

## **Notice of Distribution – Informal Guidance Note with Respect to the Second Common Terms Distribution**

*This note is provided for informal guidance only and does not constitute legal, tax or any other form of advice. No representation is made as to its accuracy or as to its appropriateness for any particular purpose. Nothing herein should be relied upon by any party and the Common Terms and terms of any Notice of Distribution should be consulted (and advice sought from legal advisors if appropriate) for a full understanding of the matters discussed. In the event of any inconsistency between this Informal Guidance Note and (i) the Omnibus Settlement Agreement (including the Common Terms); (ii) the Claim Resolution Agreement (including the Common Terms) or (iii) any Notice which may have been issued in accordance with the Omnibus Settlement Agreement or the Claim Resolution Agreement (including without limitation, any Notice of Distribution), the Omnibus Settlement Agreement, the Claim Resolution Agreement, or the relevant Notice (as applicable) will prevail. Capitalised terms used in this Informal Guidance Note which are not otherwise defined will have the meaning given to them in the Omnibus Settlement Agreement or the Claim Resolution Agreement (as applicable and in each case including the Common Terms).*

### **What is a Notice of Distribution?**

The Common Terms requires LBIE to send any Qualifying Consenting Beneficiary a Notice before each distribution setting out certain information regarding the distribution and details relating to the Qualifying Consenting Beneficiary's participation in the distribution. This Notice is called the 'Notice of Distribution'.

### **What is a Qualifying Consenting Beneficiary?**

In relation to any distribution, a Qualifying Consenting Beneficiary is a Consenting Beneficiary whom LBIE has determined was eligible to participate in the proposed distribution as at the relevant Cut-Off Date and has not subsequently ceased to be eligible (see *Clause 9.5.1 of the Common Terms for the definition of 'Qualifying Consenting Beneficiary'* and *Clause 9.2.1 for the definition of 'Cut-Off Date'*). The Cut-Off Date for the second proposed Common Terms Distribution was [9 December 2013].

### **What does a Notice of Distribution contain?**

The Notice of Distribution will contain substantially similar information for all Consenting Beneficiaries. There will, however, be some differences depending upon:

- (1) whether the Qualifying Consenting Beneficiary is:
  - (a) a CRA Signatory; or
  - (b) a party to the Omnibus Settlement Agreement; and
- (2) whether the Qualifying Consenting Beneficiary is (on a net basis, ignoring the value of any asset or client money claims it may have):
  - (a) a debtor; or
  - (b) a creditor.

### **Can a Qualifying Consenting Beneficiary dispute its Notice of Distribution?**

Subject to the important note below, a Qualifying Consenting Beneficiary has five Business Days from the receipt of the Notice of Distribution to upload a Notice on the Portal that it is disputing a Notice of Distribution Figure. *Please refer to Clause 43.1.2 of the Common Terms for the definition of 'Notice of Distribution Figure' and Clause 45.1.2 of the Common Terms for the procedure for disputing a Notice of Distribution.*

**Important Note:** Please note, however, that disputing a Notice of Distribution will render a Consenting Beneficiary 'ineligible' under Clause 9.4 of the Common Terms to participate in a Common Terms Distribution. Unless the issue under dispute is finally resolved between LBIE and the Consenting Beneficiary in the short period of time prior to the Distribution Date, that Consenting Beneficiary will not therefore be included in the Common Terms Distribution.

### **Glossary of Terms used in a Notice of Distribution**

Below is a glossary of the terms that may be used in a Notice of Distribution. Where a term is only used in Notices of Distribution for certain categories of Consenting Beneficiaries, this is made clear within the description for that term.

**Client Name:** the name of the Consenting Beneficiary as per the Portal.

**Client Code:** LBIE's unique reference number for the Consenting Beneficiary.

**Distribution Date:** the date on which a Common Terms Distribution is expected to be made. *See Clause 9.2.1 of the Common Terms for the definition of 'Distribution Date'.*

#### **Newly Available Funds for Consenting Beneficiaries:**

this term is not defined in the Common Terms but is included in the Notice of Distribution to allow Qualifying Consenting Beneficiaries to see the additional funds in the entire pool of funds allocated to all Consenting Beneficiaries since the Cut-Off Date for the previous distribution to which their Best Claim has entitled them.

'Newly Available Funds for Consenting Beneficiaries' represents the amount of Money in the Omnibus Trust, in addition to those that were stated as 'Funds Available for Consenting Beneficiaries' in the Notices of Distribution issued in relation to the previous distribution, that LBIE has determined is available for:

- (i) making payments to Consenting Beneficiaries (irrespective of whether or not they are Qualifying Consenting Beneficiaries in respect of the Distribution Date); or
- (ii) payment or appropriation by LBIE in respect of liabilities of such Consenting Beneficiaries,

in each case, irrespective of whether or not such payments are reserved for as Attributable Reserves or will actually be made.

The amount deemed to be 'additionally available' for these purposes includes any amounts which constitute Attributable Reserves in respect of Consenting Beneficiaries (for example, for potential withholding tax liabilities arising from the tax domicile of the Consenting Beneficiary). It does not include any amounts which are reserved in respect of the Legal Claims of Non-Consenting Beneficiaries or any other Reserves which were made in relation to the previous distribution and continue to be so reserved.

**Aggregate of  
Consenting  
Beneficiaries' Best  
Claims:**

in respect of a Distribution Date, the 'Aggregate of Consenting Beneficiaries' Best Claims' is the aggregate of the Best Claims for all Consenting Beneficiaries, irrespective of whether they are Qualifying Consenting Beneficiaries. This amount may be different from the amount so specified in any Notice of Distribution sent to you in respect of any previous distribution because, for example, persons who were previously Non-Consenting Beneficiaries have since become Consenting Beneficiaries and some Common Terms Disputes resulted in Best Claims being adjusted.

**Best Claim:**

each Consenting Beneficiary's pro-rata entitlement to the Omnibus Trust is determined by reference to the amount of their 'Best Claim' as notified in the Information Pack or as subsequently amended pursuant to Clause 13.1.2 of the Common Terms. *See Clause 4.2 of the Common Terms for the definition of 'Best Claim'.*

**Best Claim Percentage:** with respect to a Qualifying Consenting Beneficiary, the 'Best Claim Percentage' is its Best Claim expressed as a percentage of the aggregate of the Best Claims of all Consenting Beneficiaries. Please note that this definition has changed since the first distribution.

This term is not defined in the Common Terms but is included in the Notice of Distribution to allow Qualifying Consenting Beneficiaries to see the percentage that their Best Claim represents of the Aggregate of the Consenting Beneficiaries' Best Claims.

**Available Funds:**

the pool of money which LBIE expects to be available on the proposed Distribution Date for allocation to all Consenting Beneficiaries who are Qualifying Consenting Beneficiaries in relation to that Distribution Date. The Available Funds will not include any amount which LBIE has determined should be held as a Reserve (whether as a general Reserve or an Attributable Reserve relating to any Consenting Beneficiary) and will include amounts which LBIE had reserved in the previous distribution for Consenting Beneficiaries who were not Qualifying Consenting Beneficiaries but who have since become Qualifying Consenting Beneficiaries and therefore such amounts are no longer so reserved. The amount stated in the Notice of

Distribution is an estimate and therefore may be subject to change. *See Clause 9.6 of the Common Terms for the definition of 'Available Funds'.*

**Cumulative Gross Allocation:**

the Cumulative Gross Allocation is a benchmark which is designed to ensure that Qualifying Consenting Beneficiaries are all being treated on a pro rata basis even if the percentage of their Best Claim which is actually distributed to them or appropriated against their debt differs due to the effect of Attributable Reserves and Attributable Payments. It is also the amount by reference to which the Costs Liability of an OSA Consenting Beneficiary is determined.

The Cumulative Gross Allocation is the Qualifying Consenting Beneficiary's expected share, as at the proposed Distribution Date, of all amounts from the Omnibus Trust that:

- (i) were allocated in the course of any preceding Common Terms Distributions to those Consenting Beneficiaries who are Qualifying Consenting Beneficiaries in respect of the currently proposed Common Terms Distribution; and
- (ii) are expected to be allocated to Qualifying Consenting Beneficiaries on the forthcoming Distribution Date.

It is determined prior to making any deductions in respect of Attributable Reserves (including for potential withholding tax liabilities arising from the tax domicile of the Consenting Beneficiary) and Attributable Payments, as well as amounts that have been or will be applied as Permitted Deductions in respect of the relevant Qualifying Consenting Beneficiary.

The Qualifying Consenting Beneficiary's share of the aggregate allocations is determined using the ratio that its Best Claim bears to the aggregate of all of the Best Claims of the Consenting Beneficiaries who are Qualifying Consenting Beneficiaries for the purposes of the proposed Common Terms Distribution.

Since the Cumulative Gross Allocation is an estimate as at the time that the Notice of Distribution is published, it is subject to change. *See Clause 9.8.1 of the Common Terms for the definition of 'Cumulative Gross Allocation'.*

**Aggregate of all previous Gross Distributions:**

this term is not defined in the Common Terms. It indicates the sum of all Gross Distributions that have been made to the Consenting Beneficiary prior to the distribution in respect of which the relevant Notice of Distribution has been issued.

**Attributable Reserves:** the amount of any Reserves which are attributable to a Consenting Beneficiary but not including any general Reserve made with respect to all Consenting Beneficiaries. For this second distribution all reserves for withholding tax liabilities arising from the tax domicile of the Consenting Beneficiary have been categorised as Attributable Reserves. This Reserve is

an estimate determined by LBIE on the basis of available information which it deems relevant and may therefore be more or less than the actual amount of tax which is ultimately payable. *See Clause 8.2.3 of the Common Terms for the definition of 'Attributable Reserve'.*

**Attributable Payment:** a payment made by LBIE (other than as part of a Common Terms Distribution) to discharge any obligation which is owed by a Consenting Beneficiary. The payment may (though need not) be used to discharge an obligation in respect of which an Attributable Reserve or other Reserve has been made. An example of an Attributable Payment might be a payment made in respect of U.S. withholding tax which is made other than as part of a Common Terms Distribution. Note that if the payment in respect of U.S. withholding tax were made as part of a Common Terms Distribution, it would constitute a 'Permitted Deduction' (as referred to below) and not an Attributable Payment. *See Clause 8.2.3 of the Common Terms for the definition of 'Attributable Payment'.*

**Gross Distribution:** that part of the Cumulative Gross Allocation which is available as at the Distribution Date:

- (i) to satisfy any Permitted Deductions in respect of a Qualifying Consenting Beneficiary; and/or
- (ii) for payment to the Qualifying Consenting Beneficiary.

Under the Common Terms, the 'Gross Distribution' is an amount prior to reduction in relation to any Permitted Deductions but after deduction of any Attributable Reserves (for example in respect of potential withholding tax liabilities arising from the tax domicile of the relevant Qualifying Consenting Beneficiary) or Attributable Payments relating to that Qualifying Consenting Beneficiary. It does not include any of the previous Gross Distributions of the Qualifying Consenting Beneficiary relating to any prior distribution. *See Clause 9.8 of the Common Terms for the definition of 'Gross Distribution'.*

**Permitted Deductions:** these are the various amounts which LBIE is entitled to appropriate or pay to third parties from a Gross Distribution. Each amount is shown before and after having been reduced by the amounts deducted from the Qualifying Consenting Beneficiary's Gross Distribution.

In relation to an OSA Consenting Beneficiary, Permitted Deductions may include '**Costs Liability**', '**Tax Burden Liability**', '**Recoverable Turnover Value**', '**OSA Distribution Liabilities**' (including the amount of any outstanding indebtedness to LBIE) and, for certain debtors only, '**Further Indebtedness Amounts**'.

In relation to a CRA Omnibus Beneficiary, Permitted Deductions may include '**Tax Burden Liability**', '**Recoverable Turnover Value**', '**Distribution Liabilities**' (including '**Costs Amount**' and any '**Net Financial Liability**'), and for certain debtors only, '**Further Indebtedness Amounts**'.

*See Clause 10.3 of the Common Terms for the definition of 'Permitted Deductions'.*

**Costs Liability:** in relation to an OSA Consenting Beneficiary and:

- (i) the first Common Terms Distribution in which it participates, an amount equal to 1.00% of its Cumulative Gross Allocation (plus VAT); and
- (ii) any subsequent Common Terms Distribution in which it participates, an amount equal to 1.00% of the increase in its Cumulative Gross Allocation since the previous Common Terms Distribution in which it participated.

The aggregate of the Costs Liabilities payable by an OSA Consenting Beneficiary is subject to a cap of \$2,500,000.00.

*See Clause 54 of the Common Terms for the definition of 'Costs Liability'.*

**Tax Burden Liability:** the amounts, costs and liabilities on account of Tax which LBIE is permitted to deduct or withhold from a Gross Distribution of a Qualifying Consenting Beneficiary. *See Clause 18.4.1 of the Common Terms for the definition of 'Tax Burden Liability'.*

**Recoverable Turnover**

**Value:** the USD value of any amount which LBIE has determined, based on information available to it, that the Qualifying Consenting Beneficiary has already received from a third party in respect of its LBI Asset Claim. *See Clause 25 of the Common Terms for the definition of 'Recoverable Turnover Value'.*

**OSA Distribution**

**Liabilities:** in relation to an OSA Consenting Beneficiary, the aggregate of (i) its finally ascertained indebtedness to LBIE; (ii) any amount which LBIE is legally obliged to pay to a third party from the Gross Distribution; and (iii) any other Legal Liabilities agreed between the Consenting Beneficiary and LBIE from time to time to be deducted from Gross Distributions. *See Clause 54 of the Common Terms for the definition of 'OSA Distribution Liability'.*

**Further Indebtedness**

**Amount:** in relation to a Consenting Beneficiary which owes a debt to LBIE, the amount (if any) specified as such in their Indebtedness Determination Deed ('IDD'). *Please refer to the IDD for the definition of 'Further Indebtedness Amount'.*

**Costs Amount:** in relation to a CRA Omnibus Beneficiary, the amount stipulated in the definition of Costs Amount at Clause 96 of the CRA.

Only the portion of the Costs Amount attributable to the current Common Terms Distribution will be appropriated as part of that distribution and therefore only that portion will be stated in the Notice of Distribution.

For the Common Terms Distribution that is the first one in relation to which a CRA Omnibus Beneficiary is a Qualifying Consenting Beneficiary, the appropriated portion will equal the Costs Amount Percentage specified in the CRA multiplied by its Best Claim (plus VAT).

For any subsequent Common Terms Distribution in relation to which a CRA Omnibus Beneficiary is a Qualifying Consenting Beneficiary, the Costs Amount will be zero.

The aggregate of the Costs Amount payable by a CRA Omnibus Beneficiary out of Gross Distributions is subject to a cap of the lower of \$2,500,000.00 and 1% of all asset allocations (including Cumulative Gross Allocations) to the CRA Omnibus Beneficiary in accordance with the CRA.

**Net Financial Liability:** in relation to a CRA Omnibus Beneficiary who is a debtor to LBIE, its net indebtedness in respect of all Financial Contracts (including any interest thereon and ignoring the value of any asset or client money claims it may have against LBIE).

Please note that only the portion of the Net Financial Liability that has not already been discharged or collateralised under the CRA will be appropriated as part of a Common Terms Distribution and therefore only that portion will be stated in the Notice of Distribution. The CRA Omnibus Beneficiary will nonetheless remain liable for any undischarged portion of its Net Financial Liability under the terms of the CRA until such time as it has been satisfied.

*See Clause 25.2 of the CRA for the definition of 'Net Financial Liability' and Clause 59.8 of the CRA for the definition of 'Uncollateralised Net Financial Liability'.*

**Ascertained Non-Financial Contract Liabilities:**

all amounts due to LBIE from a CRA Omnibus Beneficiary other than in respect of its Net Financial Liability, Costs Amount and Unfunded Retention Amount. *See Clause 33.1 of the CRA for the definition of 'Ascertained Non-Financial Contract Liabilities'.*

**Unfunded Retention Amount:**

in relation to a CRA Omnibus Beneficiary, the amount which LBIE is entitled to appropriate in accordance with the CRA in connection with the Security Interest of a third party over the assets of the CRA Omnibus Beneficiary. *See Clause 29.1 of the CRA for the definition of 'Unfunded Retention Amount'.*

**Net Distribution:**

the amount of the Gross Distribution that remains after all Permitted Deductions have been made. It represents the amount which will actually be paid to the order of the Qualifying Consenting Beneficiary. Where the Permitted Deductions equal or exceed the amount of the Gross Distribution,

the Net Distribution will be zero. *See Clause 10.1 of the Common Terms for the definition of 'Net Distribution'.*