

LMA INTERCREDITOR DOCUMENTATION – FACE VALUE REQUIREMENT FOR DEEDS

1. The LMA is aware of discussions arising from obiter comments made in a decision in the lower courts of England and Wales¹ (**Macdonald Judgment**) that a form of testimonium clause contained in a restatement agreement (reportedly modelled on the testimonium clause used in the LMA's recommended forms of intercreditor agreement) did not meet the requirement under English law for a deed to make clear on its face that it is intended to be a deed (**Face Value Requirement**).
2. The LMA has been reviewing the Macdonald Judgment in conjunction with certain of the law firms on its legal committee. The LMA notes that the Financial Law Committee of the City of London Law Society (**CLLS**) has published a memorandum on the Face Value Requirement generally and the Macdonald Judgment specifically (**CLLS Memo**) which has been endorsed by the Company Law Committee of the CLLS.
3. The CLLS Memo is available through the [City of London Law Society website](#) and is linked [here](#)
4. The LMA notes that it is the opinion of the CLLS that:
 - The approach adopted in the LMA's recommended forms of intercreditor documentation² is "*sufficient to comply with the [Face Value Requirement] and that it is not necessary to amend the document*".
 - The Face Value Requirement can be met in numerous ways, including by a document stating that it is executed as a deed by those parties signing it as a deed.
 - The above views are supported by a consideration of the legislative background to, and intent of, the Face Value Requirement, the English common law framework of deed execution and case law considering the Face Value Requirement.
5. Accordingly, the LMA does not intend to make a change to the testimonium provision in its intercreditor documentation as a result of the Macdonald Judgment.

¹ *Macdonald Hotels Ltd v Bank of Scotland PLC* [2025] EWHC 32 (Comm).

² Testimonium clause reflecting the intention of the parties that the obligors (but not the other parties) will execute the agreement as a deed and that signature blocks also show which parties execute the document as a deed.