THE TAKEOVER PANEL

ASHBOURNE INVESTMENTS LIMITED

The Panel has to-day issued the attached Statement concerning Ashbourne Investments Limited.

This Statement was issued in its original form to the parties in November, 1975, and has since been amended following hearings before the Panel Appeal Committee, the findings of which are also attached.

14th April, 1976.

PANEL ON TAKE-OVERS AND MERGERS

P.O. Box No. 226 The Stock Exchange Building London EC2P 2JX

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APPEAL COMMITTEE STATEMENT
ASHBOURNE INVESTMENTS LIMITED

Mr. Glazer appealed against a Statement of the Panel dated 14th November, 1975. We have listened with care to the observations made on his behalf and considered them thoroughly. On the appeal we had an advantage which the Panel had not had of seeing Mr. Glazer before us personally and he added some observations to those of his representatives. The Director General informed us on the Appeal that he accepted that Mr. Glazer had behaved in the Ashbourne case with entire propriety. There was no indication of any desire to flout the Panel or the Code. He had made every reasonable attempt to make funds available to further the bid. There was no attack on his personal integrity. Nevertheless, there was a breach of the Code. In the result, we have amended the Statement in some particulars. Those alterations are embodied in the copy Statement attached.

24th March, 1976.

The Right Hon. Lord Pearce, QC

The Right Hon. Lord Remnant

Sir Peter Menzies

I.J. Fraser

PANEL ON TAKE-OVERS AND MERGERS

P.O. Box No. 226 The Stock Exchange Building London EC2P 2JX

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STATEMENT

ASHBOURNE INVESTMENTS LIMITED ("ASHBOURNE")

This case has occupied the attention of the City Panel for almost two years and is a most unsatisfactory one. The Panel is of course as powerless as the late King Canute to stem the tides of general economic recession and the insolvencies which have overtaken certain of those concerned in the case. The case illustrates, however, the fact that the Panel's effectiveness and the degree of support it may expect as a voluntary body are related to the extent to which it is dealing with persons who are willing to comply with a voluntary system and who wish to have continuing access to the facilities of the City. This qualification on the voluntary nature of the Panel's jurisdiction is only rarely of practical importance, and is, in the Panel's view, far outweighed by the advantages which the Panel possesses as an informal non-statutory body.

Of the two companies and one individual who in 1973 embarked upon a take-over operation in the present case both companies have, at their own request, had their Stock Exchange quotations suspended; one company is in liquidation and the directors of the other are proposing a capital reconstruction as an alternative to liquidation. The individual is a South African who has been unable to obtain the permission necessary to allow him to discharge the obligations which in the opinion of the Panel he has incurred under the City Code, but which he denies. Furthermore, one of the main backers is in liquidation.

Nonetheless, the City Panel considers that it is useful to examine at some length both the salient features of the case and the principles applicable to it under the Code so as to explain the rulings which the Panel now makes and also to give guidance for the future.

The Parties

Ashbourne is a financial and industrial holding company whose shares were listed on The Stock Exchange until that listing was suspended, at its own request, on 4th April, 1974. One of its subsidiaries is a small merchant bank called E.S. Schwab & Co. Limited ("Schwab"). At all relevant times, there have been in issue

8,790,673 ordinary shares of 25p each and £1,247,004 of 7% Convertible Unsecured Loan Stock, 1984 ("The Loan Stock").

Crest International Securities Limited ("Crest") is also a public company whose listing was suspended on 4th April, 1974. Its Chairman is Mr. Lionel I. Casper who has claimed effective control of the company, and has acted as its spokesman before the Panel.

Corporate Guarantee Trust Limited ("Corporate") is a public company whose listing was also suspended on 4th April, 1974. It was controlled by Mr. Stephen J. Barry and Mr. Stephen H. Ross and their family interests. Corporate is now in liquidation.

Both Crest and Corporate had modest banking interests.

Mr. Bernard Glazer is a South African resident who has been described as one of the major individual owners of property in South Africa. He has invested in the London market, sometimes as an investment client of Mr. Casper or his companies, he and Mr. Casper having known each other for some years.

Mr. William Stern is a financier who conducted many of his activities through various private and family companies. The only private company of Mr. Stern's which plays any important part in the present case is Wilstar Securities Limited ("Wilstar"), now in liquidation.

Finally, Brandts Limited, merchant bankers (formerly called "Wm. Brandt's Sons & Co. Limited"), became involved, in more than one way, in the course of acting for certain of the parties.

The Background

The somewhat tangled operation commenced in the latter part of 1973 when a group, the members of which were afterwards to be described as "the Consortium", acquired positions in the share capital of Ashbourne through various purchases.

Before the announcement of an offer for Ashbourne was made on 6th December, 1973, Mr. Casper and Mr. Glazer set out their intentions clearly in a written Heads of Agreement dated the 8th November, 1973 drafted by lawyers in South Africa, but which was only communicated to the Panel at a late stage in its enquiries. Mr. Glazer has informed the Panel that this agreement "fell away" or became "obsolete" soon after its signature. However, as late as 6th February, 1974, Mr. Glazer, in commenting on new proposals put to him by Mr. Casper in a letter of 31st January, 1974 wrote to Mr. Casper to say "It seems to me on reading the letter, that the whole basis of our deal, as recorded in the Agreement drawn in

Johannesburg, appears to be changed . . . . I think it will be impossible for me to agree to a final arrangement until . . . . I come over to London, which I hope will be on the 23rd inst.". The Panel is, however, satisfied that the Heads of Agreement indicate the nature of Mr. Glazer's involvement and the underlying objectives at the time when the scheme to obtain control of Ashbourne was put into operation. Mr. Casper entered into the Heads of Agreement in a personal capacity but undertook to procure the compliance by Crest and Corporate with those obligations which affected them.

In the Agreement, Mr. Casper represented that Crest and Corporate held approximately 24% of the issued share capital of Ashbourne. Under its terms, the parties intended that a bid should be made for the whole of Ashbourne and that arrangements would be made for Mr. Glazer to have a holding of 28% of Ashbourne. A voting pool would then be set up to cover Crest and Corporate's 24% of Ashbourne and Mr. Glazer's 28%. Under the pool, the whole of this 52% of Ashbourne would be voted in the manner directed by Mr. Glazer. When control was acquired the pool would be used to ensure that the Board of Ashbourne should consist of three directors nominated by Mr. Glazer, and three nominated by Crest and Corporate jointly. There would also be an independent Chairman acceptable to Mr. Glazer, Corporate and Crest.

Mr. Glazer may not have realised that this degree of involvement made him a member of the Consortium, referred to in the announcement of 6th December, 1973. The Panel concludes, for reasons given later, that he is and always has been a member of that Consortium.

The Panel has been informed that neither Crest nor Corporate had sufficient cash available to make a bid. In order therefore to secure the necessary cash, without which the operation which had been agreed upon could not be carried through, an approach was first made to Mr. Stern, a friend of Mr. Casper, who agreed to make substantial finance available through Wilstar. Mr. Stern in turn introduced the parties to Brandts who had previously acted for him and who as a result became the financial advisers to the Consortium in the present case and agreed to provide substantial financial support for the bid announced on 6th December, 1973. Under the financial arrangements which resulted, neither Crest nor Corporate were to acquire any Ashbourne shares tendered in response to the offer.

The Announcement in December, 1973

On 6th December, 973, a statement was released to the press by Brandts from which the following is an extract:

> "Crest International Securities Limited, Corporate Guarantee Trust Limited and their associates ("the Consortium") announce that they have to-day acquired 1,748,122 ordinary shares of 25p each in Ashbourne Investments Limited from certain Directors of that Company and their associates at a price of 46p per share. These shares, when added to the 2,044,977 shares already held, result in the Consortium now holding 43.15% of the Ordinary Share Capital of Ashbourne.
>
> Accordingly, Wm. Brandt's Sons & Co. Limited on behalf of the Consortium will be making an unconditional cash offer under the terms of the City Code on Take-overs and Mergers for the balance of the Ordinary Share Capital at 46p per share. An offer of £70.77 in cash for each £100 nominal of 7% Convertible Unsecured Loan Stock 1984 of Ashbourne ("the Loan Stock") will also be made on behalf of the Consortium. This is equivalent to the entitlement of Stockholders on conversion of their Loan Stock into Ordinary Shares and acceptance of the Offer".

A copy of the complete statement is attached as Appendix 1.

The purchase referred to in the statement took place pursuant to a letter dated 30th November, 1973 from Brandts to the directors of Ashbourne (a copy of which is attached as Appendix 2), in which Brandts said:

> "We act on behalf of Crest International Securities Limited, Corporate Guarantee Trust Limited and their associates ("the Consortium"). The Consortium at present holds approximately 2,044,000 Ordinary shares of 10p each in Ashbourne Investments Limited ("Ashbourne").
>
> We have been authorised by the Consortium to make offers on its behalf for all the ordinary share capital (other than those Ordinary shares referred to above) and all the outstanding 7 per cent. Convertible Unsecured Loan Stock 1984 ("the Loan Stock") of Ashbourne . . .
>
> These offers are conditional upon . . . the Directors and their associates selling to the Consortium at 46p per share not more than 1.75 mn. Ordinary shares in Ashbourne and not fewer than 1.5 mn. Ordinary shares in Ashbourne within 7 days hereof . . .
>
> . . .We confirm that the Consortium has sufficient funds available to it to implement the offers in full, and . . . we would intend to despatch the formal offer documents as soon as possible".

By the purchase on 6th December, 1973, which was in fact made entirely by Mr. Glazer and his associated interests, the Consortium incurred a mandatory bid obligation under Rule 35 of the Code as it was then in force. The existence of this obligation on the part of the Consortium has never been disputed although Mr. Glazer denies that he was a member of it. Although the offer was announced to the public on 6th December, 1973 it has never been implemented by a formal offer document.

The Mandatory Bid Obligations

The Panel considers that an understanding of the case may be assisted if it first sets out the nature of the obligations which arise under the 1972 edition of the City Code (which are substantially reproduced in the current edition) in circumstances such as these, and then its conclusions where in this case those obligations lie. The obligations under the Code are, of course, not legal ones. Legal obligations may be different. In common with ethical standards administered by most domestic tribunals, the obligations arising under the Code are usually more onerous than those which may exist at law and are superimposed on legal duties. This is fully understood by those concerned and, indeed were it not so, no Code of this nature might be appropriate or required. Nor does the absence of a rule precisely covering the case in point absolve the Panel from responsibility for reaching a decision. In such a case (as by analogy in the Common Law) the Panel must decide in accordance with the spirit and the Principles of the Code.

Rule 35 of the Code as then in force read:

> "Any person who acquires, whether by a series of transactions over a period of time or not, shares which (together with shares acquired by other persons acting in concert with such person) carry 40% of the voting rights ... attributable to the share capital of a company must, except in a case specifically approved by the Panel, extend within a reasonable period of time an unconditional offer to the holders of the remaining equity share capital of the offeree company ... The Offer required to be made under the provisions of this Rule shall ... be in cash or shall be accompanied by a cash alternative at not less than the highest price (excluding stamp duty and commission) paid by such persons for shares of that class within the preceding 12 months . . .".

The obligation stated in the Rule remains on the persons concerned unless and until the Panel for some reason, which would be quite exceptional, modifies or relieves them of it. The obligation is binding upon those who are members of a consortium. Where, as in the present case, the announcement of the intention to make an offer names only some of that consortium, this in no way absolves others who, whilst being undisclosed and referred to merely as "associates", nevertheless belong to that consortium at the time and are committed to it. It should perhaps be noted in passing that in the present case exceptionally, and for reasons it is not necessary to review, the Panel executive agreed that the price to be offered should be 46p per share, although there had been some purchases within the preceding twelve months by certain members of the Consortium at higher prices.

For the purposes of the Code an announcement of an offer, such as was made here, has of course a much greater significance than it would have in law. The form of the announcement in this case was such that had it given rise to a contractual obligation, the parties, being joint offerors, would, in effect, have been jointly and severally bound, that is to say any one of them would have been bound by the whole obligation in the event of the failure of the others. The Panel cannot apply a less demanding interpretation to its own practice than, mutatis mutandis, the law would require. Indeed, it may often be the case, as it was here, that as a matter of domestic arrangement between themselves some members of a consortium may have acquired many more or many fewer shares than others or that they are to take up either differing proportions, or possibly none, of the shares tendered in acceptance of the offer they are announcing. The Panel is satisfied, however, that (unless such differentiation is specifically announced to the shareholders of the offeree company, or to the directors of that company as representing them, and in due course to the market, in which case the position may be different) the obligation rests upon all offerors acting as a group or consortium so that each one is fully liable for its discharge, although as between themselves the parties may privately have arranged separate rights and obligations and possibly be entitled to recourse against other parties. Thus if one of the members were to become insolvent the position of the remainder in relation to the mandatory bid to be made to offeree shareholders would remain unaltered: they would each be liable to proceed with the bid in full.

The Composition of the Consortium

The present case is complicated by the complexity of the arrangements contemplated at different times by the members of the Consortium and those associated with them, by the fact that various concurrent legal proceedings have been taking place and by the circumstance that there have been several and lengthy hearings before the Panel accompanied by documentation which although eventually copious was, until the concluding stages, inadequate and may still be incomplete. Mr. Glazer made detailed written submissions in answer to requests from the Panel. The investigation has, however, been made the more difficult by the fact that he did not attend any meeting of the Panel, although invited to do so on three occasions.

In any case of such complex relationships, where the only parties specifically named as making the offer do not intend

to hold any of the shares tendered in acceptance of it and where outside finance has to be provided, it is particularly important that the financial advisers ensure that the basic terms of any agreement between the parties are clearly recorded. Unfortunately this was not done in this case. Brandts indeed were not informed of any antecedent agreement such as the Heads of Agreement between Mr. Casper and Mr. Glazer already referred to. Almost the only other contemporary document of a contractual nature relating to the arrangements contemplated, of which the Panel is aware, is a letter dated 29th November, 1973 from Wilstar agreeing with Brandts to take up shares to the value of £1,840,000. Another letter of the same date from Midland Bank to Brandts is referred to in greater detail later. Both letters were in fact drafted by Brandts.

The press statement of 6th December, 1973, whilst not identifying and disclosing all the members of the Consortium by name (and in the Panel's view, Mr. Glazer, because of his significant position, should certainly have been named), did designate them as a class capable of subsequent identification: they were the persons who already held 2,044,977 shares of Ashbourne between them before 6th December, 1973, or who acquired on that day a further 1,748,122 shares in Ashbourne. The Panel has been informed that the whole of those 1,748,122 shares purchased on 6th December, 1973 were bought by Mr. Glazer and his associated interests, who also acquired a further 191,000 shares and £10,200 nominal of the Loan Stock in the market during February and March, 1974, thereby bringing the interest of the Consortium up to some 45.3% of the Ashbourne equity. Mr. Glazer (together with his associated interests) thus became the largest individual shareholder with some 22% of the equity.

The shares acquired on 6th December, 1973 were bought from the directors of Ashbourne and their associates who no doubt considered themselves bound by the principle behind Rule 10 of the City Code (as then drawn) which required directors, who contemplated transferring effective control of a company, not to do so without securing an undertaking from the buyer to make an offer at the same price to the rest of the shareholders. The Panel is satisfied that the Ashbourne directors did expressly make such an undertaking a condition of this sale of their shares to the Consortium; moreover, before doing so, they insisted that Brandts should give them confirmation that the necessary funds were available, and such confirmation was given in the letter of 30th November, 1973.

The Consortium's Arrangements

Under the mandatory bid as announced, 46p per share had to be offered in cash for all the shares in Ashbourne and £70.77 in cash per £100 nominal for the whole of the Loan Stock not held by the Consortium. However, neither Crest nor Corporate intended to take up any further shares or Loan Stock themselves. Mr. Glazer undertook to take shares tendered up to a value of £500,000.

The remainder of the shares and all the Loan Stock tendered (with an aggregate value of about £2,760,000) were to be acquired as to 2/3 by Wilstar and 1/3 by Brandts although it was hoped that it would be possible to place on a considerable amount of these without loss. In certain circumstances it would have been necessary, in order to maintain Ashbourne's Stock Exchange listing, to place some of the shares taken up by Brandts and Wilstar under these arrangements. Brandts intended to retain shares on an investment basis to the value of £250,000 (this being, in Brandts' submission, an accepted practice by merchant bankers as an indication of confidence in issues or placings with which they are associated). For their services, Brandts could have anticipated payment of a commission and fee, although these had not been agreed with the Consortium. The Panel has also been informed that it was apparently envisaged that Brandts would be indemnified against any loss incurred in placing on any shares in Ashbourne which exceeded the £250,000-worth which Brandts had undertaken to hold on their own account. In common with all the so-called underwriting commitments in this case, there was no record of these arrangements.

Neither Crest nor Corporate, although under a mandatory obligation to bid, in fact intended to take up any shares accepted to the offer, apparently because at that time their own financial resources were inadequate. However, the Panel notes that Crest and possibly certain of the directors of Crest and Corporate appear to have agreed in principle with Wilstar, who were accepting a liability to take shares, to give Wilstar a put option at cost against themselves in respect of those shares exercisable after a period of two years.

How this liability was intended to be financed is unclear to the Panel.

The Panel is satisfied beyond any possible doubt that Mr. Glazer was at all material times a member of the Consortium even though he may not himself have realised it. It was indeed his purchase which so to speak, triggered off the obligation under the then Rule 35 and, as between members of the Consortium, he then

had the most substantial holding of Ashbourne shares. Further, although Mr.Glazer claims that his participation in the affair was limited to that of a "sub-underwriter", this is quite inconsistent, in the view of the Panel, with his intentions evidenced in the Agreement of 8th November, 1973 with Mr.Casper even though this subsequently lapsed, and with his purchase of the block which triggered off the bid obligation.

Other Parties

Whilst responsibility under the Code clearly rests with the members of the Consortium, they are not the only persons whose position has to be considered.

(a) Mr. Stern

The personal position of Mr.Stern in this matter was considered by the Panel: it does not appear however that Mr.Stern had bought any of the Ashbourne shares on his personal account or that he intended to hold any of the shares accepted to the offer on that account as distinct from that of Wilstar. Furthermore, he had not publicly pledged any personal interest. Consequently Mr.Stern does not personally have any obligations under the Code in this case. The position of Wilstar is covered in later sections of this statement.

(b) Brandts

Before stating what the Panel conceives the position of Brandts in this case to be, it should be emphasised that the City Code cannot spell out in advance the rules applicable to every circumstance in which a merchant bank may involve itself in the course of take-over transactions. The fact, however, that some particular circumstance relating to a take-over may not be within the express terms of the Code does not, as has been explained, entitle the Panel to wash its hands of the matter or to abdicate its responsibility for dealing with the problems submitted to it. In such a case the Panel seeks to state what, consistent with the City Code and its underlying principles and spirit, good practice and ethics require to be done.

Where a merchant bank is acting simply as an agent for disclosed principals in making a take-over offer to directors or in publicly announcing it to shareholders, it incurs no financial liability on that account alone beyond any arising under the law. The position may be different when it acts for undisclosed principals.

Where, however, (as the Code in certain circumstances requires) the merchant bank confirms to directors, or assures

shareholders and the public (and the Panel considers there to be no distinction in this context between a letter written to directors of an offeree company representing their shareholders and a formal offer document to the shareholders) that the necessary finance is available to the offerors to implement the offer, then the position is different. In such a case the bank concerned is under a very high and strict duty to satisfy itself that adequate finance is available at the time and, as far as can reasonably be foreseen, will continue to remain available throughout the continuance of the offer. In the case where the offer is made by a group, the Panel considers that there is no obligation to make sure that each member is separately able to provide the whole of the finance required if it is quite clear that the total resources available to the group are ample and no reason for anxiety on this score exists. Where these are the only circumstances, a merchant bank duly exercising a high degree of care and expertise at all stages does not become an insurer or guarantor that the offer will in fact be implemented.

In the circumstances existing at the end of November, 1973, there seems without the benefit of hindsight to have been no reason to question the solvency of Wilstar and the Panel accepts that Brandts were not guilty of any failure of duty in accepting Wilstar at that time as able to contribute its proportion of the intended finance towards the offer. Mr.Glazer's contribution of £500,000 was assured by the Midland Bank.

In the present case, the position of Brandts has nevertheless been a matter of great concern to the Panel, the parties and shareholders. The Panel has had to consider whether Brandts (and, for what it is now worth, Wilstar) have incurred any liability on the grounds that they were acting in concert with the Consortium or whether, by committing themselves to the prospect of a significant investment in Ashbourne, Brandts had incurred an obligation going beyond that normally attributable to a merchant bank as set out in the foregoing paragraphs.

It may well be that both Brandts and Wilstar were acting in concert with the Consortium, as defined by the Code, at the relevant time. However, under the then Rule 35, as under the present equivalent Rule, the liability to make a mandatory bid rested not upon all those acting in concert as such, but in general only on those who by their existing holdings and/or further purchases agreed between themselves to acquire shareholdings which in their totality brought the Rule into operation. Thus this liability would not normally fall upon persons who may have only agreed to purchase shares accepted to the consequent mandatory bid. The Panel accordingly rules that no financial liability arises against Brandts

(or Wilstar) simply on the ground that they may have been in concert with the Consortium. It should be added that an underwriter acting solely as an underwriter would not normally be considered to incur bid obligations under the Code in its then or present form.

A special circumstance arises in the present case and it is this which has given the Panel the most anxiety. In connection with any proposed take-over, merchant bankers of course may and frequently do provide finance in one form or another. According to the circumstances in which this is done additional obligations may arise under the spirit if not the letter of the Code.

In the present case Brandts, having been informed that neither Crest nor Corporate proposed to put up any funds or to accept any Ashbourne shares tendered under the offer, agreed to take a proportion of the shares accepted to the offer on an investment basis. It is most unfortunate that there was no written record as to this between Brandts and the Consortium, but the matter was quite clearly set out in the letter addressed to Brandts by Wilstar dated 29th November, 1973, and there has been no dispute that this was the agreed position.

Although such records as there are describe the participation of Brandts and Wilstar as "underwriting", it seems hardly accurate to describe these arrangements in that way. The present case concerns a cash offer, and "underwriting" would be an inappropriate description, since the term is normally applied where a paper offer is underwritten for cash, as seems to have been the original intention in the Heads of Agreement. However, the parties, including Brandts, chose throughout to describe the arrangements as "underwriting". On 7th January, 1974 Mr.Casper was writing to Mr.Glazer:-

> ". . . . You will recall that Brandt's agreed to act as our bankers and main underwriters. They did, however, further insist on taking a back-stop guarantee in respect of a percentage of the total commitment from my friend, Willy Stern . . . ."

and by March, 1974 Brandts were belatedly contemplating setting up a formal contractual position described as underwriting.

The Panel has, however, to consider the position as at 30th November/6th December, 1973, and later events are only of assistance insofar as they throw light on that position, which is sometimes not much. It is true that, for the purpose of the formal documentation which began to emerge in March, 1974, Brandts were described as the main underwriters with Wilstar in a sub-underwriting position, thus tending to confirm what Mr.Casper is quoted above as saying in January, 1974. The implications of the relationship between Brandts and Wilstar, possibly being that of main

underwriter and sub-underwriter, are, of course, that if the sub-underwriter failed, the main underwriter might remain under an obligation for the whole transaction. The Panel is, however, satisfied that, in the circumstances which existed in November, 1973, Brandts and Wilstar were in this respect on an equal footing. Wilstar had an earlier involvement than Brandts and Mr.Stern, in fact, was instrumental in bringing Brandts into the transaction. Furthermore, Wilstar was assuming responsibility for £1.84 mn. and it would, in the Panel's view, be quite inequitable to make Brandts a guarantor for Wilstar.

The original documents disclosed are equivocal, but it is observed that, quite apart from the absence of any underwriting agreement with the Consortium or public announcement as to the position, there was no evidence of a clear agreement at that time for the payment of underwriting commission and no firm arrangement for sub-underwriting. It seems to the Panel that Brandts agreed in writing with Wilstar and orally with Crest and Corporate to purchase in the stated proportions such shares and Loan Stock, beyond Mr.Glazer's investment of £500,000, as accepted the offer to a value not exceeding £920,000.

Brandts were only able to give the Ashbourne share-holders, as represented by their directors, their assurance that the finance necessary to implement the mandatory offer was available as a result of the fact that they themselves were committed for a substantial proportion of the amount required. The general duty of a bank in assuring itself of the availability of the necessary finance and confirming this has already been discussed. Where the bank's assurance is based upon its own provision of finance (whether by loan facilities, by agreeing to arrange underwriting or by agreeing to buy all or, as in this case, some of the offeree's shares) the Panel considers that the obligation to provide that finance will continue to subsist at least so long as the mandatory bid obligation remains in being and unless the bank has been expressly relieved of it by the Panel. This is an ethical obligation arising consistently with the spirit of the Code but not expressly set out. Were it otherwise a merchant bank could in such a case at any moment make its prior assurance of adequate finance nugatory by withdrawing its own support. Moreover, where it has been the bank's provision of support which made the announcement of the original offer possible, and which in consequence affected the market and possible dispositions of the shareholders, circumstances such as the insolvency of one or more of the offerors may not of themselves automatically relieve that bank of some continuing responsibility towards offeree shareholders. If, in

such a case, loss is to be sustained by anyone it may have, in some circumstances, to be borne or shared by the bank involved rather than by shareholders. This may be especially the case where in consequence of the bank's support the offerors, before implementation of the mandatory offer, have managed (as indeed happened to some extent in the present case) to secure control of the offeree company and have influenced its management or dispositions perhaps, as might happen in some cases, with advantage to themselves. In such circumstances, the Panel has to decide upon a general balance of equities in each case.

As will shortly appear, the offer announced on 6th December, 1973 has now for all practical purposes fallen to the ground and it is therefore this possible continuing liability on the part of Brandts which has caused the Panel the greatest difficulty. Whilst Brandts' handling of the matter during the early stages is open to criticism, it appears that they made every effort to post the offer document without delay, and when the arrangements for the bid ran into difficulties they did discuss with the Consortium various methods of getting the offer on its feet and continued to impress on Crest and Corporate the continuing obligations under the Code. They may be thought at that stage to have been doing their best in a difficult situation. On 3rd July, 1974, however, Brandts informed Crest and Corporate that unless they accepted the latest proposals which Brandts had suggested, they, Brandts, would withdraw from the whole matter. This decision was communicated to the then Director General of the Panel, who personally raised no objection to Brandts' withdrawal but in so informing them added that his view was provisional and subject to eventual review by the full Panel.

Against this background, and that of unresolved High Court actions (in one of which the Panel was joined) referred to later, a meeting of the full Panel took place on 15th July, 1974 at which the position was reviewed in the presence of the parties, including Brandts but not Mr.Glazer. The Panel did not at that time have all the relevant documents before it, nor was the inability of any of the members of the Consortium to find the necessary finance yet finally established. So far as Brandts were concerned it was argued, on the one hand, that they had in the circumstances no further liability and, on the other, that they were liable to provide funds for the full offer announced by them. In view of the still pending litigation, the matter was not then pursued in depth and the Panel came to no final conclusion regarding Brandts. Indeed, Brandts were invited to consider what financial facility they could offer so as to enable a bid to be made, albeit at a reduced level:

Brandts were certainly not entitled to assume that the full Panel had absolved them from further obligation. The Panel is satisfied that Brandts' position did not alter detrimentally or significantly because of the Director General's provisional opinion and that the matter remains at large for decision by the Panel now.

The Panel is satisfied, however, that when their clients' difficulties became apparent, Brandts did all they reasonably could both to ensure that the Consortium complied strictly with the Code and to promote with their own support new methods of enabling the Consortium to bid. Later they endeavoured to interest others in Ashbourne.

In all the circumstances, and not without certain misgivings, the Panel finally concludes that it would not be just to penalise Brandts for any shortcomings there may have been in their handling of the early stages of the bid, by insisting on a continuing obligation on their part to provide £920,000 - still less the whole amount required - independently of a bid from any member of the Consortium. So to do would be to compel Brandts to invest in a totally different transaction to the one originally contemplated and would only be justified in the case of gross negligence or other impropriety which the Panel does not find in this case.

It has been strenously maintained to the Panel by the Ashbourne board and their advisers and by the Ashbourne Shareholders' Action Committee that Brandts should be under a continuing obligation to make some offer in cash to all those who hold shares which would have been the subject of the mandatory Consortium bid. For the reasons stated above, the Panel does not accept this contention, but the Panel is pleased to note that Brandts have recognised that they have a certain moral commitment in the affair and that they have marked this by agreeing to provide funds to enable the bid, announced on 14th November, 1975 by Central and Sheerwood Limited, for the whole of the share and loan capital of Ashbourne to incorporate a cash alternative available to the holders of those shares which would have been the subject of the mandatory bid from the Consortium.

Events after 6th December, 1973

The position of Brandts having been dealt with in detail, the circumstances leading to the collapse of the bid may now be stated. Following the purchase on 6th December, 1973 of the shares from the directors of Ashbourne and their associates, the board of Ashbourne was reconstituted by the resignations of two

of the existing directors and the appointment of Mr.Casper (who was appointed Chairman of Ashbourne) and Mr.Brian Simmons of Crest and Mr.Barry and Mr.Ross of Corporate. Although five of the existing directors of Ashbourne remained on the board, for all practical purposes the Consortium's representatives thereupon assumed management control of Ashbourne. Crest and Corporate also moved into the offices of Ashbourne. On 3rd January, 1974, Ashbourne purchased from Corporate at 30p per share some 7½% of the ordinary share capital of Armour Trust Limited for about £264,000.

Meanwhile, at the end of 1973 and early in 1974, the secondary banking sector and the property market went into rapid decline and it became apparent to the Consortium that a bid for Ashbourne on the terms as announced had lost much of its attraction for them.

Although the Consortium had acquired effective control of Ashbourne, and in spite of increasing pressure from the Panel executive, there were various delays in the production of the offer document which created a very unfavourable impression on the Panel. Indeed, during the early part of 1974 a number of posting dates were promised but not met. On 28th December, 1973, it was announced that Crest and Corporate were themselves considering a merger, and the Panel executive were later advised that it was intended that this should be implemented before posting the offer for Ashbourne. Furthermore, as stated in the press announcement of 6th December, 1973, the Consortium intended to merge into Schwab the banking companies associated with the Consortium. Consideration of these proposals caused prolonged delay in the early part of 1974 but, in the event, it was decided that neither of these proposals should be pursued, at least not before the document went out. Certain allegations were made that there had been misrepresentation by Ashbourne directors at the time of the sale of their shares to the Consortium, but these were not, at that time, pursued by means of litigation. There is evidence that in the early part of March, 1974 Mr.Casper gave consideration to the possibility that certain of Crest's shareholders might seek to requisition an Extraordinary General Meeting at which a resolution would be put which would give Crest shareholders the opportunity of, in effect, vetoing the bid. However, on 19th March, 1974 Mr.Casper was reported in the press as stating that the Consortium had been advised by the Panel that it must press ahead with the bid and that offer documents would be going out shortly.

On 4th April, 1974, however, Mr.David Tannen, a share-holder in Crest, a friend of Mr.Casper and a shareholder in and director of one of Crest's subsidiaries, commenced proceedings in the High Court in which he sought an injunction to restrain Crest from proceeding to make an unconditional general offer for Ashbourne until such time as the Crest shareholders had had an opportunity of considering the proposition in general meeting. The Panel was later made a party to these proceedings by leave of the Court.

Subsequently, further and separate proceedings were instituted in the High Court by Crest and Corporate against the vendors of the 1,748,122 shares purchased by Mr.Glazer on 6th December, 1973 claiming rescission and/or damages on the grounds of misrepresentation of the financial position of Ashbourne at the time of the purchase. After this, the financial difficulties of Wilstar became known and in a letter to the Ashbourne board, dated 6th June, 1974 Brandts stated that, since a major proportion of the funds for the Ashbourne offer was to have been provided by Wilstar, Brandts could no longer be satisfied that the Consortium had sufficient funds available to them to implement the announced offer in full.

It was against this background that the matter was referred to a meeting of the full Panel on 15th July, 1974, following which the Panel issued a statement dated 23rd July which stated that, pending the result of the outstanding legal proceedings and without seeking to influence or anticipate such result, the Panel considered that the proper and fairest course was for it to direct that the Consortium and the board of Ashbourne should take immediate steps to procure:-

"(1) The Consortium's representatives on the Ashbourne board be reduced from four to two.

(2) Mr.L.I.Casper stands down as Chairman of Ashbourne in favour of a director not associated with the Consortium.

(3) A representative of the Ashbourne Shareholders' Action Committee . . . be invited to join the board.

(4) The Consortium do not exercise the voting rights attached to 19.9% of the ordinary shares in Ashbourne (being the shares purchased by them on 6th December, 1973) and the Consortium exercise the voting rights attached to any other shares held by any of them in such a manner as may be appropriate so as to preserve the composition of the board on the above lines."

In the statement, the Panel specifically reserved its final consideration of the conduct of the parties and the obligations under the Code until the Court proceedings had been concluded.

Although not expressed in these rulings, it was implicit that the Consortium were not, without the Panel's permission, to dispose of their shares.

On 6th November, 1974 it was announced that Crest and Corporate had withdrawn their claim for misrepresentation against the vendor directors of Ashbourne and others and that the latter had withdrawn a counter-claim against Crest and Corporate. The proceedings commenced by Mr.Tannen were thereupon restored and on 27th November, 1974 Mr.Justice Templeman indicated that the Panel was free to conduct a private investigation into the affair and that such enquiry would not be in contempt of Court. The Panel was required by the Court to circulate to the parties and to Mr.Tannen a statement with the result of its investigations and its findings but the Panel was directed not to publish them at that time. The Panel has only now been able to complete its investigation into this complicated affair and into the voluminous documentation to which it has given rise.

Sale of shares by Crest

Although, as stated above, it was implicit in the Panel's ruling of 23rd July, 1974 that the Consortium were not, without the Panel's permission, to dispose of their shares, Crest wrote to the Panel executive on 14th August, 1975 to the effect that the serious financial difficulties of Crest would compel the immediate sale of part of the Ashbourne holding and asked for the Panel's permission so to do. On the same day, the Panel executive delivered a reply to Crest which stated that they could not give the permission and that the matter would have to go to the full Panel; Crest was invited to telephone the executive with a view to arranging a time for a meeting of the full Panel. Crest did not ask for such a meeting. On the contrary it sold some of the Ashbourne shares on 15th August and a further tranche on 27th August. On 2nd September all Crest's remaining holding was disposed of. All these shares were sold to a private company called Topview Limited, acting as a nominee for a Mr.Leon Faust and his family interests. His name was previously unknown to the Panel but he has informed the Panel that he used to operate in the property market. In October, 1975, Corporate having gone into liquidation, Mr.Faust, through Topview, purchased from the liquidator a further 9.7% of Ashbourne, bringing his total holding to about 22.1%. There is

no evidence that Mr.Faust is acting in concert with Mr.Casper or the Consortium and he has assured the Panel that he will not do so.

It has, of course, always been the case that in exceptional circumstances a director of a company may come under a legal duty inconsistent with some obligation he has incurred under the City Code. In such a case the director's paramount obligation is without doubt to the law. This legal duty will not, however, necessarily absolve him from an obligation previously incurred under the Code or excuse him from criticism for the circumstances which have arisen. If Crest had sought to show to the full Panel that the continued solvency of the company depended on the sale of the Ashbourne shares and the Panel had been satisfied that it was accordingly the directors' duty to sell, the Panel would no doubt have consented, subject to proper disclosure. The Crest directors must always have known (and indeed were specifically told by the Panel executive in a letter dated 19th August, 1975) that to sell Ashbourne shares without Panel consent was contrary to the spirit of previous Panel rulings.

Only a few weeks before the sales, the Crest shares in Ashbourne were used in order to requisition an Extraordinary General Meeting of the Ashbourne shareholders with a view to reconstituting the Ashbourne board in Crest's favour, although, as Mr. Casper well knew, Crest was required by the Panel to vote against any resolutions to that effect. Having at first undertaken to vote the shares against these resolutions, Crest later added to the confusion by refusing to confirm that this undertaking was still effective. On 29th August, 1975 Mr.Casper issued a circular attacking the existing Ashbourne board and advising shareholders to remove them all with the exception of Mr.Simmons, who was the Consortium's representative, and another member, who upon hearing that he was to be invited to remain, stated to his colleagues that he had no intention of doing so in such circumstances. The proposed resolutions would thus have resulted in the board of Ashbourne being comprised solely of Crest directors. On 2nd September, only four days after the issue of this circular, Crest sold all its remaining shares in Ashbourne. This conduct was consistent with the deplorable harassment to which over a long period the Ashbourne board had been regularly exposed and which put that company to considerable expense.

In a letter to the Panel dated 1st September, 1975, a former director of Crest wrote, on behalf of himself and another former director of Crest, to say that:

> "We are both very concerned that the Panel on Take-overs and Mergers should know that we recently resigned

> as Directors of Crest International Securities Limited and furthermore, that in recent months, we have not taken any part in discussions on, nor have we been consulted with regard to, the treatment of the investment held by Crest in Ashbourne Investments Limited.
>
> We would also like the Panel to know that over the last year to eighteen months, we have found it very difficult to have any worthwhile say in the running of Crest, due to the fact that we have been in a minority position throughout. Such a situation, together with actions taken with regard to Ashbourne without consultation with us, led to our resignations from the Board of Crest."

At the instigation of Crest, the Department of Trade has now appointed Inspectors under the Companies Acts to enquire into the affairs of Ashbourne. In view of this investigation which will no doubt consider all aspects of the affairs and ownership of Ashbourne, both before and after the announcement of the Consortium's offer, the Panel makes no further comment on Mr.Casper's conduct in this matter.

The transfer of the shares to Mr.Faust has not affected the position of the Consortium. Where an obligation to make a mandatory bid exists, it is not terminated by any disposal or dispersal, and the obligation to make a bid remains with those who incurred it until relieved by the Panel. Were it otherwise, a person who acquired control in the market could secure his appointment to the board and bring about changes in management or dispositions of assets and then, having secured the benefits of control, avoid the concurrent obligation under the Code by disposing of the relevant shareholding. This is most certainly not the case: the mandatory obligation lies where it first falls unless with full disclosure the Panel consents to its transfer.

It follows that a transferee of a block of shares, the acquisition of which by the transferor has given rise to a mandatory bid obligation, does not automatically become affected by the obligation which remains with the transferor. If, however, the transferee was acting in collusion with the transferor, the position would be different and he might share a mandatory obligation with the transferor.

However, Corporate is in liquidation, and Crest, even if its proposed capital reconstruction takes place, is in so serious a financial position that, as a practical matter, the Panel recognises that in spite of the continuing Code responsibility, it cannot be expected that Crest will be in a position to make any bid in the future.

It falls therefore to consider the position of the remaining member of the Consortium, Mr.Glazer.

Mr. Glazer

Mr.Glazer was initially, so far as the Ashbourne directors and shareholders were concerned, an undisclosed principal (a circumstance which at least imposed a special duty of care upon Brandts) but, as has already been stated, he was undoubtedly a member of the Consortium. Indeed, it was his purchase of shares on 6th December, 1973 which brought Rule 35 into operation and created the mandatory bid obligation. Unfortunately, Mr.Glazer, although invited to do so, has not appeared before the Panel or been represented before it; the Panel has, however, received written submissions from him to which it has naturally given the most careful consideration. It would have preferred Mr.Glazer to have given evidence orally and answered for himself such questions as the Panel or the parties might have wished to address to him. Mr.Glazer in his written statements says that he never intended to be a member of the Consortium and was not told at the time that he was one. It is difficult to reconcile Mr.Glazer's contention with the contents of the press announcement put out by Brandts on 6th December, 1973. Under that announcement and Rule 35, there can be no question but that a person who acquired the shares in Ashbourne on that date acting with Crest and Corporate was a member of the Consortium. Mr. Glazer was pre-eminently such a person. This is borne out by what the Panel now knows of the 8th November, 1973 Heads of Agreement, whether or not these were implemented. If he had merely been a stranger, no obligation under Rule 35 would have arisen on the part of anybody at all.

Mr.Casper certainly regarded Mr.Glazer as a member of the Consortium throughout. Thus, on 15th January, 1974, Mr.Casper wrote to Mr.Speyer (Mr.Casper's predecessor as Chairman of Ashbourne);

> "As I explained to you, Mr.Glazer is part of our Consortium and will probably play an active part in the future of Ashbourne".

Mr.Glazer states that neither he nor his South African advisers were familiar with the Rules of the City Code. The Panel expects that a person who seeks to gain control of a public company in the United Kingdom should be familiar with the rules, regulations and practices of that country. Mr.Casper advised Mr.Glazer that a mandatory bid would be required under the Code. There appear to have been many communications between Mr.Casper and Mr.Glazer by telephone, telex and letter. Thus, as early as 31st October, 1973, in a letter mentioning the Take-over Panel, Mr.Casper alerted Mr.Glazer as to the general position and the plans then in view, which at that stage contemplated that Mr.Glazer would end up with

30% to 45% of the Ashbourne equity. A further letter disclosed by Mr.Casper was addressed to Mr.Glazer on 26th November, 1973 following which the Midland Bank wrote on 29th November to Brandts:-

> ". . . on the advice of Mr.L.I.Casper, we have been instructed by a customer of our bank to take delivery of Ashbourne . . . shares . . . against payment of an amount not exceeding £800,000".

Brandts will have realised that it was the purchase contemplated by this letter which would trigger off the mandatory obligation to bid but it is to be regretted that they do not seem to have enquired who the customer in question was, still less to have alerted him to the consequences of the purchase.

Mr.Glazer's position appears, however, to be that neither he nor his South African advisers had themselves read the Code. They say expressly that they relied upon Mr.Casper "as a merchant banker" and "an expert in London" to advise them and look after the position under the Code.

Mr.Glazer says that he understood from Mr.Casper that his obligation was a limited one, that there would have to be a bid by Crest and Corporate but not by him. He and his advisers deny Mr.Casper's evidence to the Panel that the "Yellow Book" (The Stock Exchange regulations which contain the Code) was tabled during the discussions in South Africa or that they professed "pride" in their knowledge of the Code. If Mr.Glazer and his advisers chose to rely on Mr.Casper and neglected to communicate directly with Brandts or the Panel to inform themselves of the position under the Code, that is their misfortune. It follows from the fact that Mr.Glazer was a member of the Consortium and made purchases on the market which brought Rule 35 into operation that he, together with the other members, incurred under the Code an obligation to make an offer for all the outstanding shares which offer was duly announced. This is a fact which he ought to have ascertained and could very easily have done so.

For reasons already stated, the Panel has no doubt that Mr.Glazer has a continuing obligation, and had the mandatory bid been made, Mr.Glazer would have been liable under the Code to pay for all the shares and Loan Stock tendered in acceptance, with such contributions, if any, as he would have been able to secure from the other members of the Consortium, namely Crest and Corporate. This arrangement would have enabled Mr.Glazer not only to place the £920,000 of shares and Loan Stock with Brandts and, (although this might have been a barren exercise) £1,840,000 with Wilstar but also to use the £500,000 of his own money already committed to the transaction.

It should be added that the question of underwriting to which Mr.Glazer has referred in his communications to the Panel and also his intended purchase of £500,000 worth of shares which might be tendered in acceptance of the general offer seem to the Panel to be relevant in only the following respect. On 29th November, 1973, the Midland Bank wrote to Brandts:

> "In connection with the cash offers which Crest . . . and Corporate . . . are making for the ordinary shares and . . . Loan Stock . . . of Ashbourne . . . not already owned by those Companies or their associates, we confirm that we will pay to you sums not exceeding £500,000 in total, against delivery to us of the relative amount of Shares and Loan Stock resulting from the acceptance of the offer.
>
> . . .
>
> This confirmation remains valid until we receive written confirmation from you that no further deliveries of . . . shares or . . . Loan Stock will be made to us".

Brandts relied on this authority in the final arrangements for the offer. Much later, on 16th July, 1974, the Midland Bank purported to withdraw it, presumably on the instructions of Mr.Glazer.

The so-called underwriting arrangements, as to which the Panel has already expressed its own view under the Code, are, in law, a matter between him and those with whom he considers he has made them. His was a primary liability, but he contests it. It is not, however, suggested that his financial resources, except in the United Kingdom, are in any way inadequate for the purpose.

Mr.Glazer is a citizen of South Africa. The Panel is informed that the South African Exchange Control Authority has refused to give permission for any necessary transfer of funds from that country. The Authority had apparently given the necessary permission for the original substantial purchase of Ashbourne shares which gave rise to the mandatory obligation to bid and for the further purchases which Mr.Glazer made, or contemplated making under the offer, in 1974; presumably the Authority was informed that the object was control of Ashbourne. The Panel considers it unfortunate that the South African Authority may not have been made aware that, should it permit a resident subject to its control to deal on the London Market but not to fulfil the obligations to which such dealing gives rise, this would be contrary to the accepted practices of the Market.

This, however, being the position which has arisen, the Panel has to recognise the fact that Mr.Glazer is not willing to accept the liability to remit funds and that the South African Exchange Control Authority would not give permission even if he were.

Thus, having regard to the liquidation of Corporate, to the financial position of Crest, and to Mr.Glazer's position, the

Panel is forced reluctantly to conclude that there is now no prospect of the Consortium or any of its members fulfilling their obligation to make an offer.

In recognising this de facto situation, the Panel must take into account various factors in considering Mr.Glazer's current position. It has not been suggested that Mr.Glazer has acted with impropriety in relation to Ashbourne and the Panel accepts that he did not appreciate his potential obligations under Rule 35. It may be that some criticism may be levelled at his advisers in England on this score. In his written submissions to the Panel, he has stated that he always made it clear to Crest and Corporate that he would not enter into the transaction unless a reputable merchant bank undertook to provide the finance for the subsequent mandatory offer and that his own personal liability would be limited to the further £500,000 which he made available. Unfortunately for Mr.Glazer those acting for him in the United Kingdom did not secure that result. In all the circumstances of this very exceptional case, the Panel has decided that it would be appropriate to release Mr.Glazer from his obligation but that certain restrictions should apply to the shares retained by Mr.Glazer, being some 22% of the ordinary share capital, in order to clear up the unsatisfactory situation left as a consequence of the failure to bid. The Panel therefore directs that, without its prior agreement, neither Mr.Glazer nor any of his associates may buy any Ashbourne shares or Loan Stock, or sell or otherwise dispose of any Ashbourne shares or Loan Stock to any member of the Consortium or to any companies or persons who have any relationship or understanding with any of them. In addition, neither Mr.Glazer nor any of his associated interests may frustrate any bid for Ashbourne which is accepted in respect of the majority of those Ashbourne shares which should have received the bid originally announced on 6th December, 1973.

The Panel points out that, having regard to all the circumstances of this difficult case, anyone who comes to act jointly with Mr.Glazer in relation to Ashbourne may incur obligations or be subject to certain restrictions under the Code.

The rulings in this statement supercede those contained in the Panel's statement of 23rd July, 1974.

APPENDIX

Brandts Press Release

For Immediate Release

ASHBOURNE INVESTMENTS LIMITED

Crest International Securities Limited, Corporate Guarantee Trust Limited and their associates ("the Consortium") announce that they have today acquired 1,748,122 Ordinary Shares of 25p each in Ashbourne Investments Limited from certain Directors of that Company and their associates at a price of 46p per share. These shares, when added to the 2,044,977 shares already held, result in the Consortium now holding 43.15% of the Ordinary Share Capital of Ashbourne.

Accordingly Wm.Brandt's Sons & Co. Ltd. on behalf of the Consortium will be making an unconditional cash offer under the terms of The City Code on Take-overs and Mergers for the balance of the Ordinary Share Capital at 46p per share. An offer of £70.77 in cash for each £100 nominal of 7% Convertible Unsecured Loan Stock 1984 of Ashbourne ("the Loan Stock") will also be made on behalf of the Consortium. This is equivalent to the entitlement of Stockholders on conversion of their Loan Stock into Ordinary Shares and acceptance of the Offer.

The Panel on Take-overs and Mergers has been consulted in connection with this transaction and has given its consent to the Offers.

The Board of Ashbourne was advised by Slater Walker Limited who consider the proposals fair and reasonable.

The Consortium intends that the listings for the Ordinary Shares and Loan Stock of Ashbourne on The Stock Exchange be maintained and accordingly will make arrangements for placing of sufficient shares received by the Consortium under acceptances of the Offers to maintain the listings.

Following the purchases by the Consortium, Mr. S.J. Prashker and Mr.J.R.Wright have resigned from the Board of Ashbourne. Mr.Prashker will continue to be available to the group on a consultation capacity.

Mr.Lionel Casper and Mr.Brian Simmons (Directors of Crest International) and Mr.Stephen Barry and Mr.Stephen Ross (Directors of Corporate Guarantee Trust) have been appointed to the Board of Ashbourne.

It is the intention of the Consortium to expand the business of Ashbourne particularly its banking interests and to merge into E.S. Schwab & Co. Ltd., (the banking subsidiary of Ashbourne) the banking companies associated with the Consortium namely Guarantee London Trust Company Limited and London Cavendish Securities Limited.

The Consortium has given assurances that the future of the businesses and that the rights of the employees of Ashbourne will be fully safeguarded. Details of the reconstructed Board's plans for the future of Ashbourne will be included in the Offer Document to be sent to shareholders by Brandts as soon as practicable.

- ends -

Issued by: Oliver Case (FPIS) 01-636 6431

Enquiries to: P.P. Ralph
G.A. Clark Hutchison,
Wm. Brandt's Sons & Co. Ltd. 0l-626 6599

R.J.H. McMaster,
Slater Walker Limited 01-236 4236

6th December 1973

APPENDIX II

WM. BRANDT'S SONS & CO. LTD.

DIRECTORS:
LORD ALDINGTON <illegible>
J.M.L. ANDREWS <illegible>

M.R. BATES	A.B.C. HARR<illegible>	Registered Office: P.O. BOX NO. 93 36 FENCHURCH STREET LONDON EC3P3AS	
M.A. BRANDT	V. <illegible>		
J.M. BRANDT	G.H. ONLEY		
A.J. CAVENDISH	D.J <illegible>		
W.R. CLARKE	R.J <illegible>	<illegible>	<illegible>
<illegible>	<illegible>	<illegible>	<illegible>
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F.R. WELSH

The Directors of Ashbourne Investments Limited,
Ashbourne House,
49/51 Bow Lane,
LONDON,
EC4M 9DL

30 the November, 1973.

Dear Sirs,

We act on behalf of Crest International Securities Limited, Corporate Guarantee Trust Limited and their associates ("the Consortium"). The Consortium at present holds approximately 2,044,000 Ordinary shares of l0p each in Ashbourne Investments Limited ("Ashbourne").

We have been authorised by the Consortium to make offers on its behalf for all the ordinary share capital (other than those Ordinary shares referred to above) and all the outstanding 7 per cent Convertible Unsecured Loan Stock 1984 ("the Loan Stock") of Ashbourne.

The Ordinary shares and the Loan Stock are to be acquired free from all liens, charges and encumbrances and together with all rights including dividends and interest now attaching thereto on the following bases:-

For each Ordinary share of 10p in Ashbourne: 46p in cash.
For every £100 nominal of the Loan Stock: £ 70,77 in cash.
These offers are conditional upon:-

(i) The consent of the Panel on Takeovers and Mergers being obtained to the offers required under Rule 33 of The City Code on Takeovers and Mergers being made at not more than 46p per Ordinary share and not more than £70.77 per £100 nominal of the Loan Stock.

WM. BRANDT'S SONS & CO LTD
LONDON

Continuation Sheet 2.

The Directors of Ashbourne Investments Limited,
London EC4M 9DL

30th November, 1973.

(ii) The Directors and their associates selling to the Consortium at 46p per share not more than 1.75m Ordinary shares in Ashbourne and not fewer than 1.5m Ordinary shares in Ashbourne within 7 days hereof. Settlement in respect of these shares will be in cash against delivery of documents of title following the fulfilment of condition (i) above.

(iii) The resignation immediately following the fulfilment of condition (ii) above of sufficient of the present Directors of Ashbourne to enable the remaining Directors to appoint to the Board of Ashbourne five representatives of the Consortium of whose number one shall then be appointed Chairman.

(iv) There being no material changes in the financial position of Ashbourne and its subsidiaries since 30th April, 1973, being the date of the last published audited accounts.

We confirm that the Consortium has sufficient funds available to it to implement the offers in full, and subject to all the above conditions, we would intend to despatch the formal offer documents as soon as possible.

Yours faithfully,
for and on behalf of
WM. BRANDT'S SONS & CO. LIMITED

Philip Ralph