

## **Beer Industry – Local Union No. 703 Pension Fund**

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### **Domestic Relations Order Procedures**

The Beer Industry – Local Union No. 703 Pension Fund (“Fund,” formerly known as the Beer Industry – Local Union No. 744 Pension Fund) is a collectively bargained tax-qualified pension trust fund maintained under Section 302(c), *et seq.*, of the Labor Management Relations Act of 1947, as amended (“Taft-Hartley Act”), and the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). The Pension Fund maintains two distinct pension plans, namely, the Beer Industry - Local Union No. 703 Pension Plan (“Defined Benefit Plan” or “DBP”) and the Beer Industry - Local Union No. 703 Individual Account Plan (“Individual Account Plan” or “IAP”). Both are qualified plans under the Internal Revenue Code.

ERISA Section 206(d) generally provides that benefits payable under a qualified pension plan may not be assigned or alienated. An exception to this general rule is provided in the case of a “Qualified Domestic Relations Order,” which is defined in ERISA Section 206(d)(3). The criteria for determining whether an Order is “qualified” are set forth in ERISA Section 206(d)(3). The Fund’s Trustees have adopted these Domestic Relations Order Procedures to ensure that the Fund will comply with ERISA Section 206(d)(3) and to advise the parties to a domestic relations case and their attorneys how the Fund will process Domestic Relations Orders for each of the two Plans.

1. **Types of Orders.** A Domestic Relations Order is any court order or administrative order that relates to marital property rights or the provision of child support, alimony or maintenance, and which gives the spouse, former spouse or child of the participant the right to a part or all of the participant’s benefit from a pension plan. A spouse, former spouse or child of a plan participant who will receive benefits directly from the plan is referred to as an “Alternate Payee.” Except as otherwise noted in these Procedures, the Pension Fund will process a *proposed* Domestic Relations Order in the same way as an *entered* Order. In these Procedures, the term “Order” refers to both entered Orders and proposed Orders.

2. **Receipt of Orders.** Each Order shall be processed upon receipt by the Fund office. If the pension to which the Order applies is in pay status, that portion the benefit which the Order seeks to assign shall be suspended in accordance with the provisions of paragraph 5, below.

3. **Acknowledgment of Orders.** The Pension Fund will send the participant and the proposed Alternate Payee a letter acknowledging receipt of the Order. That letter will advise that a copy of these Procedures will be provided upon request. The letter of acknowledgment will be sent to the parties’ attorneys if the names and addresses of the attorneys are known; otherwise, the letter will be sent to the participant at his/her last known address and the Alternate Payee at the address shown in the Order. Any party not represented by an attorney

may designate another person as his/her representative, in which case the Pension Fund shall send all notices under these Procedures to the representative.

4. **Notice of "Qualified" Status.** The Pension Fund will determine, based on the requirements of ERISA Section 206(d)(3), if the Order is "qualified" under that statute. The Trustees or the Pension Fund's staff may seek an opinion from Fund Counsel on any issue relating to the interpretation of an Order or the "qualified" status of an Order. An Order that is "qualified" is a Qualified Domestic Relations Order ("QDRO"). After the Pension Fund has made a determination, Fund Counsel shall send a notice to all parties, advising that the Order is or is not "qualified." If the Order is not "qualified," the letter will explain the reasons for that determination, with specific reference to the legal requirements which the Order does not satisfy, or, if applicable, the Plan requirements which the Order does not satisfy. An Order which is determined to be "not qualified" may be revised and resubmitted for further review. When an Order is found "qualified," the letter shall advise all parties, with reasonable specificity, regarding the amount to be paid to the Alternate Payee and the date such payments are to begin. If a party disagrees with the Pension Fund's determination of an Order's "qualified" status or the Pension Fund's interpretation of the Order, that party may submit a written request for a reconsideration by the Board of Trustees.

5. **Withholding of Plan Benefits Pending Determination of QDRO.** If a participant's pension from the Defined Benefit Plan is in pay status as of the date an Order is received, or if a participant becomes eligible for pension payments to start or for a distribution from the Individual Account Plan before a determination has been made regarding the "qualified" status of an Order, **and if** the Order has been entered by the Court (as distinct from a proposed Order), the Pension Fund shall withhold that portion of the benefit (from the DBP or the IAP or both, as applicable) that the Order seeks to assign to the Alternate Payee. The Fund office shall advise the parties of the withholding. If the amount payable to the Alternate Payee under the Order is not ascertainable, the Fund shall withhold the full amount of the participant's benefit. No amount shall be withheld under this paragraph beyond the 18-month period commencing when the first payment was withheld. If, within the 18-month maximum withholding period, the Trustees determine that the Order (or a later modification of it) is "qualified," the Fund will release to the Alternate Payee his/her portion of the benefit, retroactive to the date the withholding began, provided that the Fund receives a certified copy of the final entered Order.

6. **Certified Copy of Order Required.** Although the Fund will make a determination of the "qualified" status of any Order, the Fund will not commence payments to an Alternate Payee until the Fund has received a certified copy of an Order that the Trustees have determined to be a QDRO. The Alternate Payee is responsible for furnishing the certified copy of the QDRO unless the Fund office has received a certified copy from another source. Except as otherwise provided in paragraph 5, above, the Fund will not make payments to an Alternate Payee for any period prior to receipt of an Order that is found "qualified."

7. **Form of QDRO.** Upon request, the Pension Fund will provide any party with a sample QDRO for the Pension Fund's Defined Benefit Plan. The Pension Fund does **not** require

the parties to follow the format of the sample QDRO. However, if used properly, the sample QDRO will usually be found “qualified” because the format avoids the most common errors. Whether or not the sample QDRO is used, the Pension Fund will honor any Order that is found “qualified” in accordance with ERISA Section 206(d)(3). Attorneys who are drafting an Order should be aware of the manner in which Plan benefits can be paid (see paragraphs 8 and 9, below) and should note the following:

(a) The Order must correctly identify the Plan to which it applies. The full name of the DBP is the “Beer Industry – Local Union No. 703 Pension Plan” and the name of the IAP is the “Beer Industry – Local Union No. 703 Individual Account Plan.” The same Order can apply to both Plans but, as explained below, the Plans are of different types so provisions that apply to one Plan may not apply to the other. For this reason, it is usually preferable to enter a separate Order for each Plan. The Board of Trustees is both the Plan Sponsor and Plan Administrator of both Plans, although an Order is not required to name the Plan Sponsor or Administrator.

(b) The Pension Fund has no interest in how a participant's pension benefits are divided by a QDRO, so long as the combined benefits payable to the participant and to the Alternate Payee do not exceed the value of the participant's benefit. The Pension Fund's sole concern is that the manner of division be unambiguous. If a QDRO defines the “marital portion” of a pension as benefits accrued between two specified dates (e.g., the date of marriage and the date of dissolution), such a provision is comprehensible to the Fund. If a QDRO employs a formula (e.g., months of participation while married divided by total months of participation as of the date of dissolution), please note that DBP pension accruals are measured in Pension Credits and not by months or years. A formula is more comprehensible to the DBP if it uses Pension Credits, rather than a unit of time. Accruals in the IAP are measured in dollars paid into a participant's account.

(c) An order should include the names, addresses and dates of birth of all parties. The parties' social security numbers need not be included in the QDRO and, as a public records, the full number should not be shown. However, social security numbers must be provided to the Fund office before any benefit payments can be made.

## **8. Plan Design - Defined Benefit Plan.**

(a) The Defined Benefit Plan pays benefits in the form of an annuity for the lifetime of the participant. The Plan is not a “defined contribution” or “individual account” plan under which money is accumulated in separate accounts, or in which participants have a specific ownership interest.

(b) If the actuarial value of a benefit is \$5,000 or less, it will be paid in the form of a lump sum. The Plan does not offer a lump sum cashout if the actuarial value is greater than \$5,000.

(c) Normal retirement age under the Plan is 65. The earliest retirement age is 55. The Plan has no provision that allows payment to an Alternate Payee prior to the participant's attainment of earliest retirement age.

(d) The Plan permits payment to an Alternate Payee in the form of an annuity for his/her lifetime, but this provision is limited to an Alternate Payee who is the spouse or former spouse of the participant. When an Alternate Payee receives a life annuity, independent of the participant's pension, this is referred to as a division of the pension under the "separate interest" approach. When an Alternate Payee does not receive a separate life annuity but simply receives part or all of the participant's pension, if and when the participant's pension is payable, that form of division is referred to as the "shared payment" approach.<sup>i</sup>

(e) The Plan provides a Qualified Pre-retirement Survivor Annuity ("QPSA"), which is a pre-retirement death benefit, and a Qualified Joint and Survivor Annuity ("QJSA"), which is a form of pension that provides a post-retirement death benefit to the participant's surviving spouse. A QDRO can designate a former spouse as a "surviving spouse" for purposes of the QPSA, the QJSA, or both. A QDRO that gives a former spouse survivorship rights under the QJSA or QPSA should specify whether the designation applies to all accrued benefits or only to that portion of the pension which was earned during the parties' marriage.

(f) If a QDRO provides that the Alternate Payee is to be paid in the form of a life annuity (this is the "separate interest" approach, referred to above), then, once that annuity is in pay status, the participant's death will not affect the Alternate Payee's benefit. For this reason, it is usually not necessary to designate the Alternate Payee as a "surviving spouse" for purposes of the QJSA in a QDRO that adopts the "separate interest" approach.

(g) A QDRO cannot require the Fund to pay the Alternate Payee's benefit in the form of a joint and survivor annuity, where the joint annuitants are the Alternate Payee and his/her subsequent spouse.

(h) If a participant's pension is already in pay status as of the date a QDRO is received, and if the participant properly waived the QJSA at the time the pension became effective, then the QDRO's designation of a former spouse as a "surviving spouse" is ineffective because the survivor benefits have already been waived.

(i) If a participant's pension is already in pay status as of the date a QDRO is received, the QDRO can only divide the pension under the "shared payment" approach. This is because, once the Plan begins making pension payments to a participant, the form of his/her pension is fixed and any amount that is subsequently found to be due an Alternate Payee cannot be paid in a form different from the form in which the pension is being paid.

**9. Plan Design - Individual Account Plan.**

- (a) The Plan is a “defined contribution” plan in which each participant has an Individual Account into which employer contributions are paid. A participant’s accrued benefit at any given time is measured by the dollar value of his/her Individual Account.
- (b) All benefits under the IAP are payable as a single-sum cash distribution.
- (c) A participant is entitled to a distribution from his/her Individual Account upon the termination of covered employment. Also, if a participant is permanently and totally disabled, an immediate distribution is allowable. Finally, upon a participant’s death, his/her Individual Account is payable to the surviving spouse or, if none, to the participant’s beneficiary.
- (d) Except for payment at “earliest retirement age” (see below), the Plan has no provision that allows payment to an Alternate Payee prior to the date the participant (or the beneficiary of a deceased participant) would be entitled to payment. However, an Order may provide for payment at the participant’s “earliest retirement age,” in which case the Alternate Payee’s portion of the Account will be paid when the participant attains age 50, unless the Alternate Payee’s portion is payable earlier under paragraph (c).
- (e) An Order may provide that the Plan will establish a separate Individual Account for the Alternate Payee. (The Plan will not establish a separate Account if the Alternate Payee’s benefit is immediately payable.)

10. The provisions of Sections 8 and 9, above, are intended to assist attorneys in drafting Orders. They describe the general structure of the Plans but are not intended to and do not summarize all available forms of benefit or the eligibility requirements for Plan benefits. On written request, the Pension Fund will provide a party with a copy of the Summary Plan Description booklet for the Plan(s). On written request, the Fund will also provide written information on the amount of a participant’s accrued benefit under either or both Plans.

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1. The terms “separate interest approach” and “shared payment approach” are explained in a U.S. Department of Labor, Employee Benefits Security Administration publication, “QDROs: The Division of Pensions Through Qualified Domestic Relations Orders” (1997). This booklet is available without charge from EBSA at 1-800-998-7542, or on the Internet at <http://www.dol.gov/ebsa/Publications/qdros.html>, and includes sample QDRO language originally published in IRS Notice 97-11, I.R.B. 1997-2, January 13, 1997.