

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

155(6)b

A45 **331**
COMPANIES HOUSE **29/03/2006**

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

The assistance is to be given to: (note 2) ELMNear LIMITED whose registered office is at
235 Old Marylebone Road, London NW1 5Q

See Memorandum A

ELMNEAR LIMITED whose registered office is at 235 Old Marylebone Road
London NW1 5QT

† delete as appropriate

The Memorandum B

The amount of cash to be transferred to the person assisted is £ See Memorandum C

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

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legibly, preferably
in black type, or
bold block lettering

Delete either (a) or
(b) as appropriate

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

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

(a) [If we have formed the opinion that this company will be able to pay its debts as they fall due during the year immediately following that date]* (note 3)

(b) ~~XXXXXX intended to commence the winding up of the company within 12 months of that date, and XXXX~~
~~XXXXXX have formed the opinion that this company will be able to pay its debts in full within 12 months of the~~
~~XXXXXX commencement of the winding up]* (note 3)~~

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

Declared at

113 BRENT ST.
COVENTRY CV4 2DT

Declarants to sign below

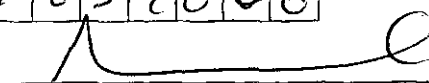




Day Month Year
on

24	03	2006
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before me

 A. KRAMER (Solicitor)

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

NOTES

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

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

or, for companies registered in Scotland:-

The Registrar of Companies
Companies House
37 Castle Terrace
Edinburgh
EH1 2EB

MEMORANDUM A

WHEREAS:

- (1) It was noted that Elmnear Limited (the "**Purchaser**") had agreed with Lloyds TSB plc (the "**Bank**") the terms of a loan facility of up to £1,350,000 (the "**Facilities**") to be made to finance the consideration to be paid on the acquisition (the "**Acquisition**") by the Purchaser of the entire issued share capital of the Company.
- (2) It was noted that an agreement to purchase the entire issued share capital of the Company was proposed to be entered into on that day between (1) the shareholders of the Company as stated therein and (2) the Purchaser relating to the Acquisition (the "**Acquisition Agreement**") and that it was proposed that exchange and completion take place shortly after the swearing of this Declaration.
- (3) It was further noted that in order to fund the completion of the Acquisition the Bank had agreed pursuant to the terms of the Facility Agreement at or on around even date (the "**Facility Agreement**") to provide the Facilities. It was noted that it was intended that the Facilities be used *inter alia* to enable the Purchaser to part fund the Acquisition of the Company. It was noted that it is a condition precedent to the Facilities being available that the Company's subsidiary Featherbar Limited ("**Featherbar**") was required to enter into various banking documents securing and guaranteeing the indebtedness due from the Purchaser to the Bank and that in doing so would therefore be giving financial assistance as defined in Section 151 of the Act. It was noted that Featherbar was required to secure all sums due to the Bank under an omnibus guarantee and set off agreement, debenture and legal charge, as described below.
- (4) In connection with the provision by Featherbar of financial assistance in the under noted form and terms to the Purchaser and the Bank for the purpose of acquiring the entire issued share capital of the Company (being 284,000 Ordinary Shares of £1.00 each) it is proposed that the documents set out below be entered into by Featherbar.

The assistance will take the form of Featherbar entering into:

- (a) An omnibus guarantee and set-off agreement (the "**OGSA**") to be entered into (on or about the date hereof) by, *inter alia*, Featherbar in favour of the Bank pursuant to which Featherbar will, amongst other things guarantee and indemnify the Bank, as principal obligor, to pay all monies and discharge all obligations owing by any of the parties thereto (other than the Bank) to the Bank from time to time; It was noted that the OGSA contained rights of set-off whereby the Bank could set off credit balances of the Company against debit balances of the other members of the Group (the "**Set-Off Rights**");

- (b) a debenture (the "**Debenture**") creating fixed and floating charges over all the assets and undertakings of the company (including without limitation the properties described in the schedule) to be given by Featherbar to the Bank securing, among other obligations, sums due under the Facility Agreement;
- (c) a legal charge (the "**Legal Charge**") to be granted by the Company creating a fixed charge over 64-66 West Smithfield, London, title number NGL 807472 (the "**Property**") to be given to the Bank;
- (d) a funding agreement between inter alia Featherbar and the Purchaser ("the **Inter-company Loan Agreement**").

and Featherbar:

- 1 incurring and discharging the associated costs and expenses associated with the acquisition of the Company including but not limited to the fees contemplated by the Facility Agreement, legal, accountancy and other professional fees; and
- 2 on the Purchaser's request but subject to Featherbar not being insolvent or the request prejudicing Featherbar's ability to pay its debts as they fall due, advancing certain sums of money to the Purchaser to assist with its repayment obligations under the Facility Agreement.

MEMORANDUM B

The principal terms on which the assistance will be given are for the purposes of this Memorandum (adopting the definitions set out in Memorandum A):

OGSA

(a) By executing the OGSA the Company will:

- (i) Guarantee, inter alia, the Principal's Liabilities (as defined in the OGSA) and to pay the other monies and liabilities described in clause 2, 3 and 4 of the OGSA;
- (ii) Guarantee the principal performance by the Purchaser of all the Purchaser's obligations under the Facility Agreement;
- (iii) Undertake to pay amounts due from the Purchaser in connection with the Facility Agreement;
- (iv) Indemnify the Bank against any costs, loss or liability if any obligation becomes unenforceable and the other indemnities contained in clause 4 of the OGSA;
- (v) Agree to grant the Set-off Arrangements (as defined in the OGSA);
- (vi) Allow the Bank to combine or consolidate all or any of the Accounts (as defined in the OGSA) with all or any of the Principal's Liability (as defined in the OGSA) and set-off or transfer any credit balance in or towards the Principals' Liabilities;
- (vii) Charges its Credit Balances (as defined in the OGSA) to the Bank to secure the payment of the Secured Obligations (as defined in the OGSA);

which in each case could include liabilities incurred by the Purchaser for the purpose of the acquisition of shares in the Company and liabilities incurred by the Purchaser under the Facility Agreement.

All as more particularly described in the OGSA.

Debenture

(b) By executing the Debenture the Company will:

- (i) grant fixed and floating charges over all its assets and undertakings which could be used to discharge liabilities incurred by the Purchaser for the purpose of the Acquisition and liabilities incurred by the Purchaser under the Facility Agreement; and

- (ii) secure the payment of all the Secured Obligations (as defined in the Debenture).

All as more particularly described in the Debenture.

Legal Charge

(c) By executing the Legal Charge Featherbar will:

- (i) be creating a fixed charge over the Property thereon to be given to the Bank which could be used to discharge liabilities incurred by the Purchaser for the purpose of the Acquisition and liabilities incurred by the Purchaser under the Facility Agreement; and
- (ii) secure the payment of all the Secured Obligations (as defined in the Legal Charge).

Intra-Company Loan Agreement

(b) By executing the Intra-Company Loan Agreement Featherbar agrees:

- (i) to lend monies to the Purchaser on the terms that it is repayable on the Termination Date (as defined therein); and
- (ii) to lend sums of money to the Purchaser which may be used to discharge liabilities of the Purchaser under the Facilities which are provided, *inter alia*, for the purpose of the Acquisition.

All as more particularly described in the Intra-Company Loan Agreement.

Associated Costs

Costs and expenses will be paid in accordance with the arrangements reached with the Company's professional advisors and others for the purposes of the Acquisition.

MEMORANDUM C

Such sums payable by the Company and Featherbar to the Purchaser under the intragroup funding agreement up to an aggregate limit of £5,000,000.

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

We have examined the attached statutory declaration of the directors of the Company dated *24th March 2006* in connection with the proposal that the Company's subsidiary, Featherbar Limited, should give financial assistance for the purchase of the entire issued share capital of the Company by Elmnear Limited.

This report is made solely to the directors of the Company for the purpose of section 156(4) of the Companies Act 1985. Our work has been undertaken so that we might state to the directors of the Company these matters that we are required to state to them in an auditors' report under that section 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, for our work, for this report, or for the opinions that we have formed.

Basis of opinion

We have enquired into the state of the Company's affairs in order to review the bases for the statutory declaration.

Opinion

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



Wilder Coe

Chartered Accountants and Registered Auditors

Date: *24th MARCH 2006*

Featherbay Limited – Board memorandum

Memorandum in connection with the proposed arrangement whereby the company will give financial assistance for the purchase of its own shares, particulars of which are given in the statutory declaration made by the directors this day pursuant to Section 155(6) of the Companies Act 1985.

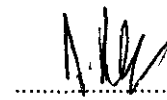
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The directors confirm the following matters to the best of their knowledge and belief:

As at 24 March 2006 being the latest practicable date before the date of this memorandum to which management accounts have been prepared, the aggregate of the company's assets as stated in its accounting records exceeded the aggregate of its liabilities as so stated;

From their knowledge of events since that date and of the likely course of the company's business, the directors have formed the opinion that the aggregate of the company's assets will exceed the aggregate of its liabilities immediately before the proposed financial assistance is given and that the giving of such financial assistance will not reduce the net assets of the company.

Signed on behalf of the Board



24/2/06

Dated

2006