

# WHITE & CASE

Dated 23 May 2024

## **Deed of Guarantee**

U.S.\$3,000,000,000  
Euro Medium Term Note Programme

of

**CBD (Cayman) Limited**

and

**Commercial Bank of Dubai P.S.C.**  
as issuers

and

in the case of Notes issued by CBD (Cayman) Limited  
unconditionally and irrevocably guaranteed by

**Commercial Bank of Dubai P.S.C.**

White & Case LLP  
ICD Brookfield Place, Al Mustaqbal Street  
Dubai International Financial Centre  
P.O. Box 9705, Dubai  
United Arab Emirates

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**This Deed of Guarantee** is made on 23 May 2024.

**By:**

- (1) **Commercial Bank of Dubai P.S.C.** as guarantor (“**CBD**”, and in its capacity as guarantor, the “**Guarantor**”);

**In favour of:**

- (2) **The Relevant Account Holders** (as defined in the Deed of Covenant referred to below); and
- (3) **The holders** for the time being of the Notes (as defined in the Conditions) issued by the Issuer (as defined below) and/or any relevant Coupon (together with the Relevant Account Holders, the “**Beneficiaries**” and each a “**Beneficiary**”).

**WHEREAS:**

- (A) CBD (Cayman) Limited (the “**Issuer**”) and CBD have entered into an amended and restated Programme Agreement (the “**Programme Agreement**”, which expression includes the same as it may be amended, supplemented or restated from time to time) dated 23 May 2024 with the Dealers named therein under which the Issuer and CBD may from time to time each issue Notes.
- (B) The Issuer and CBD in their capacity as issuer under the programme have executed a Deed of Covenant on 23 May 2024 (the “**Deed of Covenant**”, which expression includes the same as it may be amended, supplemented or restated from time to time) relating to Global Notes issued by either of them pursuant to the Programme Agreement.
- (C) The Issuer and CBD have entered into an amended and restated Agency Agreement (the “**Agency Agreement**”, which expression includes the same as it may be amended, supplemented or restated from time to time) dated 23 May 2024 with Citibank N.A., London Branch (the “**Principal Paying Agent**”) and the other agents and the Registrar named therein.
- (D) This Deed of Guarantee shall apply to all Notes issued by the Issuer in accordance with the Agency Agreement on or after the date hereof.

**This deed of guarantee witnesses as follows:**

## **1. INTERPRETATION**

Unless the contrary intention appears, terms defined in the Conditions of the Notes (the “**Conditions**”), the Programme Agreement, the Agency Agreement and/or the Deed of Covenant and not otherwise defined in this Deed of Guarantee shall have the same meanings when used in this Deed of Guarantee.

## **2. GUARANTEE**

- 2.1 The Guarantor hereby unconditionally and irrevocably guarantees by way of deed poll to each Beneficiary all sums payable by the Issuer to such Beneficiary in respect of any Note or any Coupon relating thereto or under the Deed of Covenant in respect thereof, as the case may be, (including any premium or any other amounts of whatever nature or additional amounts which may become payable under any of the foregoing) when and as the same shall become due and payable in accordance with the terms thereof. In case of the failure of the Issuer punctually to make any such payment, the Guarantor hereby undertakes to cause such payment to be made punctually when and as the same shall become due and payable, whether at maturity, upon redemption by acceleration of maturity or

otherwise, as if such payment were made by the Issuer in accordance with the terms thereof. The Guarantor hereby waives any requirement that any Beneficiary, in the event of any default of such payment by the Issuer, first makes demand upon or seeks to enforce remedies against the Issuer (save for the presentation of the relevant Note) before seeking to enforce this Deed of Guarantee; agrees that its obligations under this Deed of Guarantee shall be unconditional and irrevocable irrespective of the validity or enforceability of such Notes or of such Coupons or of the Deed of Covenant in respect thereof, the absence of any action to enforce the same, any waiver or consent by any Beneficiary with respect to any provisions thereof, the recovery of any judgment against the Issuer or any action to enforce the same, any consolidation, merger, conveyance or transfer by the Issuer or any other circumstance which might otherwise constitute a legal or equitable discharge or defence of a guarantor; and covenants that this Deed of Guarantee will not be discharged except by complete performance of the obligations contained in such Notes, such Coupons, the Deed of Covenant and this Deed of Guarantee.

- 2.2 For so long as any of the Notes is represented by a Global Note held on behalf of Euroclear Bank SA/NV (“**Euroclear**”) and/or Clearstream Banking S.A. (“**Clearstream, Luxembourg**”) each person (other than Euroclear or Clearstream, Luxembourg) who is for the time being shown in the records of Euroclear or of Clearstream, Luxembourg as the holder of a particular nominal amount of such Notes (in which regard any certificate or other document issued by Euroclear or Clearstream, Luxembourg as to the nominal amount of such Notes standing to the account of any person shall be conclusive and binding for all purposes save in the case of manifest error) shall be treated by the Guarantor as the holder of such nominal amount of such Notes for all purposes other than with respect to the payment of principal or interest on the Notes, for which purpose the bearer of the relevant Global Note shall be treated by the Guarantor as the holder of such Notes in accordance with and subject to the terms of the relevant Global Note.

References to Euroclear and/or Clearstream, Luxembourg shall, whenever the context so permits, be deemed to include a reference to any additional or alternative clearing system approved by the Issuer and the Principal Paying Agent.

The Guarantor covenants in favour of each Relevant Account Holder that it will make all payments under this Deed of Guarantee in respect of the principal amount of Notes for the time being shown in the records of Euroclear and/or Clearstream, Luxembourg as being held by the Relevant Account Holder and represented by a Global Note to the holder of the Global Note in accordance with the terms of this Deed of Guarantee and acknowledges that each Relevant Account Holder may take proceedings to enforce this covenant and any of the other rights which it has under this Deed of Guarantee directly against the Guarantor.

### **3. COVENANT**

The Guarantor covenants in favour of each Beneficiary that it will duly perform and comply with the obligations expressed to be undertaken by it in the Conditions.

### **4. THE GUARANTOR AS PRINCIPAL DEBTOR**

Without affecting the Issuer's obligations, the Guarantor will be liable under this Deed of Guarantee as if it were the sole principal debtor and not merely a surety. Accordingly, it will not be discharged, nor will its liability be affected, by anything which would not discharge it or affect its liability if it were the sole principal debtor (including (a) any time, indulgence, waiver or consent at any time given to the Issuer or any other person, (b) any amendment to any Note, any Coupon or the Deed of Covenant or to any security or other guarantee or indemnity, (c) the making or absence of any demand on the Issuer or any other person for payment, (d) the enforcement or absence of enforcement of any Note, any Coupon, the Deed of Covenant or of any security or other guarantee or indemnity, (e) the release of any such security, guarantee or indemnity, (f) the dissolution, amalgamation, reconstruction or

reorganisation of the Issuer or any other person or (g) the illegality, invalidity or unenforceability of or any defect in any provision of any Note, any Coupon or the Deed of Covenant or any of the Issuer's obligations under any of them).

## **5. THE GUARANTOR'S OBLIGATIONS CONTINUING**

The Guarantor's obligations under this Deed of Guarantee are and will remain in full force and effect by way of continuing security until no sum remains payable under any Note, any Coupon or the Deed of Covenant. Furthermore, these obligations of the Guarantor are additional to, and not instead of, any security or other guarantee or indemnity at any time existing in favour of a Beneficiary, whether from the Guarantor or otherwise.

## **6. SETTLEMENT CONDITIONAL**

If any payment received by a Beneficiary is, on the subsequent liquidation or insolvency of the Issuer, avoided under any laws relating to liquidation or insolvency, such payment will not be considered as having discharged or diminished the liability of the Guarantor and this Deed of Guarantee will continue to apply as if such payment had at all times remained owing by the Issuer.

## **7. INDEMNITY**

As a separate and alternative stipulation, the Guarantor unconditionally and irrevocably agrees that any sum expressed to be payable by the Issuer under any Note, any Coupon or the Deed of Covenant but which is for any reason (whether or not now known or becoming known to the Issuer, the Guarantor or any Beneficiary) not recoverable from the Guarantor on the basis of a guarantee will nevertheless be recoverable from it as if it were the sole principal debtor and will be paid by it to the Beneficiary on demand. This indemnity constitutes a separate and independent obligation from the other obligations in this Deed of Guarantee, gives rise to a separate and independent cause of action and will apply irrespective of any indulgence granted by any Beneficiary.

## **8. PRESERVATION OF RIGHTS**

### **8.1 Waiver of Defences**

Neither the obligations of the Guarantor contained in this Deed of Guarantee nor the rights, powers and remedies conferred upon the Holders by this Deed of Guarantee or by law shall be discharged, impaired or otherwise affected by:

- (a) Winding up: the winding up, dissolution, administration or re-organisation of the Issuer or any change in its status, function, control or ownership;
- (b) Illegality: any of the obligations of the Issuer under or in respect of the Notes or the Deed of Covenant being or becoming illegal, invalid, unenforceable or ineffective in any respect;
- (c) Indulgence: time or other indulgence being granted or agreed to be granted to the Issuer in respect of any of its obligations under or in respect of the Notes;
- (d) Amendment: any amendment to, or any variation, waiver or release of, any obligation of the Issuer under or in respect of the Notes, Deed of Covenant or any security or other guarantee or indemnity in respect thereof including without limitation any change in the purposes for which the proceeds of the issue of the Notes are applied and any extension of or any increase of the obligations of the Issuer in respect of any Note or the addition of any new obligations for the Issuer under the Deed of Covenant; or

- (e) Analogous events: any other act, event or omission which, but for this sub-clause, might operate to discharge, impair or otherwise affect the obligations expressed to be assumed by the Guarantor herein or any of the rights, powers or remedies conferred upon the Holders or any of them by this Deed of Guarantee or by law.

## **8.2 Deferral of Guarantor's Rights**

The Guarantor agrees that, so long as any sums are or may be owed by the Issuer in respect of the Notes or the Issuer is under any other actual or contingent obligation thereunder or in respect thereof, the Guarantor will not exercise any rights which the Guarantor may at any time have by reason of the performance by the Guarantor of its obligations hereunder:

- (a) Indemnity: to be indemnified by the Issuer; and/or
- (b) Contribution: to claim any contribution from any other guarantor of the Issuer's obligations under or in respect of the Notes or the Deed of Covenant; and/or
- (c) Subrogation: to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of any Beneficiary against the Issuer in respect of amounts paid by the Guarantor under this Deed of Guarantee or any security enjoyed in connection with the Notes by any Beneficiary; and/or
- (d) No competition: to claim, rank, prove or vote as a creditor of the Issuer or its estate in competition with any Beneficiary (or any trustee or agent on its behalf); and/or
- (e) Payment, distribution and set-off: to receive, claim or have the benefit of any payment, distribution or security from or on account of the Issuer, or exercise any right of set-off as against the Issuer.

## **8.3 Rights of Beneficiaries**

Until all amounts which may be or become payable by the Issuer under any Note, any Coupon or the Deed of Covenant have been irrevocably paid in full, each Beneficiary (or any trustee or agent on its behalf) may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that Beneficiary (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise), and the Guarantor shall not be entitled to benefit from the same; and
- (b) hold in a suspense account any moneys received from the Guarantor or on account of the Guarantor's liability under this Deed of Guarantee, without liability to pay interest on those moneys.

## **9. POWER TO EXECUTE**

The Guarantor hereby warrants, represents and covenants with each Beneficiary that it has all power, that it has obtained all necessary governmental consents and authorisations, and that it has taken all necessary steps, in each case to enable it to execute, deliver and perform this Deed of Guarantee and that this Deed of Guarantee constitutes legal, valid and binding obligations of the Guarantor in accordance with its terms.

## 10. DEPOSIT OF GUARANTEE

This Deed of Guarantee shall take effect as a deed poll for the benefit of the Beneficiaries from time to time and for the time being. This Deed of Guarantee shall be deposited with and held by Citibank N.A., London Branch as Principal Paying Agent until all the obligations of the Guarantor have been discharged in full.

## 11. PRODUCTION OF GUARANTEE

The Guarantor hereby acknowledges the right of every Beneficiary to the production of, and the right of every Beneficiary to obtain (upon payment of a reasonable charge) a copy of, this Deed of Guarantee, and further acknowledges and covenants that the obligations binding upon it contained herein are owed to, and shall be for the account of, each and every Beneficiary, and that each Beneficiary shall be entitled severally to enforce the said obligations against the Guarantor.

## 12. NOTICES

- 12.1 All notices and other communications to the Guarantor hereunder shall be made in writing (by electronic communication (including e-mail or letter) and shall be sent to the Guarantor at:

### COMMERCIAL BANK OF DUBAI P.S.C.

Al Ittihad Street  
P.O. Box 2668  
Dubai  
United Arab Emirates

Telephone: +971 4 212 1416  
Telefax: +971 4 205 0160  
Attention: Chief Legal and Governance Officer  
Email: [souhayel.tayeb@cbd.ae](mailto:souhayel.tayeb@cbd.ae)

or to such other e-mail address or address or for the attention of such other person or department as the Guarantor has notified to the Noteholders in the manner prescribed for the giving of notices in connection with the Notes.

- 12.2 Every notice or other communication sent in accordance with Clause 12.1 (*Notices*) shall be deemed received, if by electronic communication, when the relevant receipt of such communication being read is given, or where no read receipt is requested by the sender, at the time of sending; *provided* that no delivery failure notification is received by the sender within 24 hours of sending such communication, *provided that* any such notice or other communication which would otherwise take effect after 4.00 p.m. on any particular day shall not take effect until 10.00 a.m. on the immediately succeeding business day in the place of the Guarantor.

## 13. SEVERABILITY

In case any provision in or obligation under this Deed of Guarantee shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

## 14. GOVERNING LAW AND DISPUTE RESOLUTION

### 14.1 Governing Law

This Deed of Guarantee and any non-contractual obligations arising out of or in connection with this Deed of Guarantee are, governed by, and shall be construed in accordance with, English law.

### 14.2 Arbitration

Subject to Clause 14.3, any dispute, claim, difference or controversy arising out of, relating to or having any connection with this Deed of Guarantee (including any dispute as to its existence, validity, interpretation, performance, breach or termination or the consequences of its nullity and any dispute relating to any non-contractual obligations arising out of or in connection with it) (a “**Dispute**”) shall be referred to and finally resolved by arbitration under the LCIA Arbitration Rules (the “**Rules**”), which Rules (as amended from time to time) are incorporated by reference into this Clause 14.2.

For these purposes:

- (a) the seat of arbitration shall be London;
- (a) there shall be three arbitrators, each of whom shall be disinterested in the arbitration, shall have no connection with any party hereto and shall be an attorney experienced in international securities transactions; and
- (b) the language of the arbitration shall be English.

### 14.3 Option to Litigate

Notwithstanding Clause 14.2 above, any Beneficiary may, in the alternative, and at its sole discretion, by notice in writing to the Guarantor:

- (a) within 28 days of service of a Request for Arbitration (as defined in the Rules); or
- (b) in the event no arbitration is commenced,

require that a Dispute be heard by a court of law. If such notice is given, the Dispute to which such notice refers shall be determined in accordance with Clause 14.4 and, subject as provided below, any arbitration commenced under Clause 14.2 in respect of that Dispute will be terminated. Each person who gives such notice and the recipient of that notice will bear its own costs in relation to the terminated arbitration.

If any notice to terminate is given after service of any Request for Arbitration in respect of any Dispute, the relevant Beneficiary must also promptly give notice to the Registrar (as defined in the Rules) and to any arbitrator already appointed in relation to the Dispute that such Dispute will be settled by the courts. Upon receipt of such notice by the Registrar, the arbitration and any appointment of any arbitrator in relation to such Dispute will immediately terminate. Any such arbitrator will be deemed to be *functus officio*. The termination is without prejudice to:

- (i) the validity of any act done or order made by that arbitrator or by the court in support of that arbitration before his appointment is terminated;
- (ii) his entitlement to be paid his proper fees and disbursements; and
- (iii) the date when any claim or defence was raised for the purpose of applying any limitation bar or any similar rule or provision.



#### **14.4 Jurisdiction of the Courts**

In the event that a notice pursuant to Clause 14.3 is issued, the following provisions shall apply:

- (a) subject to paragraph (c) below, the courts of England and the Dubai International Financial Centre (the “**DIFC**”) (at the option of the Beneficiary) shall have exclusive jurisdiction to settle any Dispute and the Guarantor submits to the exclusive jurisdiction of such courts;
- (b) the Guarantor waives any objection to the courts of either England or the DIFC on the grounds that they are an inconvenient or inappropriate forum to settle any Dispute; and
- (c) this Clause 14.4 is for the benefit of the Beneficiaries only.

As a result, and notwithstanding paragraph (a) above, any Beneficiary may take proceedings relating to a Dispute (“**Proceedings**”) in any other courts with jurisdiction. To the extent allowed by law, any Beneficiary may take concurrent Proceedings in any number of jurisdictions.

#### **14.5 Appointment of Process Agent**

The Guarantor irrevocably appoints Process Servers Ltd at its registered office at 12 Angel Gate, 326 City Road, London, EC1V 2PT, United Kingdom as its agent for service of process, in any proceedings before the English courts in relation to any Dispute, and agrees that, in the event of Process Servers Ltd being unable or unwilling for any reason so to act, it will immediately appoint another person as its agent for service of process in England in respect of any Proceedings or Disputes. The Guarantor agrees that failure by a process agent to notify it of any process will not invalidate service. Nothing herein shall affect the right to serve process in any other manner permitted by law.

#### **14.6 Waiver of Immunity**

The Guarantor hereby irrevocably and unconditionally waives with respect to the Notes, the Coupons and this Deed of Guarantee any right to claim sovereign or other immunity from jurisdiction or execution and any similar defence and irrevocably and unconditionally consents to the giving of any relief or the issue of any process, including without limitation, the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order of judgment made or given in connection with any Disputes or Proceedings.

#### **15. MODIFICATION**

The Agency Agreement contains provisions for convening meetings of Noteholders to consider matters relating to the Notes, including the modification of any provision of this Deed of Guarantee. Any such modification must be made by supplemental deed poll if sanctioned by an Extraordinary Resolution and shall be binding on all Accountholders.

**IN WITNESS** whereof this Deed of Guarantee has been manually executed as a deed poll on behalf of the Guarantor and is intended to be and is hereby delivered on the date first before written.

**SIGNATORIES**

Executed as a **Deed** by )  
**Commercial Bank of Dubai P.S.C.** )  
acting by )  
in the presence of: )  
Witness's signature: )



**Dr. Bernd van Linder**  
*Chief Executive Officer*

**Darren Clarke**  
*Chief Financial Officer*

Name: **SOUHAYEL TAYEL**

Address: **AL ITTIHAD STREET**  
**PORT SAEEED - DEIRA - UAE**



[Signature page to the Deed of Guarantee]