

To: All members, warehouse companies and their London agents and other interested parties

Ref: 24/129

Classification: Warehousing Consultation

Date: 19 March 2024

Subject: **PROPOSED AMENDMENT TO THE POLICY ON THE APPROVAL OF LOCATIONS AS DELIVERY POINTS**

Introduction

1. The London Metal Exchange (the “LME”) seeks the views of Members, warehouse companies and their London Agents and other interested parties in relation to a proposed amendment to the Policy on the Approval of Locations as Delivery Points (the “Policy”).

Defined Terms

2. Terms not otherwise defined in this notice (the “**Notice**”) shall have the meaning ascribed to them in the terms and conditions applicable to all LME listed warehouse companies (the “**Warehouse Agreement**”) and the Rules and Regulations of the LME (the “**LME Rulebook**”).

Background

3. Further to an application received by the LME to list Jeddah, Saudi Arabia, as a Delivery Point for copper and zinc, the LME seeks the views of Members, warehouse companies and their London Agents and other interested parties on its proposal to amend clause 1(d) (the “**Clause**”) of the Policy. The Clause states that in the event of a bankruptcy or insolvency, there must be no restrictions placed on a metal owner who wishes to take possession of their metal and remove it from a Warehouse (provided that rent and handling charges have been paid). The Clause further explains that such a right must be incorporated in the law of the jurisdiction in which the Location is situated.
4. The proposed amendment to the Clause intends to clarify the LME’s understanding that jurisdictions such as Saudi Arabia may require a metal owner to enter into a court process to obtain a court order to obtain their metal from a Warehouse. The LME does not consider such a court process to represent a restriction for the purposes of the Clause, provided that such a process is generally understood to be efficient. The proposed amendment to the Clause within the Policy is set out in Appendix 1 of this Notice.

The consultation process, timings and steps following the consultation

5. This consultation is open to all Members, warehouse companies and their London Agents and other interested parties. Formal responses to the consultation should be submitted in writing.
6. The consultation will remain open until close of business on 30 April 2024. The LME shall not be under any obligation to consider responses submitted after this time.
7. Any questions regarding this consultation and formal written responses should be submitted by email to consultation@lme.com.
8. The LME may need to share responses received with regulatory authorities, members of its group, and its legal or other professional advisors, or as required by law. Anonymised responses (verbatim or paraphrased) may be included in any decision notice(s). Apart from this, all responses will be treated in confidence.



9. Following due consideration of any responses and following the close of this consultation, the LME may implement:
 - (a) in respect of the consultation proposal, that proposal, a modified version of that proposal, an alternative to that proposal, or no measure in respect of that proposal;
 - (b) any other measures; or
 - (c) no measures.
10. Following this consultation, the LME will advise Members, warehouse companies and their London Agents via Notice when changes to the Policy will take effect.

Benefits and unintended consequences

11. The LME has not identified any unintended consequences as a result of any of the proposals. However, the LME is interested in the views of respondents to the consultation in this regard.

Georgina Hallett

Chief Sustainability Officer and Chief of Staff

cc: LME Board directors
All committees



Appendix 1

Policy on the Approval of Locations as Delivery Points (Redline)

**LME POLICY ON THE APPROVAL OF LOCATIONS AS DELIVERY POINTS,
REVISED [1 FEBRUARY 2020 [X] 2024]**

A) Policy Criteria

- 1 For a new Location to be approved as a Delivery Point, the following criteria shall be met:
 - (a) For any particular metal subject to LME Contracts to be deliverable therein, the Location should be in an Area of Net Consumption and away from adjacent areas of production for that particular metal.
 - (b) The Location should be capable of becoming, a natural, logistically sound conduit for the passage of metal on to eventual consumption points:
 - (i) The Location should be positioned on the natural route (e.g. trade lanes which would exist without Authorised Warehouses) – current or potential if a consumption is believed to happen in the future (e.g. set-up of a new plant) - to the consumption centres that it serves. This is assessed, without limitation, to the quantity of metal going through the Location;
 - (ii) The Location should be connected to major trade lanes, allowing other consumption centres to be reached. This is assessed, without limitation, by reference to the number of deep sea connections (number of origins and destinations ("O/D") services, frequency of services, number of shipping lines serving the Location) and the volume handled by the Location (both break-bulk and containers).
 - (c) The Location should be, in the reasonable view of the LME, safe, well managed, politically and economically stable, commercially sensible, fiscally appropriate, legally sound and not subject to corruption.
 - (d) In the event of bankruptcy or insolvency of the Warehouse or other such contingency, there must be no restrictions placed upon owners of metal wishing to take possession of their individually identified metal and remove such metal ~~it~~ from the Authorised Warehouse(s) (provided rent and handling charges are paid). This must be incorporated in the law of the jurisdiction in which the Location is situated. The LME understands that in certain jurisdictions, if a Warehouse becomes bankrupt or insolvent, a metal owner may be required to enter into a court process in order to take possession of the metal which they own and remove it from the Warehouse. The LME does not consider such a process to represent a “restriction” for the purposes of this Clause. However, the LME may (in its absolute discretion) reject a Location if concerns exist as to the speed or effectiveness of the court process that exists within



the Location and which a metal owner may be required to enter into in order to take possession of the metal which they own from a Warehouse that is declared bankrupt and/or insolvent.

- (e) Metal stored in Authorised Warehouses is the subject of international banking finance activity and, as such, the LME will only approve Locations where it is satisfied that the international banking community accepts the fully negotiable nature of the warehouse receipts ("LME warrants") being on a par with already approved Delivery Points.
 - (f) Indefinite storage of metals must be permitted in a secure customs warehousing regime wherein any LME listed brand of metal may be stored without liability for duties prior to customs clearance. Domestically produced metal and any metal previously customs cleared, and with any duty accounted for, must also be allowed to be stored in the same Authorised Warehouses as bonded metal. There must be no liability for taxes on transactions for metal held in such Authorised Warehouses, nor a need for the Warehouse to determine ownership of the metal whilst in store. There must also be no taxes on storage costs.
- 2 The LME will not usually be prepared to approve a Location where there would be only a single Warehouse in such Location. A Location must be capable of hosting more than one Warehouse. The LME reserves the right to delist a Delivery Point which no longer hosts a Warehouse.
- 3 Without limitation to LME's discretion, the LME may refuse to approve a Location as a Delivery Point where the Location does not comply with the criteria specified above or where the LME has reasonable concerns regarding the potential for the Location to cause an adverse reputational impact for the LME, group affiliates of the LME, or users of the facilities maintained by the LME or such group affiliates.

B) Criteria related to Working Practices and Facilities for Locations

- 1 It is required that there are a minimum of 3 working berths, private or public and accessible by each Warehouse, with a minimum water depth of 11 metres at all times.
- 2 The port must have the facilities available to be able to load 1500 tonnes per berth, per Weather Working Day. This standard has been set on the basis of aluminium ingots and, although the LME has an expectation that ports would be able to achieve higher rates for other metals, no specific separate standard has been set for them.
- 3 Standard working practice must be a minimum 8-hour working day (with labour normally available to work overtime if demand warrants) and on the basis of a 5-day working week.
- 4 Each Location must have container and break bulk terminals.



- 5 Rail connectivity is required in the US and in the following European countries: Germany, Belgium, Netherlands, Sweden. When considering an application to be a Delivery Point in a new country, the LME will carry out a specific study to determine if rail is required.
- 6 An Inland Location may be approved as a Delivery Point on a case by case basis and, if necessary, the criteria in paragraphs 1-5 above may be waived. Applications for Inland Locations to be Delivery Points shall be considered with reference to the following criteria related to working practices and facilities for Locations:
 - (a) Whether they are positioned on land trade lanes (i.e. metal naturally goes from production to consumption centres only through land transportation) with significant volumes;
 - (b) Barge and rail connectivity;
 - (c) In addition to connectivity to consumption centres in the Area, the existence of connectivity to major export ports of the relevant Area, through rail and barging;
 - (d) Minimum capacity of 4,500 tonnes per Weather Working Day, through a combination of rail and barging terminals accessible by each Warehouse.
- 7 The maximum geographical distance of the Location of an Authorised Warehouse from the appropriate water and rail terminals (when necessary) is to be established by the LME. The existing Delivery Point boundaries may be increased on a case by case basis in circumstances of shortage of storage capacity by small increments of driving distance and subject to reasonable transit time. The demonstration of shortage of storage capacity will have to be made by the applicant before being reviewed by the LME.
- 8 While there may be exceptions to the above criteria, such exceptions are expected to be rare.

C) Application process

- 1 Applications for approval as Delivery Points by the LME should comply with the following process:
 - (a) The presentation of the initial Location application, with the supporting information requested, should be made by the port authority or (in exceptional cases) such other relevant authority controlling warehousing in the Location. If there is no such authority then an application may be made by a Warehouse.
 - (b) It should be noted that there is no set time scale for approving or otherwise any application due to the indeterminate time required to



process all aspects of the application. The application process is structured with at least four gates, whereby each needs to be passed before proceeding to the next gate

- (i) Gate 1: complete submission of all documents required by the LME to process the application and determine whether the basic criteria are satisfied;
 - (ii) Gate 2: technical assessment by the LME based on the criteria listed in this policy;
 - (iii) Gate 3: committee input (Metal Committee giving non-binding opinion on the Area of Net Consumption and Warehousing Committee giving non-binding opinion on logistics connectivity and infrastructure); and
 - (iv) Gate 4: Final assessment by the LME and formal decision.
- (c) Should an application be accepted by the EXCOM, commencement of LME approved operations would not take place for a minimum of 90 days after Board approval and would be subject to applicant Warehouses being similarly approved.
- (d) A Location should have substantial logistical connections on international trading routes. It is the responsibility of the applicant to provide at least the following information:
- (i) Statistical evidence of throughput tonnages of LME metals by means of contact with the metals trade, forwarding agents, fabricators, producers, warehouse companies, traders etc to support the application:
 - (A) Statistics on production and consumption as well as imports and exports in the Area;
 - (B) Major production plants and consumption and associated volumes in the Area; and
 - (C) Trade flows serviced (i.e., O/D served) with associated services in the Area.
 - (ii) Logistics connections:
 - (A) Maritime: number of short sea and deep sea connections, number of shipping lines calling at the port, frequency of services;
 - (B) Rail: frequency of service and time to access major consumption points; and



- (C) If applicable, barge: frequency of services and time to access major consumption points.
 - (iii) Detail/data of the logistics support services of the Location:
 - (A) Container terminals, break-bulk terminals and rail terminals (including crane infrastructure);
 - (B) Number, length and depth of berths (including draft for access e.g. river draft); and
 - (C) Number and capacity of rail terminals.
 - (iv) Approximate percentage utilisation of services of road/rail/water (as applicable) for both inbound and outbound traffic in metals.
 - (v) Logistics infrastructure:
 - (A) Estimation of number of available sheds that warehousing companies can use for LME storage operations; and
 - (B) Detailed maps / plans showing the outline of the Location evidencing the logistical connections and locations of short/long term warehouse facilities are required.
 - (vi) If applicable, description of any potential or actual exercise of control in activities such as terminal operations, warehouse ownership, logistics operations within the port, etc and the anticipated impact on competition in relation to warehousing operations in the Location.
- (e) A description of the Location's work labour practices is required; and should include at least the following elements:
 - (i) Working / overtime hours;
 - (ii) Labour costs; and
 - (iii) Time to load truck / rail / container.
- (f) This should illustrate the degree of integrated warehousing/ forwarding/stevedoring activities and whether it/they are privately/ municipality run. Normal working hours and overtime potential should be explained so that the LME may gauge productivity in comparison with currently approved Delivery Points.
- (g) A description of matters relevant to the Location's corruption and bribery risk is required. This should describe in broad terms whether the Location has enacted, and whether it routinely enforces, laws relating to the corruption of Public Officials; whether demands for facilitation payments are commonly made by Public Officials in the Location; and (if



relevant) what, if any, steps are underway or planned to address such issues.

- (h) The LME is entitled to request any external third party studies that it deems necessary to investigate any specific aspects, at the applicant's expense. This diligence may cover, without limitation, at least the following areas:
 - (i) Metal ownership – confirmation that:
 - (A) Warrants and warehouse receipts would be capable of being the document of title, and ownership of warrants can be transferred using LMEsword or any successor system; and
 - (B) Metal belonging to the owner can be removed in case of bankruptcy or insolvency of a potential applicant Warehouse, subject only to any outstanding rent and handling charges having been paid.
 - (ii) Companies – confirmation that:
 - (A) Potential applicant Warehouses can be owned by foreign entities;
 - (B) Operations in foreign currency are allowed;
 - (C) There is no restriction on the repatriation of profits from the location.
 - (iii) Taxes - confirmation that:
 - (A) The tax and duty free environment is appropriate in connection with transactions involving metal stored in the location, or on services provided in relation to the metal e.g. storage, ancillary services, stevedoring & handling;
 - (B) There would be no location duties and no time limit on storage of metal;
 - (C) Any seller / buyer who is not established in the territory of the country would not be obliged to have a tax registration or to submit a tax return solely on account of the trading of metal in warehouse; and
 - (D) Metal bound for export or moving between different Warehouses / Locations would not be liable to tax or duty.
 - (iv) Others – confirmation that:



- (A) There would be no conflict between LME requirements and insurance laws that preclude potential applicant Warehouses from obtaining the necessary cover under the Warehouse Agreement;
 - (B) There would be no requirement to keep lists of metal owners;
 - (C) There should be no requirement to report sales of metals made within the Warehouse;
 - (D) There would be no embargo (other than an United Nations-related embargo) against origin countries for metals for which a location is seeking approval as a Delivery Point;
 - (E) There are no export license requirements;
 - (F) Domestic and foreign goods can be stored in the same warehouse environment; and
 - (G) Metals within the same (HS) harmonized system codes as LME listed brands will be treated in like manner as LME listed brands
- (i) The LME will need to be satisfied by its own members, warehousing and appropriate metals committees, professional advisers and independent research that each facet of the application is accurate before indicating acceptance in principle of a Location. At this stage it would be necessary for potential applicant Warehouses to be identified which would apply for LME approval, if this has not already been done.
 - (j) The LME will report to the Warehousing Committee the number and identity of Delivery Point applicants by gate on a regular basis.
- 2 In the event that no Warehouse has been approved for a Delivery Point within six months of the LME's approval of that Delivery Point pursuant to this Section C:
- (a) the LME's approval of that Delivery Point shall lapse, unless (b) below applies;
 - (b) where, prior to the expiry of such six month period:
 - (i) a Warehouse has provided to the LME information regarding a proposed application to operate at such Delivery Point and the LME is satisfied that (i) such application will be provided within a reasonable period and (ii) it has sufficient information to determine that such application will be a substantive application submitted in good faith; or



- (ii) where the LME, in its absolute discretion, otherwise determines it appropriate to do so,

the LME may, by written notice to the port authority (or, if applicable, other relevant authority), extend the period within which such application must be made before the approval of the Delivery Point shall lapse; and

- (c) in the event that the LME's approval of the Delivery Point does lapse, the port authority (or, if applicable, other relevant authority) wishes such Location to be approved as a Delivery Point, such authority must submit a new application for such Location to be approved, in accordance with this Section C.

D) Continued compliance with policy and guidelines

- 1 In the event that an existing Delivery Point does not appear to continue to meet the LME's criteria, there will be an initial review by the LME and consultation with the Warehouse and the port authority in that Delivery Point.
- 2 If, after consultation the port authority is able to demonstrate that it will upgrade its facilities, transitional arrangements can be made to allow an acceptable length of time for completion and this would be determined on a case by case basis, according to the circumstances.
- 3 If, after consultation, the relevant port authority is unwilling or unable to upgrade the facilities or work practices to meet the LME's standards, the LME retains the right to limit the capacity in that Delivery Point or to delist it.
- 4 Where a Delivery Point's corruption risk changes, LME retains the right to limit the capacity in that Delivery Point or to delist it.
- 5 Generally speaking, implementation of capacity limits would, unless there are exceptional circumstances, be implemented over a reasonable period by imposing a ban on new warrants being issued and allowing natural wastage to bring levels down to the required tonnage. Similarly, delisting a Delivery Point would require a run down of stocks over a reasonable period of time by imposing a ban on the issuing of new warrants and natural wastage, followed by an eventual de-warranting of any remaining metal and its removal to another Delivery Point for re-warranting. In both these instances the LME would assess what implementation period would be reasonable on a case by case basis, taking into account all factors put forward in the consultation process, and it could be several years where the LME deems appropriate.
- 6 Delivery Points are, in particular, expected to continue to support the operation of multiple warehouse operators on a non-discriminatory basis. To the extent that a prospective operator of an Authorised Warehouse is of the view that they are prevented from establishing LME operations at a given Delivery Point, this may be reported to the Exchange, which will subsequently investigate the situation, mindful of relevant factors including those listed at paragraph A3 of



the LME Policy on the Approval and Operation of Warehouses, paragraph A of this Policy, and applicable competition law.

E) Review of LME policy and guidelines for good delivery points

This policy and guidelines will be reviewed from time to time.

F) Definitions

"Authorised Warehouse" shall mean a warehouse storage facility operated by a Warehouse in a particular Delivery Point, which has been approved by the LME for the purposes of the Warehouse Agreement.

"Area" shall mean a country, regions of large countries, or an aggregation of small countries with an integrated logistics land network as determined by the LME acting reasonably.

"Delivery Point" shall mean a specific geographic area within which warehouses are listed and approved by the LME for the issue of Warrants.

"EXCOM" shall mean the Executive Committee of the LME.

"Inland Location" means a geographic area away from all of (i) the sea; (ii) a deltaic area; or (iii) an estuarine area.

"LME" or the **"Exchange"** shall mean The London Metal Exchange.

"LME Contract" shall mean a contract as defined by the LME Rulebook.

"Location" shall mean a geographic area capable of being a Delivery Point.

"Metal Committee" shall mean the relevant LME metal committee, details of which are set out on the LME website www.lme.com.

"Net Consumption" shall mean a significant negative trade balance for the metal in question across two consecutive years.

"Public Official" means an official, whether elected or appointed, who holds a legislative, administrative or judicial position of any kind of a country or territory inside or outside the UK.

"Warehouse" shall mean a warehouse company which has been approved by the LME and which has agreed to be bound by the terms and conditions applicable to all LME approved warehouses, as amended by the LME from time to time.



"Warehouse Agreement" shall mean the terms and conditions entered into between the Warehouse and the LME, as applicable to all LME listed Warehouses.

"Warehousing Committee" shall mean the LME warehousing committee, details of which are set out on the LME website www.lme.com.

"Warrant" shall mean a warehouse warrant for the storage of metal, issued by a Warehouse and in a form approved by the LME.

"Weather Working Day" shall mean any day in which meteorological conditions permit normal operations.