanyx

]‡

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

The number and class of the shares acquired or to be acquired is: (i) 5,921,765 ordinary shares of £1.00 each in the company, acquired by UK Railway Holdings (BVI) Limited, and (ii) 736,212 ordinary shares of £1.00 each in the company, acquired by MJ UK Railway Holdings LLP.

Presentor's name, address and reference (if any): FRESHFIELDS BRUCKHAUS DERINGER 65 FLEET STREET, LONDON **ENGLAND EC4Y 1HS** DX 23 LONDON/CHANCERY LANE

For official use **General Section**

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

(i) UK Railway Holdings (BVI) Limited of Craigmuir Chambers, PO Box 71, Road Town, Tortola, British Virgin Islands; (ii) MJ UK Railway Holdings LLP of 9E Lockerman Street, Suite 1B, Dover DE 19901, County of Kent, USA and (iii) English Welsh & Scottish Railway Limited of McBeath House, 310 Goswell Road, London, EC1V 7LL.

Please do not write in this margin

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

The assistance will take the form of:

See appendix 1	 	
•		
i		
		·

The person who [has acquired] twitte apprixe] * the shares is:

(i) UK Railway Holdings (BVI) Limited of Craigmuir Chambers, PO Box 71, Road Town, Tortola, British Virgin Islands; and (ii) MJ UK Railway Holdings LLP of 9E Lockerman Street, Suite 1B, Dover DE 19901, County of Kent, USA

*Delete as appropriate

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

See appendix 2	 	
	•	
		:

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 See appendix 3

19

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

†Delete either (a) or (b) as appropriate

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) [*/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) blaissintended tox commence the minding up at the company within x12 manths at the commence the minding up at the company will be able to pay its also toxin full within 12 mounts and the commence ment at the commence 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 Montreal Quebec

the 5th day of done

before me

A Commissioner for Oaths or Notary Public or Justice of the Peace or a Solicitor having the powers conferred on a Commissioner for Oaths. Declarants to sign below



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.

ENGLISH WELSH & SCOTTISH RAILWAY HOLDINGS LIMITED (EWS)

The assistance in this transaction (where applicable in respect of each relevant party) will take the form of:

- (a) EWSR, EWSI (each as a seller of its debts and EWSR as a borrower) and EWS entering into new financing facilities with LTSBCF (which facilities will then be subparticipated to Lloyds TSB Bank plc and certain other banks or financial institutions) totalling (in aggregate with the BVI Facility as defined below) up to £150 million (the EWS Facilities). The EWS Facilities will comprise Debt Purchase Agreements (individually with each of EWSR and EWSI as seller of its respective debts) and a Property Loan Agreement and a Plant and Machinery Loan Agreement (each with EWSR as borrower). At the same time as entering into the EWS Facilities, EWS cancelling its existing bank facilities with Barclays Bank plc, Lloyds TSB Bank plc and The Royal Bank of Scotland plc.
- (b) the providing of guarantees and the giving of indemnities in respect of the EWS Facilities and the BVI Facility (as defined below) in favour of LTSBCF by EWS, EWSR, EWSI and RES (together the *Guarantors*) entering into a composite guarantee and indemnity (the *Guarantee*).
- (c) the Guarantors entering into a security deed in connection with the EWS Facilities and the BVI Facility, under which security will be granted in favour of LTSBCF by each of them over all of their assets and undertakings (the Security Deed)
- (d) E&W, RD and B&A, each entering into a security document in connection with the EWS Facilities and the BVI Facility granting a charge in favour of LTSBCF over all of the shares in EWSI, RES and EWSR respectively (the *Share Charges*).
- (e) EWS (together with EWSR, EWSI, RES, B&A, RD, E&W and BVI) and LTSBCF entering into an enforcement agreement (the *Enforcement Agreement*).

APPENDIX 2 – PRINCIPAL TERMS ON WHICH THE ASSISTANCE WILL BE GIVEN

- (a) Pursuant to the EWS Facilities, EWSR and EWSI paying certain fees to LTSBCF in connection with the EWS Facilities and the BVI Facility.
- (b) Pursuant to the Guarantee, EWS (together with EWSI, EWSR and RES on a joint and several basis) will enter into obligations as Guarantors in relation to the EWS Facilities and the BVI Facility to:
 - (i) guarantee to LTSBCF punctual performance by EWS, EWSR, EWSI and BVI of each of their respective obligations under or in connection with the EWS Facilities and the BVI Facility;
 - (ii) undertake with LTSBCF that whenever EWS, EWSR, EWSI and BVI does not pay any amount when due under or in connection with the EWS Facilities and the BVI Facility, it shall immediately on demand pay that amount as if it was the principal obligor; and
 - (iii) indemnify LTSBCF immediately on demand against any cost, loss or liability suffered by LTSBCF if any obligation guaranteed by EWS, EWSR, EWSI and BVI is or becomes unenforceable, invalid or illegal,

on the terms agreed.

- (c) Pursuant to the Security Deed, EWS (together with EWSR, EWSI and RES):
 - (i) will covenant to pay to LTSBCF all Liabilities when due in accordance with its terms or, if they do not specify the time for payment, immediately on demand by LTSBCF;
 - (ii) will create fixed and floating charges over its assets and undertakings as security for their respective Liabilities under the Finance Documents;
 - (iii) will undertake to do all such acts or execute all such documents as LTSBCF requires to:
 - (A) perfect or protect the Charges or the priority of the Charges; and/or
 - (B) facilitate the realisation of the Charged Assets or the exercise of any rights vested in LTSBCF or any receiver; and
 - (iv) will promptly execute and deliver to LTSBCF a Charge of such of its real property from time to time in England and/or Wales as LTSBCF requires,

on the terms agreed.

- (d) Pursuant to the Share Charges, B&A, RD and E&W, amongst other things:
 - (i) will covenant to pay to LTSBCF all Liabilities when due in accordance with its terms or, if they do not specify the time for payment, immediately on demand by LTSBCF; and
 - (ii) will create fixed charges over the shares they hold in the capital of EWSR, RES and EWSI respectively,

LD930877/5 105522-0230 Page 2

on the terms agreed.

(e) Pursuant to the Enforcement Agreement, EWS (together with EWSR, EWSI and RES) and LTSBCF will enter into arrangements relating to (amongst other things) security issues relating to the New Security Documents, the Guarantee and Indemnity Document, the EWS Facilities and the BVI Facility.

DEFINITIONS

BVI Facility means a £20 million loan facility which BVI proposes enter with LTSBCF (in which Lloyds Bank plc and certain other banks or other banks or other financial institutions will again sub-participate);

B&A means Boreal & Austral Railfreight Limited (company number 3164272);

BVI means UK Railway Holdings (BVI) Limited (registered in the British Virgin Islands with the number 565232);

Charged Assets means the assets of EWS, EWSR, EWSI, RES and/or any assets from time to time subject, or expressed to be subject, to the Charges or any part of those assets;

Charges means all or any of the security created or expressed to be created by or pursuant to the Security Deed by EWS, EWSR, EWSI and/or RES;

EWSI means English Welsh & Scottish Railway International Limited (company number 3232475);

EWS means English Welsh & Scottish Railway Holdings Limited (company number 3116322);

EWSR means English Welsh & Scottish Railway Limited (company number 2938988);

E&W means East & West Railway Limited (company number 3180966);

Finance Documents means each of the Debt Purchase Agreements (individually with each of EWSR and EWSI as seller of its respective debts), the Property Loan Agreement and the Plant and Machinery Loan Agreement, the Guarantee, the Security Deed, the Share Charges, the Enforcement Agreement, any accession letters, any resignation letter and any other document designated as such by the relevant parties;

Liabilities means all present and future moneys, debts and liabilities due, owing or incurred by it to any secured party under or in connection with any Finance Document (in each case, whether alone or jointly, or jointly and severally, with any other person, whether actually or contingently and whether as principal, surety or otherwise);

LTSBCF means Lloyds TSB Commercial Finance Limited (company number 733011);

New Security Documents means the Share Charges and the Security Deed together;

RD means Res December Limited (company number 3134604); and

RES means Rail Express Systems Limited (2938991).

APPENDIX 3 – DATE ON WHICH FINANCIAL ASSISTANCE IS TO BE GIVEN

A date being not later than eight weeks from the date hereof.

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KPMG LLP
1 The Embankment
Neville Street
Leeds LS1 4DW
United Kingdom

Tel +44 (0) 113 231 3000 Fax +44 (0) 113 231 3655 DX 724440 Leeds

The Directors
English Welsh & Scottish Railway Holdings
Limited
McBeath House
310 Goswell Road
London ECIV 7LL

Our ref rf/218

Dear Sirs

Auditors' report to the directors of English Welsh & Scottish Railway Holdings Limited pursuant to Section 156(4) of the Companies Act 1985

We have examined the attached statutory declaration of the directors dated 5 June 2006 in connection with the proposal that the company should give financial assistance for the purpose of reducing or discharging a liability previously incurred for the purpose of the company's ordinary shares.

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

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 LLP

Registered Auditor

G

COMPANIES FORM No. 155(6)a

Declaration in relation to assistance for the acquisition of shares.



Please do not write in this margin Pursuant to section 155(6) of the Companies Act 1985

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

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

*insert full name of company

finsert name(s) and address(es) of all the directors

To the Registrar of Companies

For official use Company number

03116322

Name of company

* English Welsh & Scottish Railway Holdings Limited (hereinafter referred to as "the company")

l/We†

Hamdi Conger of 7 Briar Road, Newthorpe, Nottinghamshire, NG16 2BN;

Carl Ferenbach of 87 Pinckney Street, Boston, Massachusetts, MA 02114, USA;

Sean Finn of 935 de la Guacheterie Street West, Floor 16, Montreal, Quebec H3B 2M9, Canada;

Keith Heller of 56 Scarsdale Villas, London, W8 6PP;

Lord Griffiths of Fforestfach of 133 Fleet Street, London, EC4A 2BB;

Claude Mongeau of 935 de la Guacheterie Street West, Floor 16, Montreal, Quebec H3B 2M9, Canada; and

David Richwhite of Appartment 16 Hale House, 34 De Vere Gardens, London, W8 5AQ.

Delete as appropriate

[that: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

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(c) something other than the above ‡

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

The number and class of the shares acquired or to be acquired is: (i) 5,921,765 ordinary shares of £1.00 each in the company, acquired by UK Railway Holdings (BVI) Limited, and (ii) 736,212 ordinary shares of £1.00 each in the company, acquired by MJ UK Railway Holdings LLP.

Presentor's name, address and reference (if any):
FRESHFIELDS BRUCKHAUS DERINGER
65 FLEET STREET, LONDON ENGLAND EC4Y IHS DX 23 LONDON/CHANCERY LANE

For official use General Section

Post room

]‡

Page 1

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

(i) UK Railway Holdings (BVI) Limited of Craigmuir Chambers, PO Box 71, Road Town, Tortola, British Virgin Islands; (ii) MJ UK Railway Holdings LLP of 9E Lockerman Street, Suite 1B, Dover DE 19901, County of Kent, USA and (iii) English Welsh & Scottish Railway Limited of McBeath House, 310 Goswell Road, London, EC1V 7LL.

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

The	assistance	will	take	the	form	of:
, , , , –	4444		1411	1114	101111	•

See appendix 1	
	;

The person who [has acquired] [with a required]* the shares is:

(i) UK Railway Holdings (BVI) Limited of Craigmuir Chambers, PO Box 71, Road Town, Tortola, British Virgin Islands; and (ii) MJ UK Railway Holdings LLP of 9E Lockerman Street, Suite 1B, Dover DE 19901, County of Kent, USA

*Delete as appropriate

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

See appendix 2		
		į
		i

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

19

The date on which the assistance is to be given is See appendix 3

Page 2

Please do not write in this margin

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

†Delete either (a) or (b) as appropriate

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) [½/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) Htxisxintended tox commonce the winding up to the keep pany within xXX manths set that date, nichiwothat nixatdalaxatix waaxat saldac adulli wexnaa maaxad statuta da kala na adula amad sawah sa a #2xmonthsxxfthexannancementxafthexaindingxxxx.] † (note 3)

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

Declared at auchland, New Zealand

Declarants to sign below

day of June 2006

before me

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

> Roger J C Partridge Solicitor Auckland

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.

ENGLISH WELSH & SCOTTISH RAILWAY HOLDINGS LIMITED (EWS)

The assistance in this transaction (where applicable in respect of each relevant party) will take the form of:

- (a) EWSR, EWSI (each as a seller of its debts and EWSR as a borrower) and EWS entering into new financing facilities with LTSBCF (which facilities will then be subparticipated to Lloyds TSB Bank plc and certain other banks or financial institutions) totalling (in aggregate with the BVI Facility as defined below) up to £150 million (the EWS Facilities). The EWS Facilities will comprise Debt Purchase Agreements (individually with each of EWSR and EWSI as seller of its respective debts) and a Property Loan Agreement and a Plant and Machinery Loan Agreement (each with EWSR as borrower). At the same time as entering into the EWS Facilities, EWS cancelling its existing bank facilities with Barclays Bank plc, Lloyds TSB Bank plc and The Royal Bank of Scotland plc.
- (b) the providing of guarantees and the giving of indemnities in respect of the EWS Facilities and the BVI Facility (as defined below) in favour of LTSBCF by EWS, EWSR, EWSI and RES (together the *Guarantors*) entering into a composite guarantee and indemnity (the *Guarantee*).
- (c) the Guarantors entering into a security deed in connection with the EWS Facilities and the BVI Facility, under which security will be granted in favour of LTSBCF by each of them over all of their assets and undertakings (the Security Deed)
- (d) E&W, RD and B&A, each entering into a security document in connection with the EWS Facilities and the BVI Facility granting a charge in favour of LTSBCF over all of the shares in EWSI, RES and EWSR respectively (the *Share Charges*).
- (e) EWS (together with EWSR, EWSI, RES, B&A, RD, E&W and BVI) and LTSBCF entering into an enforcement agreement (the *Enforcement Agreement*).

APPENDIX 2 – PRINCIPAL TERMS ON WHICH THE ASSISTANCE WILL BE GIVEN

- (a) Pursuant to the EWS Facilities, EWSR and EWSI paying certain fees to LTSBCF in connection with the EWS Facilities and the BVI Facility.
- (b) Pursuant to the Guarantee, EWS (together with EWSI, EWSR and RES on a joint and several basis) will enter into obligations as Guarantors in relation to the EWS Facilities and the BVI Facility to:
 - (i) guarantee to LTSBCF punctual performance by EWS, EWSR, EWSI and BVI of each of their respective obligations under or in connection with the EWS Facilities and the BVI Facility;
 - (ii) undertake with LTSBCF that whenever EWS, EWSR, EWSI and BVI does not pay any amount when due under or in connection with the EWS Facilities and the BVI Facility, it shall immediately on demand pay that amount as if it was the principal obligor; and
 - (iii) indemnify LTSBCF immediately on demand against any cost, loss or liability suffered by LTSBCF if any obligation guaranteed by EWS, EWSR, EWSI and BVI is or becomes unenforceable, invalid or illegal,

on the terms agreed.

- (c) Pursuant to the Security Deed, EWS (together with EWSR, EWSI and RES):
 - (i) will covenant to pay to LTSBCF all Liabilities when due in accordance with its terms or, if they do not specify the time for payment, immediately on demand by LTSBCF;
 - (ii) will create fixed and floating charges over its assets and undertakings as security for their respective Liabilities under the Finance Documents;
 - (iii) will undertake to do all such acts or execute all such documents as LTSBCF requires to:
 - (A) perfect or protect the Charges or the priority of the Charges; and/or
 - (B) facilitate the realisation of the Charged Assets or the exercise of any rights vested in LTSBCF or any receiver; and
 - (iv) will promptly execute and deliver to LTSBCF a Charge of such of its real property from time to time in England and/or Wales as LTSBCF requires,

on the terms agreed.

- (d) Pursuant to the Share Charges, B&A, RD and E&W, amongst other things:
 - (i) will covenant to pay to LTSBCF all Liabilities when due in accordance with its terms or, if they do not specify the time for payment, immediately on demand by LTSBCF; and
 - (ii) will create fixed charges over the shares they hold in the capital of EWSR, RES and EWSI respectively,

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on the terms agreed.

(e) Pursuant to the Enforcement Agreement, EWS (together with EWSR, EWSI and RES) and LTSBCF will enter into arrangements relating to (amongst other things) security issues relating to the New Security Documents, the Guarantee and Indemnity Document, the EWS Facilities and the BVI Facility.

DEFINITIONS

BVI Facility means a £20 million loan facility which BVI proposes enter with LTSBCF (in which Lloyds Bank plc and certain other banks or other banks or other financial institutions will again sub-participate);

B&A means Boreal & Austral Railfreight Limited (company number 3164272);

BVI means UK Railway Holdings (BVI) Limited (registered in the British Virgin Islands with the number 565232);

Charged Assets means the assets of EWS, EWSR, EWSI, RES and/or any assets from time to time subject, or expressed to be subject, to the Charges or any part of those assets;

Charges means all or any of the security created or expressed to be created by or pursuant to the Security Deed by EWS, EWSR, EWSI and/or RES;

EWSI means English Welsh & Scottish Railway International Limited (company number 3232475);

EWS means English Welsh & Scottish Railway Holdings Limited (company number 3116322);

EWSR means English Welsh & Scottish Railway Limited (company number 2938988);

E&W means East & West Railway Limited (company number 3180966);

Finance Documents means each of the Debt Purchase Agreements (individually with each of EWSR and EWSI as seller of its respective debts), the Property Loan Agreement and the Plant and Machinery Loan Agreement, the Guarantee, the Security Deed, the Share Charges, the Enforcement Agreement, any accession letters, any resignation letter and any other document designated as such by the relevant parties;

Liabilities means all present and future moneys, debts and liabilities due, owing or incurred by it to any secured party under or in connection with any Finance Document (in each case, whether alone or jointly, or jointly and severally, with any other person, whether actually or contingently and whether as principal, surety or otherwise);

LTSBCF means Lloyds TSB Commercial Finance Limited (company number 733011);

New Security Documents means the Share Charges and the Security Deed together;

RD means Res December Limited (company number 3134604); and

RES means Rail Express Systems Limited (2938991).

APPENDIX 3 – DATE ON WHICH FINANCIAL ASSISTANCE IS TO BE GIVEN

A date being not later than eight weeks from the date hereof.



KPMG LLP 1 The Embankment Neville Street Leeds LS1 4DW United Kingdom Tel +44 (0) 113 231 3000 Fax +44 (0) 113 231 3655 DX 724440 Leeds

The Directors
English Welsh & Scottish Railway Holdings
Limited
McBeath House
310 Goswell Road
London EC1V 7LL

Our ref rf/218

Dear Sirs

Auditors' report to the directors of English Welsh & Scottish Railway Holdings Limited pursuant to Section 156(4) of the Companies Act 1985

We have examined the attached statutory declaration of the directors dated 5 June 2006 in connection with the proposal that the company should give financial assistance for the purpose of reducing or discharging a liability previously incurred for the purpose of the purchase of the company's ordinary shares.

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

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 LLP

Registered Auditor



KPMG LLP

1 The Embankment Neville Street Leeds LS1 4DW United Kingdom Tel +44 (0) 113 231 3000 Fax +44 (0) 113 231 3655 DX 724440 Leeds

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Yours faithfully

Registered Auditor

KPMG LLP

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