For the avoidance of doubt, the Mezzanine Document, the LMA Leveraged (Compounded Rate/Term Rate) Document and the LMA Intercreditor Agreement (Compounded Rate/Term Rate) are in a non-binding, recommended form. Their intention is to be used as a starting point for negotiation only. Individual parties are free to depart from their terms and should always satisfy themselves of the regulatory implications of their use.

MEZZANINE FACILITY AGREEMENT DRAFTING GUIDE

FOR LEVERAGED ACQUISITION FINANCE TRANSACTIONS

(SENIOR / MEZZANINE)(COMPOUNDED RATE/TERM RATE)

~~MARCH~~DECEMBER 202~~0~~1

CONTENTS

1. IMPORTANT NOTICE

General

This Mezzanine drafting guide (the "**Mezzanine Document**") ~~has been prepared for the Loan Market Association ("**LMA**~~is intended to be read in conjunction with the LMA commentary to the Compounded Rate Facilities Agreements (the "**Commentary**") and the LMA Guidance note entitled "*LIBOR transition considerations for the LMA's leveraged finance documentation*" (available through the LMA website) (the "**LIBOR Transition Note**"). Whilst every care has been taken in the preparation of the Mezzanine Document~~,~~ no representation or warranty is given by the LMA or Clifford Chance LLP:

- as to the suitability of the Mezzanine Document for any particular transaction; or
- that the Mezzanine Document will cover any ~~particular~~ eventuality.
- ~~as to the accuracy or completeness~~Users of the ~~contents of the~~ Mezzanine Document should satisfy themselves as to its taxation, regulatory and accounting aspects.

Neither the LMA nor Clifford Chance LLP is liable for any losses suffered by any person as a result of any contract made on the terms of the Mezzanine Document or which may arise from the presence of any errors or omissions in the Mezzanine Document and no proceedings shall be taken by any person in relation to such losses.

For the avoidance of doubt, the Mezzanine Document is in a non-binding~~,~~ recommended form. Its intention is to be used as a starting point for negotiation only. Individual parties are free to depart from its terms and should always satisfy themselves of the regulatory implications of its use.

Existing recommended form of facility agreement for leveraged acquisition finance transactions (senior/mezzanine)

The Mezzanine Document is based on the LMA's recommended form of Leveraged Facilities Agreement for Acquisition Finance Transactions (Senior/Mezzanine) incorporating backward-looking compounded rates and forward-looking term rates with rate switch provisions (with option for lookback without or with observation shift) (the "**LMA Leveraged (Compounded Rate/Term Rate) Document**"). In turn, the LMA Leveraged (Compounded Rate/Term Rate) Document is based on the LMA's existing recommended form of facility agreement for leveraged acquisition finance transactions (senior/mezzanine) (the "**LIBOR Leveraged Document**") which was developed by a working party consisting of representatives from banks (including in-house lawyers) and major City law firms. The LMA Leveraged (Compounded Rate/Term Rate) Document differs from the LIBOR Leveraged Document in terms of the interest rate related provisions, particularly those relating to the use of compounded risk-free reference rates. The development of those provisions is discussed below and in the Commentary, as well as in the LIBOR Transition Note which highlights considerations for users of the the LMA's leveraged finance documentation to bear in mind relating to the use of compounded risk-free reference rates. However, the other provisions of the LMA Leveraged (Compounded Rate/Term Rate) Document and, consequently, the Mezzanine Document, remain the same as the corresponding provisions set out in the LIBOR Leveraged Document (the "**Underlying Provisions**").

Users should refer to the LMA Users Guide to the LIBOR Leveraged Document for further discussion of the Underlying Provisions.

Development of the Mezzanine Documentt

The framework for compounded risk-free reference rates in the LMA Leveraged (Compounded Rate/Term Rate) Document and, consequently, the Mezzanine Document is based upon those contained in the LMA's Multicurrency Term and Revolving Facilities Agreement Incorporating Rate Switch Provisions (Lookback without Observation Shift) (the "**Lookback without Observation Shift Initial Exposure Draft**") and the LMA's Multicurrency Term and Revolving Facilities Agreement Incorporating Rate Switch Provisions (Lookback with Observation Shift) (the "**Lookback with Observation Shift Initial Exposure Draft**", together with the Lookback without Observation Shift Initial Exposure Draft, the "**Initial Exposure Drafts**"). The Lookback without Observation Shift Initial Exposure Draft was first published on 11 September 2020 as an exposure draft version of that document to facilitate awareness of the issues involved in structuring syndicated loans which use forward-looking interbank term rates[1] initially with a switch to backward-looking compounded risk-free reference rates[2] and the development of that approach by market participants. An updated exposure draft of the Lookback without Observation Shift Initial Exposure Draft was published on 23 November 2020 and reflected market feedback received on the initial version. The Lookback with Observation Shift Initial Exposure Draft first published on 23 November 2020 was based on this revised form and features the "with observation shift" calculation methodology. These Initial Exposure Drafts were published as recommended forms on 30 March 2021 (the "**Rate Switch Agreements**") at which point they were updated to conform to a small number of updates made in the LMA's Multicurrency Term and Revolving Facilities Agreement incorporating Backward-Looking Compounded Rates and Forward-Looking Term Rates with Rate Switch Provisions (Lookback without Observation Shift) and the LMA's Multicurrency Term and Revolving Facilities Agreement incorporating Backward-Looking Compounded Rates and Forward-Looking Term Rates with Rate Switch Provisions (Lookback with Observation Shift) that were published on 28 May 2021 and to reflect updates to the supporting material[3] to the £RFR Working Group Conventions (as defined below). The LMA Leveraged (Compounded Rate/Term Rate) Document was published on 15 December 2021.

The Rate Switch Agreements and, consequently, the LMA Leveraged (Compounded Rate/Term Rate) Document and the Mezzanine Document provide a documentary reflection of the recommendations for SONIA Loan Market Conventions (the "**£RFR Working Group**

[1] The phrase "*interbank term rate*" is used to refer to a forward-looking rate such as EURIBOR which is set as of a given day for a given period of time in the future and which incorporates a credit premium and a term liquidity premium.

[2] In the Mezzanine Document the phrase "*compounded [risk-free reference] rate*" is used to refer to a backward-looking rate based on a mathematical calculation of the value of realised daily fixings of a risk-free reference rate (such as €STR, SARON, SOFR and SONIA) over a given period of time in the past.

[3] i.e. Supporting Slides and Worked Examples which were issued in September 2020 and updated in March 2021 with a clarifying amendment intended to ensure that the sum of the non-cumulative compounded rate daily amounts exactly equals the interest accrual produced if using the cumulative compounded rate calculation. These publications now make it clear that, in order to achieve this when using the non-cumulative compounded rate, the interest should be rounded to two decimal places at the end of the period only. The documentary changes made to reflect this clarification were discussed with an LMA working party which included borrower representation.

Conventions")[4] issued by the Working Group on Sterling Risk-Free Reference Rates (the "**£RFR Working Group**") in September 2020. Users choosing to use the Mezzanine Document for guidance on preparing loan documentation for transactions should note that in the absence of established market or operational practice in relation to the £RFR Working Group Conventions the Mezzanine Document seeks only to reflect the £RFR Working Group Conventions and does not purport to offer any standardised position in relation to a number of issues associated with the use of compounded risk-free reference rates or the operation of the £RFR Working Group Conventions. Those issues are outlined in the Commentary (and the commentary on the Rate Switch Agreements[5]) but will require consideration and resolution by the relevant parties in the context of the relevant transaction.

Nothing in the Mezzanine Document is intended to, or should be construed as, a recommendation of, or support for, any particular pricing methodology by the LMA.

Use of compounded risk-free reference rates from outset

Users should note that the configuration of the interest reference rate provisions in the Mezzanine Document envisage that from the ***outset*** of the facilities a compounded risk-free reference rate will be used as the basis on which interest is calculated and that the RFR Working Group Conventions will be the framework for that calculation[6].

In light of the target of the £RFR Working Group that there should be no new sterling LIBOR loans after the end of March 2021, the sterling syndicated loan market has, in general, moved to the adoption of compounded SONIA at the outset for new transactions which terminate after the end of 2021.

The publication of the Mezzanine Document is not intended to be, and should not be construed as, a determination or implication by the LMA that any market participant is, or ought to be, capable of entering into, and managing, facilities based on compounded risk-free reference rates and the £RFR Working Group Conventions. It is for individual market participants to

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4 The package of documents constituting the £RFR Working Group Conventions is available through the website of the £RFR Working Group. Unless otherwise indicated, a reference in the footnotes to the Mezzanine Document to a recommendation or statement of the £RFR Working Group is a reference to a recommendation or statement contained in the £RFR Working Group Conventions. The Mezzanine Document reflects the £RFR Working Group Conventions issued in September 2020 and the accompanying Supporting Slides and Worked Examples which were issued in September 2020 and updated in March 2021. The £RFR Working Group has also published a Best Practice Guide for GBP Loans which was updated in July 2021 and includes some further guidance relating to the £RFR Working Group Conventions.

5 The LMA has also published a webinar giving an overview of the context of the Rate Switch Agreements, the rate switch mechanics and the framework for compounded rate loans and a webinar describing the main features of the LMA's recommended forms of multicurrency term and revolving facilities agreement incorporating backward-looking compounded rates and forward-looking term rates with rate switch provisions (lookback without observation shift and lookback with observation shift versions). Those features are reflected in the Mezzanine Document.

6 The Mezzanine Document sets out interest rate reference rate provisions for US dollars, sterling and Swiss francs. It does not set out interest rate reference rate provisions for other currencies. Schedule 16 (*Reference Rate Terms*) can be supplemented to provide for the appropriate interest reference rate provisions for any other relevant currency. Users should note however that the Mezzanine Document is **not** designed for the documentation of euro facilities and that additional changes will be required to the body of the document if it is adapted for that purpose. See the Commentary.

form their own view of the extent to which it (and each £RFR Working Group Convention) is suitable for use as the basis for preparing loan documentation for transactions.

The £RFR Working Group Conventions

Users should note that the £RFR Working Group Conventions are recommendations of the £RFR Working Group only. The materials constituting the £RFR Working Group Conventions emphasise that the £RFR Working Group Conventions are not binding and that it is recognised that in certain circumstances alternative methodologies or rates may be more appropriate or convenient, and that market conventions may continue to evolve over time.

In particular users should note that the £RFR Working Group Conventions acknowledge that different approaches are viable options on some key issues. The Mezzanine Document provides:

- an option for a Lookback without Observation Shift OR a Lookback with Observation Shift; and
- a non-cumulative compounded methodology for interest calculation[7].

Although a Lookback without Observation Shift is in accordance with the £RFR Working Group Conventions, users should note that the £RFR Working Group Conventions acknowledge that:

- "*where lenders are also able to offer lookback with an observation shift this remains a viable and robust alternative*"; and
- "*several methods exist to calculate SONIA Compounded in arrears and implementation choice is left to individual market participant*s."

Users should refer to the materials constituting the £RFR Working Group Conventions for more information on the status of those conventions, the process leading to their recommendation by the £RFR Working Group, and a discussion of the concepts involved. The reflection of the £RFR Working Group Conventions in the Mezzanine Document should not be construed as an endorsement of the £RFR Working Group Conventions by the LMA.

Other recommendations for loan conventions and approach of the Mezzanine Document

Users should note that recommendations for loan market conventions for the use of risk-free reference rates are being developed separately by each currency-specific risk-free reference rate working group. Each such working group has its own priorities and frames of reference and, understandably, this results in differences between each set of recommendations.

Market participants should consider the extent to which the preference will be to adopt a single set of conventions for use across all currencies (as is currently reflected in the Mezzanine

[7] Users should note that whilst the Statement on behalf of the Working Group on Sterling Risk-Free Reference Rates – Recommendations for SONIA Loan Market Conventio*n*s provides only that "*daily non-cumulative compounded rate….may be an option*" the accompanying Supporting Slides provide that "*It is recommended to adopt Non-Cumulative Compounded Rate method*". This is further reflected in the Best Practice Guide for GBP Loans which explains why market participants may prefer to use the non-cumulative compounded rate for syndicated loans.

Document) or to adopt a bifurcated approach whereby the conventions applied will vary by reference to currency (such that documentation may also vary by currency). This is a wider issue for each market participant's operational and system requirements.[8]

Users should note that the Mezzanine Document applies the £RFR Working Group Conventions to the facility and the relevant risk-free reference rate irrespective of the currency of the facility and the risk-free reference rate which corresponds to that currency[9]. As a result, the application of the £RFR Working Group Conventions in the Mezzanine Document is not confined to the use of SONIA and sterling amounts. This is for reasons of simplicity and ease of illustration and is intended to facilitate market participants in their assessment of the extent to which the £RFR Working Group Conventions are appropriate for use (whether for sterling amounts or on a multicurrency basis) in the European syndicated lending market when documenting facilities which reference compounded risk-free reference rates. It should not be construed as an endorsement of such an approach by the LMA.

In particular users should note that although there are similarities between the £RFR Working Group Conventions and both:

- the Conventions related to using SOFR in arrears for syndicated loans issued by the US Alternative Reference Rates Committee in July 2020 (the "**ARRC Conventions**")[10]; and

- the recommendation related to using SARON for syndicated loans made by the National Working Group on Swiss Franc Reference Rates in May 2020 and updated in September 2020 (the "**NWG Recommendation**")[11],

there are also, in each case, a number of differences. The Mezzanine Document does not seek to reflect the ARRC Conventions or the NWG Recommendation.

Neither does the Mezzanine Document seek to reflect any other conventions that are being developed by other currency-specific risk-free reference rate working groups.

Users should consider those other convention recommendations and make their own determination as to the extent to which those other conventions are appropriate for use in the European syndicated lending market when documenting facilities which reference compounded risk-free reference rates. The approach taken in the Mezzanine Document should not be construed as an LMA endorsement of, or recommendation for the adoption of, the £RFR Working Group Conventions in preference to the ARRC Conventions, the NWG Recommendation or any other convention recommendation. As above, the approach adopted

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[8] Whilst there are obvious advantages of operational simplicity and ease of comprehension associated with the adoption of a single uniform set of conventions this will require balancing against any commercial or other desire for consistency with each set of recommendations.

[9] Other than in relation to day-count conventions where the Mezzanine Document reflects the convention in the wholesale money markets that interest in respect of the majority of major currencies other than sterling is calculated on an actual/360 basis.

[10] The ARRC Conventions (together with a supporting technical reference document) are available through the website of the Alternative Reference Rates Committee.

[11] The NWG Recommendation is available through the website of the National Working Group on Swiss Franc Reference Rates.

in the Mezzanine Document is for reasons of simplicity and to facilitate market participants in their making of the assessments described above.

Term SOFR

The CME Term SOFR Reference Rate ("**Term SOFR**") is a term rate that is derived from SOFR.[12] Term SOFR has been formally endorsed[13] by the US Alternative Reference Rates Committee which has also published conventions[14] for the use of Term SOFR alongside best practice recommendations[15] for its use. The use of Term SOFR is not addressed in the Mezzanine Document. See the Commentary for further discussion.

Brexit

As the Mezzanine Document was published after 1 January 2021, it reflects changes required as a result of the end of the Brexit transition period on 31 December 2020. In particular:

- EU legislative references have been updated in the Mezzanine Document in accordance with the EU Legislative References in LMA English Law Facility Documentation - Destination Table (the "**Destination Table**");
- an optional two-way exclusive jurisdiction clause has been included as per the LMA note on Documentary implications of the end of the Brexit transition period for LMA facility documentation - Consolidated and Updated Note (the "**Documentary Implications Note**"); and
- a contractual recognition of bail-in clause has been included as per the LMA Recommended Form of Bail-In Clause and Users Guide (the "**Bail-In Users Guide**").

Users should refer to the Destination Table, the Documentary Implications Note and the Bail-In Users Guide for considerations for the use of the Mezzanine Document in the context of Brexit. Existing LMA documentation which does not yet reflect these changes will be updated in due course.

[12] Refer to the website of the CME Group for more information about Term SOFR.

[13] ARRC recommendation

[14] ARRC Term SOFR conventions

[15] ARRC Term SOFR best practice recommendations

2. INTRODUCTION

The purpose of the Mezzanine Document is to assist users of the ~~LMA's recommended form of Leveraged Facilities Agreement for Acquisition Finance Transactions (Senior/Mezzanine) (the "~~LMA Leveraged (Compounded Rate/Term Rate) Document~~")~~ in preparing a mezzanine facility agreement on a transaction where the senior facilities agreement is based on the LMA Leveraged (Compounded Rate/Term Rate) Document and the structure of the transaction is as set out in the User's Guide to the LMA LIBOR Leveraged Document.

2.1 *Evolution and Scope of the Mezzanine Document*

The Mezzanine Document ~~was created in response to demand from the leveraged finance market to~~ provides guidance as to the form of mezzanine facility agreement for use in conjunction with the LMA Leveraged (Compounded Rate/Term Rate) Document and the LMA's recommended form of intercreditor agreement for leveraged acquisition finance transactions (senior/mezzanine)(compounded rate/term rate) (the "**LMA Intercreditor Agreement (Compounded Rate/Term Rate)**").

~~It was recognised that the nature of a mezzanine facility agreement meant that, unlike the LMA's other forms of recommended facility documentation, it would not be helpful to produce a document presented as a template agreement. Instead, it was thought that the document was best~~The document is structured as a drafting guide to illustrate the changes that might typically be made to a final form of senior facilities agreement when producing a mezzanine facility agreement based on that senior facilities agreement. It ~~was also accepted that any drafting guidance that was produced would~~will need to be adapted so as to be tailored to the particular transaction structure and terms agreed on the mezzanine financing.

~~However, it was still felt that it would be helpful for market participants if~~The guidance ~~was produced which was~~aims to be a good starting point for the draftsman; ~~which~~to provide~~d~~ a common framework and language for those involved in these transactions; and which ~~was~~is specifically designed to dovetail with the LMA Leveraged (Compounded Rate/Term Rate) Document and the LMA Intercreditor Agreement (Compounded Rate/Term Rate).

It is important, therefore, to recognise that, as with the LMA Leveraged (Compounded Rate/Term Rate) Document and the LMA Intercreditor Agreement (Compounded Rate/Term Rate), the Mezzanine Document is not intended to be followed slavishly for each deal but is intended to be used as a starting point for parties seeking to draft and negotiate mezzanine facilities on leveraged financing transactions.

In order to be helpful, various provisions which may or may not be included in the form of mezzanine facility agreement for any particular transaction have been included in square brackets in order that a menu of clauses is available to the draftsman should those clauses be required. The non-inclusion of such square bracketed provisions should not be considered as a departure from the LMA form.

2.2 *Format and Use of the Mezzanine Document*

(a) *Format*

Unlike the LMA's other recommended forms of facility documentation the Mezzanine Document is not structured as a template agreement. This is because in the ordinary course of a leveraged finance transaction the form of any mezzanine facility agreement will typically be based on the final negotiated form of the corresponding senior facilities agreement. Accordingly, presenting the Mezzanine Document in the form of a template agreement would not be helpful to users.

Instead the Mezzanine Document is presented as a drafting guide and is divided into three principal sections:

- Section 0 (*Mezzanine Changes*) outlines the amendments to be made to any given form of senior facilities agreement on a transaction to produce a form of mezzanine facility agreement based on that senior facilities agreement.

- Part I of Section 0 (*Mezzanine Drafting*) is a mark-up of the LMA Leveraged (Compounded Rate/Term Rate) Document showing a recommended form of drafting to implement those amendments.

- Part II of Section 0 (*Mezzanine Drafting*) is an unmarked form of that recommended form of drafting. As stated above, it is not intended to be used as a template agreement but is presented in this form to facilitate the reading of certain sections.

(b) *Assumptions*

The Mezzanine Document has been produced on the basis of various assumptions set out below which have been made in order to avoid overcomplicating the guidance. However, if any assumption is not correct in the context of a particular transaction, the Mezzanine Document may still represent a useful starting point. These assumptions are set out below:

Use of LMA Leveraged (Compounded Rate/Term Rate) Document and LMA Intercreditor Agreement (Compounded Rate/Term Rate)

The corresponding senior facilities agreement and intercreditor agreement are based on the LMA Leveraged (Compounded Rate/Term Rate) Document and the LMA Intercreditor Agreement (Compounded Rate/Term Rate) (and the assumptions made in the separate Users Guides to the ~~LMA~~LIBOR Leveraged Document and the LMA recommended form of ~~I~~intercreditor ~~A~~agreement for leveraged acquisition finance transactions (senior/mezzanine) apply equally to the Mezzanine Document).

Transaction structure

The transaction structure is as described in the Users Guide to the ~~LMA~~LIBOR Leveraged Document and is replicated and supplemented in Section 0 (*The Transaction*).

Holding accounts

Separate senior and mezzanine prepayment and holding accounts are maintained.

Structure of mezzanine facility

The mezzanine facility is

- a single currency term loan facility (denominated in Swiss francs, US dollars or sterling)
- available to the Company only
- available by way of a single drawing only
- available to be drawn in full only
- repayable in a single bullet repayment,

and it is not envisaged that any additional or incremental mezzanine facilities may be established under the framework of the mezzanine facility agreement.

Terms of the mezzanine facility

The commercial terms of the mezzanine facility are to be the same as those applying to the senior facilities other than potentially:

- Term
- Yield provisions
- Mandatory prepayment from excess cashflow
- Financial covenants
- Cross-default provisions
- Board observer and management rights
- Enhanced information rights

These potential differences are set out in more detail in Section 0 (*Mezzanine Changes*).

Security Agent and Mezzanine Facility Agent

- The same security agent will hold the security on behalf of each of the senior lenders, the hedge counterparties and the mezzanine lenders (see Section 0 (*Security Structure*)) and will be appointed under the intercreditor agreement.

- There will be a separate facility agent for the mezzanine lenders, appointed under the mezzanine facility agreement.

(c) ***Style of drafting***

As far as possible the drafting in Section 0 (*Mezzanine Drafting*) adopts a "plain English" approach, with clauses broken down into shorter sub-paragraphs and exceptions listed in sub-paragraphs rather than as provisos.

(d) ***How to use the Mezzanine Document***

The Mezzanine Document is not intended to be used as a template. It is designed for use as a drafting guide and shows the drafting changes necessary (as against the corresponding senior facilities agreement) if a mezzanine facility agreement was to be based

- on the LMA Leveraged (Compounded Rate/Term Rate) Document; and

- on the assumptions set out in this section.

Where those drafting changes require additional information a gap [ ] is left. Where optional language or more than one option have been included it is identified as [option] or [option 1]/[option 2].

The footnotes in the Mezzanine Document are not intended to be comprehensive and do not duplicate those set out in the LMA Leveraged (Compounded Rate/Term Rate) Document. They focus primarily upon the areas where the drafting in Section 0 (*Mezzanine Drafting*) differs from the LMA Leveraged (Compounded Rate/Term Rate) Document. Users should refer to the LMA Leveraged (Compounded Rate/Term Rate) Document and ~~accompanying~~the User's Guide to the LIBOR Leveraged Document for more comprehensive guidance. Users should also refer to the footnotes in the LMA Leveraged (Compounded Rate/Term Rate) Document and the Commentary in relation to the use of a compounded risk-free reference rate. In particular, the Commentary highlights features of a single currency facility agreement referencing a compounded risk-free reference rate which may be relevant to the Mezzanine Document.

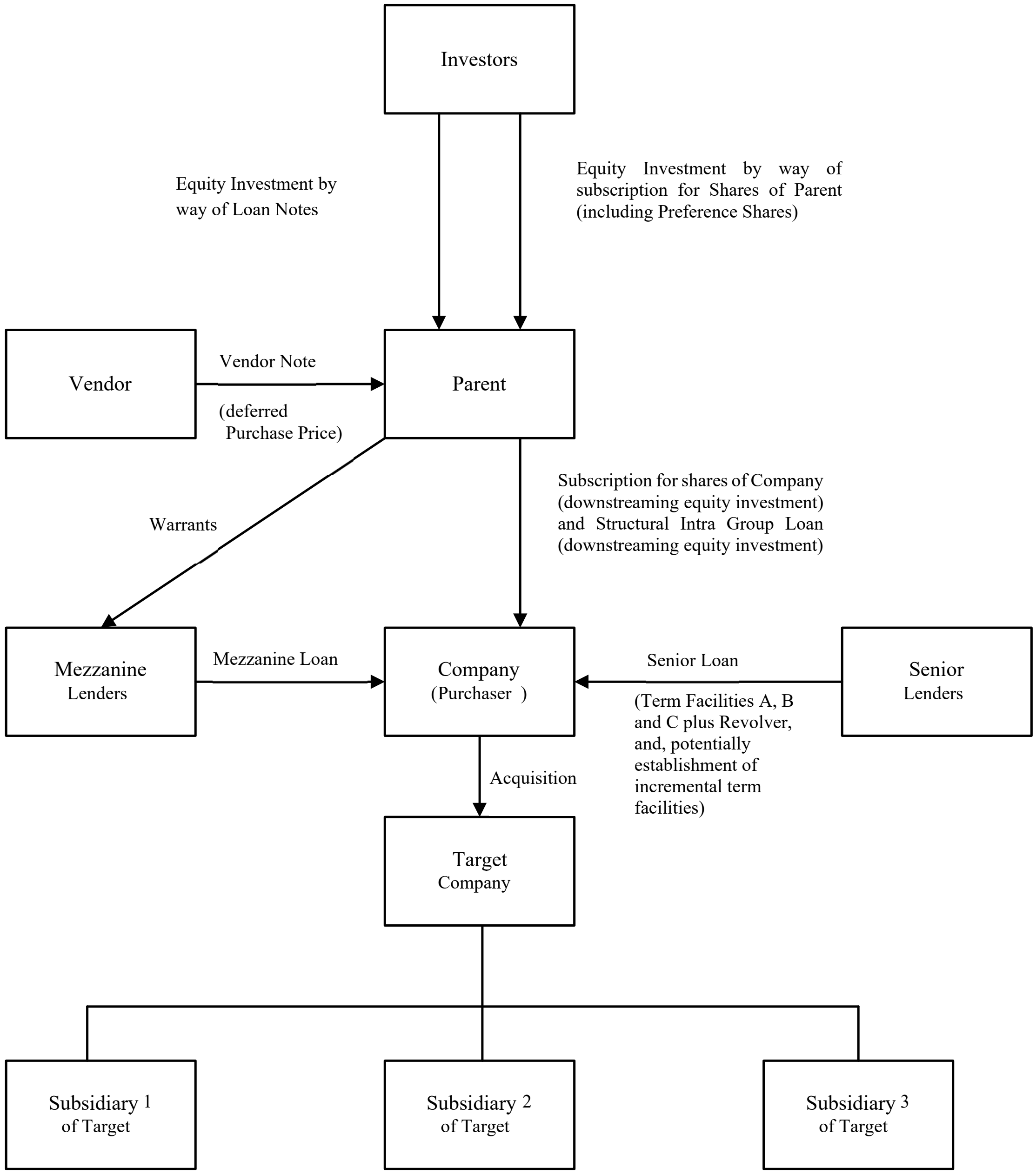
3. THE TRANSACTION

Set out below is a brief description of the transaction documented by the Mezzanine Document. It is important to note that the transaction does not represent a recommended transaction or structure and that it is described here solely to outline the parameters of the Mezzanine Document. In any given case the transaction and the structure will be driven by the requirements of the parties and is a matter for commercial agreement. To the extent that the agreed transaction and structure in any given case is different from that described in this section it is important to note that changes will be required to the Mezzanine Document, LMA Leveraged (Compounded Rate/Term Rate) Document and LMA Intercreditor Agreement (Compounded Rate/Term Rate) to take account of that agreed transaction and structure.

3.1 ***Structure***

The Mezzanine Document, the LMA Leveraged (Compounded Rate/Term Rate) Document and the LMA Intercreditor Agreement (Compounded Rate/Term Rate) relate to a typical senior loan and mezzanine loan structure. Overleaf is a diagram of the assumed structure. The assumption is that Parent establishes Company to which senior and mezzanine finance is made available for the acquisition of Target. The assumption is also made that equity investment is by way of (a) ordinary shares and (b) institutional loan notes or preference shares into Parent. Security is to be granted in favour of a trustee for both senior lenders and mezzanine lenders with the order of priority and other trustee provisions set out in a separate intercreditor agreement. (The LMA Intercreditor Agreement (Compounded Rate/Term Rate) contains such provisions). The Leveraged Document and the Mezzanine Document provide for both a share and business acquisition. All other forms of finance contemplated by the structure (other than the hedging facilities described in section 0 (*Senior Facilities and Hedging Facilities*)) would be subordinated to the finance provided under the senior and mezzanine facilities agreements.

Debt Structure Chart



3.2 ***Senior Facilities and Hedging Facilities***

The senior facilities agreement provides for three senior term facilities, a senior revolving facility and, potentially, the establishment of additional senior incremental term facilities.

The revolving credit facility includes a letter of credit facility and provides for other ancillary facilities (such as overdraft, foreign exchange and guarantee facilities) to be included (albeit that the detail of these facilities would be documented separately).

In addition to the facilities under the senior facilities agreement it is assumed that certain financial institutions (which need not also be senior lenders) would provide hedging facilities. It is assumed however that there would be no other layers of debt except for the mezzanine facility (and institutional loan notes/vendor loan notes).

3.3 ***Mezzanine Facility***

This is to be a single term facility and borrowed at the Company level; warrants may be issued by the Parent to the mezzanine lenders.

3.4 ***Vendor Notes***

It is assumed that notes are to be issued by the Parent to the Vendor as part of the consideration for the acquisition.

3.5 ***Security Structure***

The security is to be held by a security trustee (defined as the "**Security Agent**") on behalf of the senior lenders, the mezzanine lenders and the hedge counterparties and is to be documented in the form of a debenture.

The documentation has not been drafted in order to provide a structure which will benefit from an exemption from the insolvency provisions of the UK Enterprise Act (and so it is likely that the lenders will not be able to block the appointment of an administrator). It is also assumed that security trustee provisions are to be contained in an intercreditor agreement between (amongst others) the senior lenders, the mezzanine lenders and the hedge counterparties. (The LMA Intercreditor Agreement (Compounded Rate/Term Rate) contains such provisions.)

3.6 ***Subordination of Mezzanine Facility***

The Mezzanine Facility will be contractually subordinated to the Senior Facilities and the Hedging Facilities pursuant to the Intercreditor Agreement, which will also provide that the Senior Facilities and the Hedging Facilities will have priority recourse to proceeds from enforcement of the security. (The LMA Intercreditor Agreement (Compounded Rate/Term Rate) contains such provisions and users should refer to the User Guide to the LMA ~~I~~intercreditor ~~A~~agreement for leveraged acquisition finance transactions (senior/mezzanine) for further information).

3.7 *Alternative Structures*

The structure assumed above is a traditional European leveraged buy-out structure and is considered to be one which is commonly encountered across all levels of the acquisition finance market. There are, of course, a number of other structures that could be used for leveraged acquisition finance transactions with a senior/mezzanine debt structure. For example:

- the structure could envisage the granting of security (for the benefit of the Mezzanine Lenders only) over shares in a company positioned above the Parent in the Group structure; or

- as an alternative to warrants the Mezzanine Lenders might be granted a direct shareholding or limited partnership interest in an additional entity at a level above the Parent.

As above it is likely that the choice of structure will be a matter for commercial agreement and will be driven by the specific requirements of the transaction in question. To the extent that the structure of the transaction in question is different from that described in sections 0 (*The Structure*) to 0 (*Subordination of Mezzanine Facility*) above, it is important to note that changes will be required to the Mezzanine Document, LMA Leveraged (Compounded Rate/Term Rate) Document and LMA Intercreditor Agreement (Compounded Rate/Term Rate) to take account of that structure's particular characteristics and complexities.

4. MEZZANINE CHANGES

Set out below is a description of the changes to be made to any given form of senior facilities agreement to produce a form of mezzanine facility agreement based both on that senior facilities agreement and on the assumptions set out in Section 0 (*Format and Use of the Mezzanine Document*). Recommended drafting for the majority of these changes is provided in Section 0 (*Mezzanine Drafting*).

These are, of course, not exclusive or definitive but represent typical changes to the form of a senior facilities agreement to produce a corresponding mezzanine facility agreement that are most often seen or discussed on traditional European leveraged acquisition finance transactions.

4.1 Technical changes

(a) ***Structure of mezzanine facility***

Mechanical changes will be needed to reflect the fact that the mezzanine facility is a single currency term loan facility which is borrowed by the Company only and which is to be available only in a single drawing and in full.

These will include:

- Deletion of the revolving credit facility and, accordingly, the provisions dealing with letters of credit and ancillary facilities.
- Deletion of Facilities B and C and renaming Facility A as "the Facility" and consequential changes to any provision which envisages multiple facilities and utilisations.
- Deletion of the multicurrency mechanics and reformulating those provisions which envisage use of multiple currencies. Note that the mezzanine facility is not designed for the documentation of loans in euro and that additional changes will be required to the body of the document if it is adapted for that purpose. See the Commentary for futher detail.
- Reformulation of interest rate fixing provisions and payment mechanics to envisage a single currency only.
- Deletion of the amortisation options.
- Deletion of the framework for establishment of incremental facilities.
- Deletion of the rate switch mechanics facilitating a change from a forward-looking term reference rate to a backward-looking compounded risk-free reference rate.

Where applicable, these changes set out in Section 0 (*Mezzanine Drafting*) have been based, to the greatest extent possible, upon the LMA recommended form of Primary Document LMA.ST.CompoundedRate.~~1~~01, the single currency

Term Facility Agreement incorporating backward-looking compounded rates (with option for lookback without or with observation shift).

(b) ***Intercreditor Agreement and suspension of mandatory prepayment obligations***

The intercreditor agreement is likely to prevent mandatory prepayments of principal from being made pursuant to the mezzanine facility prior to discharge of the Senior Facilities and the Hedging Facilities. (The LMA Intercreditor Agreement (Compounded Rate/Term Rate) contains such provisions). As a result of this, mandatory prepayment obligations in the mezzanine facility agreement are made subject to the terms of the intercreditor agreement, so that an amount becomes due under those provisions only to the extent payment would be permitted under the intercreditor agreement. This ensures that compliance with these intercreditor provisions does not result in a mezzanine payment default.

4.2 **Commercial changes**

Other than where otherwise indicated each of the changes set out in this Section 0 is presented as optional drafting in Section 0 (*Mezzanine Drafting*). Whilst often seen on mezzanine transactions the inclusion or otherwise of each of the elements set out below will be a function of the agreed commercial position.

(a) ***Term***

The term of the mezzanine facility will be a matter for negotiation in each case but is generally longer than that applying to the corresponding senior facilities agreement.

(b) ***Yield provisions***

The mezzanine facility may have a more complicated yield structure than the corresponding senior facilities agreement. Whilst the mezzanine facility will yield cash pay interest calculated on the basis of a specified margin over an interest rate benchmark in a similar way to the senior facilities agreement (although typically without use of a leverage based margin ratchet) the mezzanine facility may include one or more of the additional yield components set out below. Section 0 (*Mezzanine Drafting*) includes placeholders and/or outline drafting for each of these concepts but the extent to which it is appropriate for all or any to be included on a transaction is a matter to be considered by users together with the precise formulation of the relevant yield component.

- *PIK Interest*: Capitalised interest (often referred to as "PIK" or "payment-in-kind") where the interest is not paid at the end of each interest period but capitalises on, and is added to, the principal outstanding under the mezzanine facility (generally at the end of each interest period). Some structures may contain a mechanic allowing the borrower to opt to pay interest either as cash pay interest or to capitalise that interest as PIK Interest (often referred to as a "PIK Toggle").

Section 0 (*Mezzanine Drafting*) does not contain outline drafting for such a PIK Toggle.

- *Warrants*: issued by the Parent to the Mezzanine Lenders (assumed to be constituted under a separate warrant instrument).

- *Make Whole Amount/Prepayment Fee*: Section 0 (*Mezzanine Drafting*) includes a placeholder for a Make Whole Amount or Prepayment Fee on prepayments.

  A make whole amount is typically calculated by reference to the discounted value of the interest which would otherwise have been payable on the prepaid amount.

  A prepayment fee is typically paid as a percentage (typically, a decreasing percentage) of the amount to be prepaid.

  Users should consider whether it is appropriate for a make whole amount or prepayment fee to be payable under the mezzanine facility in question and, if so, should consider:

  - the rate of the prepayment fee or the formula for calculating the make whole amount (including the formulation of the discount which reflects early receipt of the interest)

  - for how long the prepayment fee or make whole amount should apply

  - to which types of prepayment should the prepayment fee or make whole amount apply.

  Section 0 (*Mezzanine Drafting*) does not contain outline drafting for the calculation of any make whole amount or prepayment fee as these are matters for commercial negotiations but envisages that any amendment of any provision addressing a make whole amount or prepayment fee will require all Lender consent.

  Users should consider the formulation of any make-whole provisions in the context of the use of compounded risk-free reference rates rather than a forward-looking term reference rate. See the LMA's note "LIBOR transition considerations for the LMA's leveraged finance documentation".

(c) ***Mandatory prepayment from excess cashflow***

A mezzanine facility may not require prepayment from excess cash. Section 0 (*Mezzanine Drafting*) indicates the relevant changes that should be made if the commercial agreement is that an excess cash sweep is not to be included.

(d) ***Financial covenants***

- The commercial provisions under a mezzanine facility are generally the same as under the corresponding senior facilities agreement. Section 0 (*Mezzanine Drafting*) envisages that the representations, general undertakings, events of default (other than the cross-default), mandatory prepayment provisions and transfer restrictions are the same in both the corresponding senior facilities agreement and the mezzanine facility agreement.

- However, the financial covenants are often an exception and certain financial covenants under the mezzanine facility are often set at ratios which have greater headroom than those which apply under the corresponding senior facilities agreement. This reflects the commercial agreement that any failure by the borrower to meet the specified financial targets should result in a default under the senior facilities at an earlier stage than it will under the mezzanine facility. A necessary corollary of this arrangement is that the cross-default provision in the mezzanine facility should not be triggered by a default under the senior facilities resulting from a breach of those financial covenants. Section 0 (*Mezzanine Drafting*) provides for such an approach by excluding breach of any such financial covenant under the senior facilities agreement from the scope of the mezzanine facility's cross-default.

- The commercial agreement may be that the mezzanine lenders will not have the benefit of any financial covenant (such as a senior interest cover covenant or a senior leverage covenant) which measures risk by reference to amounts outstanding under the senior facilities only. Section 0 (*Mezzanine Drafting*) assumes that this is the case and the senior interest cover and senior leverage covenants from the LMA Leveraged (Compounded Rate/Term Rate) Document are not contained in Section 0 (*Mezzanine Drafting*).

(e) ***Cross-default***

The extent to which the mezzanine facility's cross-default is to be triggered by an event of default under the senior facilities is sometimes the subject of negotiation. Possible approaches include:

- allowing any default under the senior facilities (other than prescribed defaults, such as a default under the senior facilities resulting from a breach of the financial covenants under the senior facilities) to trigger the mezzanine facility's cross-default (this is the approach followed in Section 0 (*Mezzanine Drafting*));

- providing that only events under the senior facilities which can trigger the mezzanine facility's cross-default are non-payment under the senior facilities and an acceleration of the senior facilities; and

- providing that the only event under the senior facilities which can trigger the mezzanine facility's cross-default is an acceleration of the senior facilities.

(f) ***Board observer and management rights***

Mezzanine investors often seek to obtain enhanced monitoring/management rights such as (i) the right to appoint a non-voting observer to the board of the principal member(s) of the Group or (ii) so called venture capital operating company ("**VCOC**") rights.

VCOC rights are potentially relevant for US funds which include US pension plan investors (as well as certain other plans subject to the US internal revenue code). To avoid being subject to onerous US ERISA compliance rules US funds need to qualify as venture capital operating companies by investing in companies in which they have "management rights". Such "management rights" would typically include consultation rights with respect to the business of the borrower, rights to financial information and rights to inspect books and records.

Section 0 (*Mezzanine Drafting*) provides optional drafting:

- providing for the attendance of a non-voting representative of the mezzanine lenders at board meetings of the principal member(s) of the Group as an observer (a "**Board Observer**"); and

- enabling a mezzanine lender to call for "management rights" in any Obligor to the extent needed to meet VCOC requirements.

Users should note that these provisions are sometimes covered in a side-letter, in which case the drafting set out in Section 0 (*Mezzanine Drafting*) may be used as the basis of such a letter. Users should note that the drafting provided should be used as a starting point only and that appropriate specialist advice should be taken as to the relevant ERISA/VCOC requirements in each case.

Users should note that the provisions relating to the appointment and attendance of a Board Observer are intended as an outline example only and that the parameters of the Board Observer's role are a matter for negotiation and can vary widely. In particular, but without limitation, users should consider the following:

- the exclusion of the Board Observer in the case of a conflict of interest

- the exclusion of the Board Observer following non-attendance

- a requirement for the Board Observer to enter into a confidentiality agreement

- the extent to which the Board Observer should be restricted from receiving commercially sensitive materials

- the Board Observer's right to speak.

(g) ***Enhanced information rights***

Mezzanine investors may seek to obtain more extensive information undertakings than those applying in the corresponding senior facilities agreement.

Section 0 (*Mezzanine Drafting*) does not contain outline drafting for such an approach but users should consider the extent to which such provisions are appropriate in the context of the relevant transaction. Areas which might be considered include:

- Monthly Financial Statements provided to Mezzanine Lenders to be accompanied with calculations of financial covenants

- Supply to Mezzanine Lenders of information provided to any finance party under the Senior Facilities Agreement

- Notification to Mezzanine Lenders of any new money advances made by the lenders under the Senior Facilities Agreement.

5. MEZZANINE DRAFTING

PART I – MARK-UP

Set out overleaf is a version of the currently published LMA Leveraged (Compounded Rate/Term Rate) Document marked to show a recommended form of drafting to implement the amendments set out in Section 0 (*Mezzanine Changes*).

PART II - CLEAN

Set out overleaf is a clean form of the drafting set out in Part I of Section 0 (*Mezzanine Drafting*).