

# COMPANIES FORM No. 155(6)(a)

## Declaration in relation to assistance for the acquisition of shares

# 155(6)a

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

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

For official use

Company number

04346502

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

\*Insert full name of company

Name of company

\* Thistle Edinburgh Limited (the "Company")

~~We~~

Cheryl Frances Moharm of 104 Granville Road, Wood Green, London N22 5LX and

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

Nicola Jane Wilden of 12C Elsworth Terrace, London NW3 3DR

†Delete as appropriate

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

The business of the company is:

§Delete whichever is inappropriate

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

~~(b) that of a person authorised under section 3 or 4 of the Insurance Companies Act 1982 to carry on insurance business in the United Kingdom~~

(c) something other than the above §

The company is proposing to give financial assistance in connection with the acquisition of shares in the [company] ~~company's holding company~~

~~limited~~

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

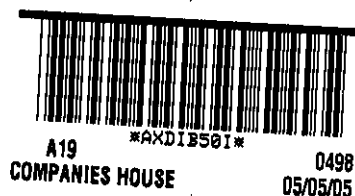
The number and class of the shares acquired or to be acquired is: 1 ordinary share of £1.00

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

Osborne Clarke (Ref: 0892825)  
2 Temple Back East  
Temple Quay  
Bristol BS1 6EG  
DX 7818 Bristol

For official Use (10/03)  
General Section

Post room



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

Please see attached Schedule, Part 1

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:

Please see attached Schedule, Part 2

The person who [has acquired] ~~will acquire~~ the shares is:

Topland Riversmeet Limited of 8 Baker Street, London W1U 3LL (the "**Purchaser**")

† Delete as  
appropriate

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

Please see attached Schedule, Part 3

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

Nil

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

Nil

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

CO155(6)(a)/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

X/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) X/We have formed the opinion that the company will be able to pay its debts as they fall due during the year immediately following that date]\* (note 3)

~~(b) It is intended to commence the winding-up of the company within 12 months of that date, and X/we have formed the opinion that the company will be able to pay its debts in full within 12 months of the commencement of the winding-up.]\* (note 3)~~

And X/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

1 London Wall, London

Day Month Year

on

28 04 2010

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 auditor's 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

DX 33050 Cardiff

or, for companies registered in Scotland:-

The Registrar of Companies  
37 Castle Terrace  
Edinburgh  
EH1 2EB

DX 235 Edinburgh

or LP-4 Edinburgh 2

**Schedule to Form 155(6)a in relation to**

**Thistle Edinburgh Limited, company number: 04346502 (the "Company")**

**Part 1 – The assistance is to be given to:**

1. The Purchaser;
2. The Governor and Company of the Bank of Scotland of 4th Floor, 116 Wellington Street, Leeds, LS1 4LT;
3. HBOS Treasury Services Plc of 33 Old Broad Street, London EC2N 1HZ (the **"Hedging Counter-Party"**);
4. Thistle Edinburgh Tenant Limited, Thistle Piccadilly Tenant Limited, Thistle Bloomsbury Park Tenant Limited, Thistle Euston Tenant Limited, Thistle Hyde Park Tenant Limited and Thistle Barbican Tenant Limited (the **"Operating Companies"**) all of PO Box 44790, 101 Buckingham Palace Road, London SW1W 0WA;
5. Berkley Estates London Limited of 8 Baker Street London W1U 3LL; and
6. Thistle Hotels Limited of PO Box 44790, 101 Buckingham Palace Road, London SW1W 0WA.

**Part 2 - form of the assistance:**

The assistance will take the form of the execution and delivery by the Company of the following documents (or the documents referred to therein or relating thereto) as the same may be amended, increased, novated, and / or replaced, varied supplemented or substituted from time to time, and the Company fulfilling its obligations under them and / or the entry into of the following transactions:

1. a facility agreement made between (1) The Governor and Company of the Bank of Scotland in its capacity as original lender, hedging guarantor bank, agent and security trustee (the **"Bank"**) (2) The Hotel Companies (as defined below) (3) the Purchasers (as defined below) and (4) Topland Group Holdings Limited (the **"Parent"**) (the **"Hotel Companies' Facility"**);
2. a security agreement to be entered into by the Company in favour of The Bank (the **"Security Agreement"**);
3. a deed of novation to be entered into by the Company (1) Thistle Piccadilly Limited, Thistle Bloomsbury Park Limited, Thistle Hyde Park Limited, Thistle Barbican Limited and Thistle Euston Limited (the **"Target Companies"**) (together with the Company the **"Hotel Companies"**) (2) Topland Riversmeet Limited, Topland Valley Limited, Topland Medway Limited, Topland Summit Limited, Topland Tor Limited, Topland Delta Limited (the **"Purchasers"**) (3) the Bank (4) and the Hedging Counter-Party (the **"Deed of Novation"**);

4. a standard security to be entered into by the Company in favour of the Bank (the **"Standard Security"**);
5. an assignation of rents to be entered into by the Company in favour of the Bank (the **"Assignation of Rents"**);
6. a subordination deed to be entered into by the Bank (1) the Hotel Companies (2) the Purchasers (3) and Berkley Estates London Limited (4) (the Hotel Companies, the Purchasers and Berkley Estates London Limited being referred to herein as the **"Subordinated Creditors"**) (the **"Subordination Deed"**);
7. a fees letter from the Bank addressed to and acknowledged by the Hotel Companies (the **"Fees Letter"**);
8. an ISDA master agreement and confirmations to be made thereunder to be entered into between the Hotel Companies and the Hedging Counter-Party (the **"ISDA Master Agreement"**);
9. a treasury counter indemnity relating to the Treasury Guarantee (as defined below) to be entered into between the Hotel Companies and the Bank (the **"Treasury Counter Indemnity"**);
10. a draft hive-up agreement between the Company and Topland Riversmeet Limited (the **"Purchaser"**) (the **"Post Acquisition Hive-Up Agreement"**);
11. the payment of all professional advisors and other fees to be incurred or paid by the Company in connection with or relating to the proposed acquisition of the shares in the Hotel Companies by the Purchasers (the **"Acquisition"**) (the **"Fees"**);
12. the pre-completion hive-out side letter addressed to Thistle Hotels Limited (1), High Advance Holdings Limited (2) and the Operating Companies (3) and from the Hotel Companies (4) (the **"Hive-Out Side Letter"**); and
13. an assignment by the Company of a balancing payment to Thistle Hotels Limited (the **"Balancing Payment Assignment"**).

## **Part 2 - principal terms of the assistance:**

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

1. under the Hotel Companies' Facility the Company (amongst other things) guarantees the punctual performance of each party to the Hotel Companies' Facility, or that accedes to the arrangements thereunder from time to time (the **"Obligors"**) of each of those Obligors' liabilities under all documents entered into in favour of the Bank pursuant to the Hotel Companies' Facility and indemnifies the Bank and Hedging Counterparty from time to time (the **"Finance Party"**) immediately on demand against any cost, loss or liability suffered by that Finance Party if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal;
2. under the Security Agreement the Company (amongst other things) covenants to pay, and guarantees the payment of, all moneys from time to time owed to the Bank by the

- Purchaser or to the Hotel Companies, including all moneys owed by the Purchaser under the Hotel Companies' Facility (the proceeds of which will be used, amongst other things, for discharge of inter group debt incurred in connection with the finance of the acquisition of the shares in the Company), grants first fixed charges over the various assets specified therein and over the property at The Thistle Hotel St James Centre Edinburgh London registered at the Land Registry under Title Number MID22327 (the "**Property**"), specific assignments in respect of the Company's rights and interests in connection with the Property and the Acquisition and a floating charge over the whole of the Company's assets and undertaking (save for certain excluded assets) as security for all the obligations of the Company to the Bank from time to time and provides an indemnity in favour of the Bank against all losses in connection with the liabilities owed by the Purchaser or the Hotel Companies to the Bank;
3. under the Deed of Novation (amongst other things) all of the Company's benefits, obligations and liabilities to the Bank under the Finance Documents as defined in the Hotel Companies' Facility and all arrangements entered into with the Hedging Counter-Party pursuant to the terms of the Hotel Companies' Facility are novated to the Purchasers;
  4. under the Standard Security (amongst other things) the Company charges to the Bank all of its interest in the Property and provides an indemnity in favour of the Bank against all losses in connection with the liabilities owed by the Purchaser or the Hotel Companies to the Bank;
  5. under the Assignment of Rents (amongst other things) the Company assigns the payment of rents due to it pursuant to a lease of the Property and provides an indemnity in favour of the Bank against all losses in connection with the liabilities owed by the Purchaser or the Hotel Companies to the Bank;
  6. under the Subordination Deed (amongst other things) payments due and owing from the Company to the Subordinated Creditors (as defined therein) are subordinated to payments due and owing to the Bank;
  7. under the Fees Letter (amongst other things) the Hotel Companies agree to pay to the Bank the fees detailed on the terms set out therein in connection with the provision of the Hotel Companies' Facility and pursuant to which the net assets of the Company will be reduced and which include an arrangement fee of £1,700,000, an anniversary fee of £1,700,000 and an exit fee of an amount determined in accordance with the calculations set out therein;
  8. pursuant to the ISDA Master Agreement (amongst other things) the interest rate management agreements will be entered into in accordance with the hedging strategy agreed between the Bank and the Company in relation to interest payable by the Hotel Companies under the tranche of the loan made available to it pursuant to the Hotel Companies' Facility together with all associated confirmations to be made thereunder;
  9. under the Treasury Counter Indemnity (amongst other things) the Hotel Companies indemnify the Bank for any liabilities incurred by the Bank in relation to a treasury guarantee entered (or to be entered) into between the Hedging Counterparty and the Bank whereby the Bank indemnifies the Hedging Counterparty in relation to sums

payable by the Hotel Companies and the Purchasers in relation to each interest rate management agreement entered into by the Hotel Companies and/or the Purchasers pursuant to the terms of the Hotel Companies' Facility (the "**Treasury Guarantee**");

10. under the Post Acquisition Hive-up Agreement (amongst other things) the Property is to be transferred to the Purchaser on the terms set out therein and the consideration for which is to be left outstanding as an intercompany loan;
11. by agreeing to be liable for the Fees the Company will be incurring costs and expenses in connection with or relating to the Acquisition and pursuant to which the net assets of the Company will be reduced;
12. under the Hive-out Side Letter the Company (amongst other things) agrees that any claim arising pursuant to a hive-out agreement between (1) the Company and (2) Thistle Edinburgh Tenant Limited (the "**Operating Company**") (the "**Hive-Out Agreement**") will be brought pursuant to the terms of a sale and purchase agreement relating to the Acquisition between (1) Thistle Hotels Limited, (2) High Advance Holdings Limited and (3) the Purchasers; and
13. under the Balancing Payment Assignment the Company assigns to Thistle Hotels Limited the Balancing Payment for a consideration equal to that Balancing Payment, such Balancing Payment originally payable pursuant to the Hive-Out Agreement and by the Operating Company to the Company (or by the Company to the Operating Company, as the case may be).



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Web site: www.bdo.co.uk

The Directors  
Thistle Edinburgh Limited  
Nations House  
103 Wigmore Street  
London  
W1U 1QS

28 April 2005

Our ref: 4653/PNP/N157

Dear Sirs

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

We have examined the attached statutory declaration of the directors of Thistle Edinburgh Limited (the "Company") dated 28 April 2005 in connection with the proposal that the Company should give financial assistance for the purpose of reducing or discharging a liability incurred in connection with the purchase of the entire share capital of the Company.

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

**Basis of opinion**

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

**Opinion**

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

Yours faithfully

BDO Stoy Hayward LLP  
*Chartered Accountants and Registered Auditors*