

Credit Suisse AT1 Bondholder Investor-State Group Claim

FAQ regarding Legal Finance Agreement

This FAQ is provided for your consideration. You may wish to take legal or other professional advice in respect of the LFA, the Steering Committee Agreement and the other contractual documents relevant to the AT1 Bonds Action.

Please note that Omni Bridgeway is a litigation funder. They are not your lawyer and cannot provide you with any legal advice

1. Who is Omni Bridgeway?

- a. Omni Bridgeway Limited (“**OBL**”), is a public company listed on the Australian Securities Exchange (ASX code: OBL). OBL’s affiliated funds provide funding for significant and large-scale arbitration and litigation. Information about OBL can be found on the OBL website at omnibridgeway.com.

2. What is the Legal Finance Agreement?

- a. The Legal Finance Agreement (“**LFA**”) is an agreement between Omni Bridgeway (Fund 5) S2 Cayman Investment Limited (“**OB**”), a fund entity which is part of the OBL affiliated fund structure, and each of the claimants. Under the LFA, OB agrees to pay the costs of the action against the Swiss Confederation (as we will explain further below), and in return receives a portion of the financial recovery if the action is successful (whether by way of final judgment / award or settlement).
- b. Entering into the LFA means that claimants can participate in the action without paying costs themselves, and without having to pay adverse cost orders which may be made against them (see Questions **6.** and **14.** below for further details) if the claim is unsuccessful.
- c. The LFA sets out key terms, including (but not limited to):
 - i. the costs that are to be paid by OB;
 - ii. the fees that the claimants will be paying to OB if the action is successful, but only from what is recovered from the Swiss Confederation or otherwise may be realised from a reinstatement of the Credit Suisse AT1 Bonds (“**AT1 Bonds**”);

- iii. the order of priority for payments if the action is successful;
- iv. the claimants' approval to consolidate the actions arising out of the different international treaty instruments;
- v. the function of the Steering Committee to be appointed to represent all claimants (see Question 25 below);
- vi. who will bear the costs of any Ancillary Proceedings, which includes enforcement proceedings (see Question 20);
- vii. the representations and undertakings made by OB and the claimants; and
- viii. the parties' confidentiality obligations.

3. Who are the “Lawyers” that will be acting for claimants?

- a. The term “Lawyers” is defined in Clause 19.1 and Schedule 1 as Drew & Napier LLC (“**D&N**”), Withers Khattar Wong LLP and Withers LLP (“**Withers**”), and any counsel retained by D&N and Withers, or any other solicitors appointed in their place in accordance with the terms of the LFA.
- b. There is a possibility that additional lawyers other than D&N, Withers and/or Robert Kirkness (referred to in the LFA as Retained Counsel) may be appointed to act for the claimants in this matter.

4. I already signed an LFA when I signed up through OB’s website. Do I need to sign the updated LFA and why?

- a. Yes. You will be asked to sign the updated LFA so that all of the claimants who have signed up so far will be subject to the same, most up-to-date agreement for the conduct of the proceedings. OB has revised the LFA to take into account the specific complexities of this case.
- b. Clause 1.3 of the updated LFA confirms that any earlier agreement will be terminated by mutual agreement and will be replaced by the updated LFA, which will apply moving forward.

5. What else do I need to sign?

Please note that when you follow the online process to sign up to the LFA, you will be asked to sign just once and this will be taken as your acceptance and execution of each and all of:

- the LFA;
- the Instructions to Lawyers (Schedule 2 to the LFA);
- the Power of Attorney (Schedule 3 to the LFA); and
- the Steering Committee Agreement.

You will also be asked to sign the Lawyers' Engagement Letters.

Each of these documents will be available for review on the online portal. Please note that certain Schedules of the LFA are redacted due to commercial sensitivity but there is a process you can follow to request access to these Schedules prior to sign up. Please see Question 6 below.

6. What costs will be paid by OB?

- a. Clause 3 of the LFA sets out the costs that will be paid by OB, which is defined as the "Facility". The Facility will cover the "Funded Costs", which includes:
 - i. the reasonable fees and disbursements of the Lawyers to identify potential claims and claimants for the proceedings and to facilitate all preparatory steps for, and effect the filing of, Proceedings (that is, the Initial Phase Costs);
 - ii. the reasonable fees and disbursements of the Lawyers for the proceedings, including any filing fees, arbitral tribunal fees and expert's costs to be provided in accordance with a quarterly Drawdown Schedule ;
 - iii. any Adverse Costs Order (subject to the Adverse Costs Limit - see Question 14);
 - iv. OB's insurance costs which support OB's obligation above regarding payment of an Adverse Costs Order and any costs associated with the quantification of any Adverse Cost Order;
 - v. costs of Ancillary Proceedings; and
 - vi. OB's costs for establishing the funding and costs for client liaison services.
- b. The maximum amount of the Facility is defined as the "Facility Limit". The Facility Limit has now been **increased** to reflect the expanded scope of the proceedings, including the participation of Singapore-based claimants. The Facility Limit is the upper level of the

- required Facility to cover all of the costs of the proceedings. This may be subject to adjustment upon the conclusion of the LFA sign-up process when the total claim value can be calculated and a decision can be made on which investor treaty instruments the proceedings will be brought under. Currently, the Facility Limit is set in order to fund proceedings in the Swiss Court on behalf of Singapore AT1 Bondholders and separate investment treaty arbitrations on behalf of Japanese AT1 Bondholders and Hong Kong AT1 Bondholders, provided that a sufficiently large book (quantum) of claims is built. If you know of other AT1 Bondholders who have yet to sign up, please encourage them to do so.
- c. The Drawdown Schedules are provided in Schedule 4 to the LFA and the various figures including the Facility Limit and caps on the Lawyers' fees and disbursements are specified in Schedule 5 to the LFA. Both of these Schedules are redacted to protect the commercial sensitivity of the relevant budgeted figures. However, these Schedules can be accessed by prospective claimants on request prior to sign up if they provide an appropriate undertaking as to confidentiality.
 - d. For clarity, the Facility Limit will include not just the relevant amounts provided for in the Drawdown Schedule but also covers costs involved in funding and pursuing the proceedings, including, but not limited to, those specified above at paragraph (a), amounts provisioned for potential expenses and past costs paid by Omni Bridgeway.

7. In what circumstances will the claimants become liable to pay costs?

- a. The LFA is meant to cover the costs that claimants will incur in bringing the action. However, there are some unlikely scenarios in which the claimants may become liable to pay costs and they are as follows:
 - i. If the conditions precedent set out at Clause 2 of the LFA are not satisfied, the funding will not go ahead. Claimants will then have the option to withdraw from the claim or to self-fund the proceedings. If the claimants decide to self-fund the proceedings, they will have to pay costs of those proceedings themselves (see Clause 2).
 - ii. If there is a counterclaim and OB does not agree to fund the defence, the claimants will bear the costs of the defence. We note that it is highly unlikely that there will be a counterclaim and, if there is a counterclaim, that OB will not agree to fund it (see Clause 3.4).
 - iii. If there are any Ancillary Proceedings that OB does not agree to fund, the claimants will bear the costs of these Ancillary Proceedings (see Clause 3.4).
 - iv. If, upon a Security for Costs Request, the tribunal ultimately refuses to order that such security can be provided by way of a costs undertaking from OB, then OB has

the discretion whether to lodge the security in some other form (eg, cash) – in the unlikely event that OB decides against lodging such security then the claimants will have to bear the security for costs themselves (see Clause 4.1).

- v. If the LFA is terminated pursuant to the prescribed grounds for termination, the claimants will have the option to withdraw from the claim or to bear the remaining costs of the claim (see Clause 16 and question 21 below).
- v. If the limit for the Adverse Costs Order is exceeded, the exceeded costs will be paid by the claimants unless OB agreed to increase the limit (see definition of Adverse Costs Order at Schedule 1 and Question 14).
- vii. If OB goes bankrupt or liquidates, the claimants will become responsible for the costs incurred thereafter and any unpaid costs that have been accrued to date – whatever bills have been issued and paid for by OB prior to the bankruptcy would not be payable by the claimants. We note that the chances of OB going bankrupt are very unlikely.

8. Will I incur costs if the Facility Limit is exceeded?

- a. The Facility Limit has been assessed by OB considering the Lawyers' views on the required budget for the reasonable legal fees and disbursements of the proceedings, any costs it anticipates will be required for the claim, and the current anticipated size of the claimants' claims.
- b. If costs exceed the Facility Limit then these costs will be borne by the claimants and/or the Lawyers and recoverable only from the claimants' share of the Resolution Sum, to the extent there are sufficient proceeds available (see Clause 3.2).
- c. However, OB may agree to an increase of the Facility Limit in accordance with Clauses 3.2 and 5.1.4 of the LFA. If the relevant sub-limits on the legal fees (referred to as the D&N Fee Cap and the Withers Fee Cap) have been, or will be exceeded, 100% of the reasonable legal fees incurred above those sub-limits will be deferred and will be recoverable by the Lawyers only from the Resolution Sum, together with an uplift (see Question 11), if the claim is successful. Please refer to Clauses 3.2.8 and 3.2.9 of the LFA.

9. What fees are payable to OB if the claim is successful?

- a. The proportion of recovery by OB out of any Resolution Sum will be determined in accordance with Clause 5 of the LFA. In essence, the proportion of proceeds that OB will

receive will depend on the **length of the proceedings**; the **amount of costs that OB has incurred**; and the **quantum of any Resolution Sum**.

- b. In summary, Clause 5 provides that OB’s fees will be the **lesser** of (1) the entire Resolution Sum; and (2) the aggregate of the following:
 - i. The amount of the total costs paid or payable by OB; and
 - ii. The **greater** out of:
 - 1. A multiple of the amount of the total costs paid by OB as at Final Resolution which shall be 1x if it occurs in the first 12 months from the Contract Date of the LFA and will increase by 0.5x for every subsequent 12 month period or part thereof; and
 - 2. 10% of the Resolution Sum from any Final Resolution which occurs in the first 12 months of the Contract Date of the LFA and increasing by 5% for every subsequent 12 month period or part thereof.
- c. Compared to the previous LFA, the terms for the calculation of OB’s fees are unchanged. The key update is that OB’s fees are now payable upon Final Resolution of all claims, which provides greater certainty and consistency for claimants—for example, if one of the claims is resolved earlier, payment to OB will only be made once all other claims have been finally resolved.
- d. Based on the scenario set out at [b.ii.2] above, the table below shows examples of the amounts that would be recovered by OB and the claimants for a claim size of US\$300 million and recovery sum of US\$210 million (that is, the claim is successful but claimants only manage to recover 70% of the claim value). Please note that these sums are for the purposes of illustration **only** and are not the actual or anticipated values of the claim size or recovery amount.

	Final Resolution occurs after 24 months and on or before 36 months from the Contract Date	Final Resolution occurs after 48 months and on or before 60 months from the Contract Date
Total claim size	US\$300 million	
Deployed Funded Costs	US\$10 million	
Recovery	US\$210 million	

Funder's success fee	20% of recovery = US\$42 million	30% of recovery = US\$63 million
Total fees paid to funder	US\$52 million	US\$73 million
Balance left for claimants	US\$158 million	US\$137 million

10. What percentage of return will the claimants get?

- a. The action will be for the full value of the AT1 Bonds. However, if the Swiss Confederation is found to have breached its international law obligations and/or other laws which caused the claimants loss, the sum of damages that will be awarded will depend on how the arbitral tribunal or court assesses the loss. This depends on several factors including, for example, the evidence that has been put forward. There could also be a resolution through settlement where the damages payable will be negotiated with the Swiss Confederation.
- b. The amount awarded or settled will then be subject to OB's fees and any Lawyers' Uplift there may be (see Question 11), in accordance with Clause 5 and 6.2.4 of the LFA.
- c. The amount to be paid to the claimants is the balance of any recovered sum after the fees payable to OB, and the uplift to the Lawyers (if any), have been deducted from the Resolution Sum. This balance amount will be shared amongst the claimants pro-rata to the value of their AT1 Bondholding. Please refer to Question 9 above for further details on OB's fees.

11. What is the Lawyers Uplift' and how is this calculated?

- a. The Lawyers' Uplift only applies if the applicable sub-limits within the Facility have been, or will be exceeded. As set out at Clause 3.2 of the LFA, if such sub-limits (subject to any increase permitted by the terms of the LFA) are exceeded, the Lawyers will defer 100% of the reasonable legal fees which will then be paid from the Resolution Sum if the claim is successful. If the claim is unsuccessful, the claimants will not be liable to pay these fees.
- b. As is standard practice for this type of arrangement, to take into account the risk that is taken by the Lawyers in the payment of their fees being conditional only upon a resolution, the Lawyers will be entitled to an uplift of 50% of the deferred fees if there is a resolution.

12. What is the priority of payment?

- a. Clause 6.2.4 provides for the priority of payments in the event of a Final Resolution.

- i. First, OB will be paid the total Funded Costs pursuant to Clause 5.1.1;
 - ii. Second, OB will be paid its entitlements pursuant to Clause 5.1.2(ii);
 - iii. Third, the Lawyers will be paid the amount of fees that have been deferred (if any) together with an uplift; and
 - iv. Fourth, the remaining balance will be paid to the claimants.
- b. This priority arrangement is standard in litigation funding agreements to take into account the **risk** that OB and/or the Lawyers are taking in paying the costs of the action when recovery is not guaranteed.
 - c. The benefit of this arrangement to the claimants is that the claimants can take part in the proceedings **without the risk** of having to pay costs if the action is unsuccessful.
 - d. While the wording of the priority arrangement has been updated for clarity in the LFA, the priority of payment as it applies to claimants remains the same.

13. Will I be liable for costs if there is no resolution?

- a. Clause 7.3.3 provides that if there is no Final Resolution, nothing in the LFA requires the claimants to pay the fees that the Lawyers defer in excess of the sub-limits or the Lawyers' Uplift (see Question 11 above).
- b. Omni Bridgeway's Fees are payable only from a Resolution Sum, meaning that if there is no resolution, claimants will not need to pay Omni Bridgeway anything.
- c. For the avoidance of doubt, resolution means that 1) the claim is successful in court / arbitration **or** the claim is settled in the claimants' favour; 2) monies are paid or recovered from the Swiss Confederation under the judgment / award issued by the court / arbitration tribunal or the settlement agreement and/or 3) the value of the AT1 Bonds (e.g. if they are reinstated) to the benefit of the claimant(s) is realised. If no money is recovered or paid by the Swiss Confederation, there is no resolution. The LFA also clarifies at Schedule 1 that a Final Resolution only occurs once all claims are fully concluded, including the receipt of all amounts due and when there is no further prospect of appeal or other action to re-open the proceedings.

14. What happens if the adverse costs awarded against the claimants are higher than the Adverse Costs Order limit in the LFA?

- a. Clause 3 and 4 of the LFA provides that OB will pay for any Adverse Costs Order in return for a fee to be paid by the claimants (the Adverse Costs Fee) but only out of claim proceeds if the claim is successful. The LFA limits the amount that OB will pay to USD 10 million for any Adverse Costs Order. On present estimates, the Adverse Costs Order is unlikely to exceed USD 10 million. This limit applies to all the OB funded proceedings expected to be brought on behalf of all of the claimants.
- b. However, if during the course of the proceedings, the Lawyers and OB determine that the USD 10 million limit may not be sufficient, then OB may agree to increase the limit (likely by taking on a specific ATE insurance policy in addition) which would necessitate an increase to its entitlements pursuant to Clause 5.1 of the LFA.

15. Is it guaranteed that OB will provide funding for all claimants?

- a. Subject to the terms of the LFA, OB will provide funding to **all** claimants meeting the eligibility criteria: The eligibility criteria are:
 - (1) the claimant must be either an individual or applying on behalf of a company who, at the time of acquiring the AT1 Bonds, held nationality or permanent residency in Hong Kong, Singapore, or Japan. For companies, the ultimate beneficial owner must also be a national of one of these jurisdictions.
 - (2) claimants must have acquired the AT1 Bonds prior to 19 March 2023 and still hold those AT1 Bonds as at 19 March 2023. This is subject to the terms of the LFA including that if the conditions precedent under Clause 2 of the LFA are satisfied for **each individual claimant**. For example, if an individual claimant does not provide the requested customary closing documents requested by OB under Clause 2.1.2 or if OB is unable to obtain internal approval for an individual claimant after carrying out its due diligence checks, OB might not enter into the LFA with that individual claimant, and may not agree to fund that claimant's claim. In that situation, the claimant can continue to participate on a self-funded basis, or withdraw from the Claim.
- b. The conditions precedent as set out in Clause 2 of the LFA are as follows:
 - i. OB has obtained all necessary internal approvals to fund the proceedings.
 - ii. OB has received all customary closing documents that it reasonably requests from the claimant (for example, documents confirming identity, authority and bond holdings).

- iii. Any security interests required by OB to secure its entitlements under the LFA have been granted and, where applicable, registered.
- iv. The Power of Attorney has been validly executed.
- v. The Steering Committee Agreement has been validly executed.
- vi. The LFA itself has been validly executed.

16. I only agreed to participate on the premise that all costs will be borne by the funder. Can I withdraw if there is any risk as to cost being incurred?

- a. Please note that there is a distinction between withdrawing from the action (that is, terminating or ending the claim against the Swiss Confederation) and withdrawing from the LFA. For the purposes of this FAQ, we are addressing the question of whether and when a claimant may withdraw from the action against the Swiss Confederation.
- b. Under Clause 10.2.1 of the LFA, once claimants sign the LFA **and** the conditions precedent have been satisfied, they will be unable to withdraw, discontinue, abandon or settle the claim against the Swiss Confederation without the prior written consent of OB. This is to safeguard for the benefit of all other claimants the economic viability of OB continuing to fund the proceedings.
- c. The only other circumstance in which claimants will be able to withdraw from the action after they have entered into the LFA is if the LFA is terminated and the claimants are no longer bound by the terms of the LFA. After the LFA has been terminated, claimants who wish to withdraw from the action may do so.
- d. Please note that even if a claimant withdraws its claim (whether by way of obtaining approval from OB or the termination of the LFA), OB will continue to be entitled to the payments due to it under Clause 5, and will have a claim over any sums recovered in any new proceedings against the Swiss Confederation under Clause 16.4 of the LFA.

17. What happens if I am part of another proceeding relating to the AT1 Bonds? Will OB claim a share of the Resolution Sum arising from that action also?

- a. First, Clause 10.1.6 provides that if the claimant is taking part in any legal proceedings which are relevant to the claims being funded under the LFA, the claimant must notify OB, the Lawyers and the Steering Committee of their involvement.
- b. Second, if the claimant is taking part in two alternative actions relating to the same AT1 Bonds, the general position is that the claimant will only be entitled to recover sums from one of these actions assuming that the claimant is compensated in only one of the actions. This is to prevent double recovery. Where there is partial recovery from one forum, it may be possible to pursue a claim for the remainder of the bond value in a second forum.
- c. Third, Clause 13.4 has been added to clarify how situations involving other proceedings relating to the AT1 Bonds are handled. Under this clause, a claimant must not participate in, or must withdraw from, another proceeding relating to the AT1 Bonds unless they comply with the requirements set out in Clause 13.4.3. These requirements include notifying OB of the other proceeding, keeping OB informed of its progress, and holding any amounts recovered so that they can be taken into account and credited into the Resolution Sum under the LFA.

This is to reflect the fact that the action being funded by OB is very likely to create significant additional pressure on the Swiss Confederation to settle all and any claims regarding the AT1 Bond write-down. It also ensures that OB can protect its investment – it cannot have a situation where it funds and pays for the treaty action that we are leading, but the investors in the treaty action realise their claims in another action with another firm, leaving the funder unable to recover on its investment.

18. What are my obligations under the LFA?

- a. The claimants should read the LFA carefully and ensure that they understand their obligations. Some of the claimants' important obligations include:
 - i. The claimants are required to abide by the decisions of the Steering Committee as if those decisions were their own (see Clause 8.7).
 - ii. The claimants must ensure that the representations and warranties set out at Clause 9.1 are true and accurate.
 - iii. The claimants must ensure that they comply with the undertakings set out at Clause 10.1. These include:

1. Not to sell, assign, transfer, encumber or otherwise dispose of the claims or any Resolution Sum to any person;
2. Provide a copy of the executed LFA to the Lawyers and instruct the Lawyers to act consistently with the LFA by issuing the instructions in Schedule 2;
3. Accede to the Steering Committee to diligently prosecute the proceedings and any Ancillary Proceedings and enable the Lawyers to ensure that the proceedings and the Ancillary Proceedings are conducted to facilitate the just resolution of the claims according to law and as quickly, inexpensively and efficiently as possible with the aim of maximising proceeds and minimising risks;
4. Comply with orders of the court and all statutory provisions, regulations, rules and directions in relation to the claims and the proceedings;
5. Inform OB immediately of any approach in respect of Settlement or Alternative Dispute Resolution;
6. Inform OB, the Steering Committee, and the Lawyers of any legal proceedings which are relevant to the claims and which the claimant or an affiliate are a party to at the time of entering into the LFA, and to inform OB, the Steering Committee and the Lawyers if such legal proceedings commence;
7. Do all that is necessary to give effect to any Settlement which is agreed between the Steering Committee and the Swiss Confederation, in conjunction with OB;
8. Follow all reasonable legal advice of the Lawyers in relation to the proceedings and the claims, subject to the LFA;
9. Promptly provide full instructions to the Lawyers and any counsel retained by the Lawyers and provide the Lawyers with all documents in the claimants' possession, custody or power that are relevant to the claims or the proceedings; and
10. Fully cooperate with OB and the Lawyers, and act with care and diligence of a prudent business-person.

- ii. The claimants must ensure that they comply with the undertakings set out at Clause 10.2. The claimants must not (without the prior written consent of OB):
 - 1. Discontinue, abandon, withdraw or settle the proceedings or any claims against the Swiss Confederation or make any admission in relation to any claim, unless such action is contemplated by or taken by the claimants in accordance with the LFA;
 - 2. Reject any offer made by the Swiss Confederation to engage in any form of Alternative Dispute Resolution Process;
 - 3. Terminate the Lawyer's retainer agreement, Conditional Fee Agreement and/or other agreements under which the Lawyers agree to represent the claimants in respect of the claims and/or are entitled to receive fees in connection with the claims;
 - 4. Retain any other lawyers in place of the Lawyers or counsel to be retained by the Lawyers;
 - 5. Agree to any amendment to the Lawyers' retainer agreement, Conditional Fee Agreement, Damages Based Agreement and/or other agreements under which the Lawyers agree to represent the claimants in respect of the claims and/or are entitled to receive fees in connection with the claims;
 - 6. Seek any order from any court which may detrimentally affect the proceedings or OB's rights under the LFA other than if there is a material breach by OB of its obligations under the LFA;
 - 7. Plead any new cause of action in the proceedings;
 - 8. Agree to the appointment of an arbitrator, or in the case of a panel of arbitrators, the appointment of a chairperson to that panel;
 - 9. Accept or reject any Settlement offer made by the Swiss Confederation, unless done so in accordance with the LFA;
 - 10. Effect a change of control without prior written approval of OB (see definition of "Change of Control" at Schedule 1).
- b. The claimants are required to keep the LFA confidential but are allowed to disclose the LFA to their professional advisers, limited to their legal, tax and financial advisers. However,

the claimants' professional advisers are also required to keep the LFA confidential (see Clause 17.4).

- c. The claimants are also required to keep all information and documents relating to the claim and the LFA confidential, including information relating to the business, operations, structure, technology and/or finances and/or intellectual property (see Clause 17.1).

19. How can I make the warranties set out in Clause 9.1 if I purchased the AT1 Bonds through my bank and do not hold physical scripts of ownership?

- a. For claimants who purchased the AT1 Bonds through the bank and do not have the documents relating to their purchase, such as the ownership documents, the claimants should immediately request for the bank to provide these documents.
- b. While OB and/or the Lawyers can assist with determining the relevant documents, it is the claimants' responsibility to ensure they have all the relevant documents and that all the documents are in order. Once the claimants have received and reviewed these documents, the claimants must ensure that they are able to provide the warranties set out at Clause 9.1 of the LFA.
- c. If you have already provided these documents to OB you will not need to provide them again. OB will advise you if they require any further information from you.

20. What are Ancillary Proceedings and why would they be required? Will OB be paying for the Ancillary Proceedings?

- a. Ancillary proceedings are secondary legal actions that arise out of, or in relation to, the main lawsuit.
- b. As defined in the LFA, Ancillary Proceedings include an appeal, enforcement proceedings and proceedings to set aside a judgment or award.
 - i. An appeal may be brought by a party who is unhappy with the outcome of the proceedings and would like to challenge the court's judgment. For example, such challenge may be brought if there is an issue of procedural irregularities, lack of jurisdiction, and/or misconduct.
 - ii. Enforcement proceedings may be brought by a party to compel the opposing party to comply with a judgment or award. This is to ensure that the opposing party fulfils their obligations under the judgment or award in the event that they do not voluntarily comply.

- iii. Proceedings to set aside an award may be brought by a party to nullify or void the award. For example, a party may argue that there were procedural irregularities, lack of due process, or misconduct.
- c. Under Clause 12 of the LFA, OB may agree to fund Ancillary Proceedings but is not obliged to do so. OB may decide to fund Ancillary Proceedings if OB reasonably considers certain Ancillary Proceedings to be necessary.

21. Can I terminate the LFA? Under what circumstances can the LFA be terminated, and what happens on termination of the LFA?

- a. Under Clause 16.2 of the LFA, Claimants have the right to terminate the LFA in the event that OB has committed a material breach of the LFA, which is not remedied within 15 business days after written notice of the breach is given by the Claimants.
- b. Under Clause 16.3 of the LFA, OB will be entitled to terminate the LFA by giving at least 14 days' written notice in the following circumstances:
 - i. OB reasonably believes that the prospects of success of the claims have materially deteriorated and/or that the claims are no longer commercially viable for OB to fund;
 - ii. There has been a material breach of the LFA by the claimant which has not been waived or satisfied within 15 Business Days after OB notified the claimant of the breach; or
 - iii. The claimant becomes insolvent or unlikely to be able to pay its debts.
- c. Generally, a funder should not have a discretionary right to terminate the agreement.
- d. If the circumstances set out at Clause 16.3 occur and OB terminates the LFA, the claimants will be required to self-fund the proceedings for them to continue. Termination may be effected against one or more claimants but only pursuant to the grounds set out above. In the event that one claimant becomes insolvent, the LFA will then be terminated for that single claimant only.
- e. If OB terminates the LFA, it will still be entitled to recover the fees payable to it (see Question 9 above) from any Resolution Sum.

- f. However, if OB terminates the LFA, OB will still be liable to pay the Funded Costs up to the date of the termination (see Clause 16.4.3) and any Adverse Costs Order that is attributable to the period up to the date of the termination (see Clause 16.4.4).
- g. If OB terminates the LFA, claimants who no longer wish to participate may withdraw from the claim after the termination date without bearing any further costs.

22. Why does OB take a portion of the proceeds even if they terminate?

- a. Clause 16.4.1 provides that even if OB terminates the LFA, OB will be entitled to claim its fees as set out at Clause 5 (see questions 9 and 21 above).
- b. The reason for OB's entitlement is that OB would have paid a portion of the costs in the proceedings prior to the termination. Throughout the course of the proceedings and prior, OB already funded costs in pursuance of them and has assumed a substantial portion of the risks of the proceedings. Therefore, OB will be entitled to be compensated for the risk taken.

23. How will the conduct of the action be governed?

- a. As set out at Clause 8.3.1 of the LFA, a Steering Committee will be constituted. The Steering Committee will make decisions on behalf of all the claimants and OB will liaise directly with the Steering Committee, who will be the principal point of contact.
- b. Despite the existence of a Steering Committee, all claimants will be kept up-to-date and be provided current information about the progress of the action and material developments by way of a report from the Steering Committee every three (3) months. Please see clause 10.1 of the Steering Committee Agreement.

24. How are members of the Steering Committee selected and will the process be transparent?

- a. As set out at Clause 8.5 of the LFA, the Steering Committee will be appointed pursuant to the Steering Committee Agreement, which provides a framework governing the establishment and conduct of the Steering Committee.
- b. Under clause 3.2 of the Steering Committee Agreement, the Steering Committee will comprise 3 claimants selected based on the value of the AT1 Bonds held by or for the benefit of the claimant immediately before the write-down, and with at least one representative from the different proceedings. Appointments are subject to the consent of the selected claimant (in their discretion) and OB, acting reasonably.

- c. For completeness, clause 5 of the Steering Committee Agreement provides that OB may appoint a non-voting representative to sit on the Steering Committee, but OB has no control over the Steering Committee's decisions or the conduct of the proceedings.

25. What are the powers of the Steering Committee and how does it affect me?

- a. The Steering Committee is authorised to exercise all powers necessary to perform the functions contemplated by the LFA and the Steering Committee Agreement, including (but not limited to):
 - i. Providing day-to-day instructions to the Lawyers in relation to the claims and proceedings;
 - ii. Initiating and conducting settlement negotiations with the Swiss Confederation;
 - iii. Subject to the approval of 75% of the claimants, settling some or all of the claims and proceedings;
 - iv. Reviewing and approving invoices issued by the Lawyers; and
 - v. Commencing any ancillary proceedings in accordance with the LFA.
- b. Each claimant is required to abide by the decisions of the Steering Committee and grants all necessary authority and power to the Steering Committee to execute any documents on that claimant's behalf for the purposes of the claims and proceedings.

26. What happens if a dispute arises between OB and the claimants?

- a. The LFA sets out a settlement and dispute resolution mechanism at Clause 11 in the unlikely event of a dispute arising between OB and the claimants.

27. If there is a dispute between the claimants and OB, can the Lawyers continue to act for the claimants?

- a. As part of the Lawyers' ethical obligations, they are required to advise the claimants that the LFA should include a term stating that if there is a conflict of interest between OB and the claimants (such as a dispute between the two), OB acknowledges that the Lawyers act in the proceedings solely for the claimants and may continue to do so only in that capacity.

- b. Clause 3.10 of the LFA states that in the unlikely event of a dispute or disagreement between OB and the claimants arising out of the LFA, so as to avoid a conflict of interest, the claimants will not instruct the Lawyers to advise or act for it in the dispute with OB, or take any step that is prejudicial to the interests of OB except as may be reasonably necessary and proportionate to resolve the dispute with OB. This means that the Lawyers cannot act for the claimants in the dispute with OB, and the claimants must find separate counsel to act for them if a dispute arises.
- c. However, as mentioned above, the Lawyers can continue to act for the claimants in relation to the dispute with the Swiss Confederation.

28. Is it necessary to create a right of pledge when any payout goes into a pool held in trust?

- a. It is not currently clear whether a right of pledge will be necessary and a determination on this point will be made subsequently at the appropriate time and in light of all relevant jurisdictions.

29. Why is the Power of Attorney necessary? If OB is fully authorised to represent us, does this mean the claimants cannot make decisions along the way or pull out if there is some kind of payment?

- a. The Power of Attorney is only applicable for the purposes of any enforcement proceedings that may become necessary. It essentially ensures that enforcement strategies can be conducted quickly and effectively, avoiding the risk of a judgment or award debtor dissipating or hiding assets. This is far less relevant in the context of these proceedings – enforcement is very unlikely to be required – but a Power of Attorney remains OB's standard practice.

30. What happens if the Resolution Sum comprises of non-cash property?

- a. Under Clause 7.2, if all or part of the Resolution Sum is awarded in non-cash form (for example, bonds, securities, or other financial assets instead of cash), that property will first be valued at its fair market value. That value will be included in the calculation of OB's entitlements under Clause 5. If the cash component of the Resolution Sum is insufficient (or there is no cash component), the non-cash property will be sold to the extent necessary to pay OB its entitlements in full, with any remaining proceeds dealt with in accordance with the normal distribution of payment. Based on the information available to us at this juncture, it appears that this situation is unlikely to occur.

31. What happens if my AT1 Bonds are reinstated?

- a. Clause 13.5 provides that if another proceeding or any other circumstance results in the claimants' AT1 Bonds being reinstated, or replacement or substitute bonds being issued, and this leads to the proceedings being terminated or the Resolution Sum being reduced, the claimants must hold those reinstated bonds for the benefit of OB and deal with them only in accordance with OB's written instructions, including paying over any amounts received. If it is not legally or practically possible to do so, the claimants must instead pay OB an amount equal to the fair market value of the reinstated bonds, and in all cases OB is granted a security interest over the AT1 Bonds (or reinstated bonds) and any related rights and proceeds.

32. Can I sell my AT1 Bonds to third parties or otherwise deal with them?

- a. Under Clause 14, claimants may only sell, transfer or otherwise deal with their AT1 Bonds with OB's prior written consent. Claimants must deal with the bonds in accordance with any request OB may give from time to time. If the claimants receive any amounts connected to their AT1 Bonds, those amounts must be held for the benefit of OB (up to OB's entitlements under Clause 5).