

Policy on Administration of Undistributed Amounts

The Members of BECS have approved adoption of this Policy in General Meeting on 2nd December 2016

Undistributed Funds are performer payments that, despite the best efforts of BECS, it has not been able to pass onto rights-holders; mainly due to missing contact and payment details.

Any expressions used in this Policy shall have the same meaning as in the Articles of Association of BECS as at the date of adoption of these Rules ("the Adoption Date").

"The Undistributed Fund" means the sum of £104,000 or thereabouts and all other sums held by BECS at the Adoption Date representing monies properly paid to BECS as part of Performers' Remuneration, but which comprise "Monies on Hold".

"Monies on Hold" shall comprise Performers' Remuneration which BECS is unable to distribute to relevant Performers' in accordance with BECS Distribution Rules and Policies:

- (a) for Objective Reasons; and
- (b) the collective management organisations from whom the monies were received have agreed that BECS be authorised to hold monies in the Undistributed Fund.

"Objective Reasons" shall comprise:-

- (a) a performer having been identified as entitled to a payment, but contact or payment details have not been provided to BECS to enable the payment to be processed;
- (b) a performer is identified as potentially entitled to a payment, but the payment is subject to a claim from a third party collective management organisation;
- (c) matching errors are shown in the reporting received from another collective management organisation and BECS has been instructed to hold the payments pending an investigation into the matching error being resolved;
- (d) BECS is unable to identify the amounts due to particular performers or cannot trace particular performers within a period of six years of BECS having been paid the monies within a lump sum payment transferred from a third party collective management organisation.

"Future Funds" means any funds received by BECS after the Adoption Date representing Performers' Remuneration, where for Objective Reasons the monies become part of Monies on Hold for the purposes of application of this Policy.

"Undistributed Funds" means Monies on Hold which have been held by BECS for the Relevant Period and which, for Objective Reasons, BECS has been unable or remains unauthorised to distribute within the Relevant Period.

References in this Policy to a performer include his or her personal representatives or estate or Performer Heirs.

The Members have agreed to make the following rules for the treatment of Undistributed Funds and for the creation of the indemnity fund pursuant to Article 3.2 of the Articles of Association of BECS.

Identification of Undistributed Funds

BECS shall cause the Undistributed Funds to be identified separately in its records as the Undistributed Funds to which this Policy relates.

BECS may at the discretion of the Supervisory Committee and on the instruction of the Board of Management (but need not) place Undistributed Funds in a separate designated bank account subject always to application of BECS Policy on Investment.

“The Relevant Period” means the period of six years from the end of the accounting period of BECS during which any particular sum representing Performers’ Remuneration was or is in the future received by BECS and falls to be treated as Monies on Hold.

BECS shall hold any sum forming part of Monies on Hold for the Relevant Period for the purpose of distributing that sum to any Performer who may be entitled to it.

After the expiration of the Relevant Period the Society shall hold that sum as Undistributed Funds in accordance with this Policy.

Allocations from Undistributed Funds

BECS may, subject to approval of the Supervisory Committee and on the recommendation of the Board of Management, make provision for a reasonable amount to be allocated from Undistributed Funds:

- (a) to cover any costs or expenses (incurred or anticipated) of carrying out the past or future purposes and operations of BECS in accordance with, and subject to, the terms of BECS’ Policy on Deductions; or
- (b) in application of the powers of BECS under its Articles of Association and in particular (but not in limitation) the establishment of the Indemnity Fund.

The Indemnity Fund

The Members have authorised BECS to use Undistributed Funds not otherwise agreed to be allocated for use as provided by this Policy to create and maintain an Indemnity Fund (“the Indemnity Fund”) in such amount as the Board from time to time thinks fit in accordance with Article 3.2 of the Articles of Association of BECS.

If at any time it appears to the Board of Management that the Indemnity Fund is excessive for the purposes of Article 3.2 it may restore the excess part of the Indemnity Fund as an addition to the balance of Undistributed Funds.

The Indemnity Fund shall form part of Undistributed Funds.

Investment of Undistributed Funds

BECS’ Policy on Investment shall apply to and govern any investment of Undistributed Funds.

Ex-Gratia Payments

At its discretion, and with the approval of the Board of Management, BECS may after the end of the Relevant Period make an ex-gratia payment to any Performer or Performer Heir who establishes to the satisfaction of BECS that he or she or it was entitled to any part of the Monies on Hold received by the Society during the Relevant Period and for this purpose the Board shall take into account such factors as it considers to be relevant, including (but not limited to) the amount involved, the personal circumstances of the Performer or his or her estate, the reason why that part of the Undistributed Funds was not distributed to that Performer, and any other claims upon the Undistributed Funds. An ex-gratia payment under this Policy may be made out of the Indemnity Fund.

Adoption of this Policy

This Policy may be amended from time to time both prospectively and retrospectively by Ordinary Resolution of the Members of BECS in General Meeting, but no payment already made to a Performer, and no expenditure already laid out by BECS in accordance with the terms of this Policy shall be affected by a retrospective amendment of the Policy.

Rules on Undistributed Monies

It should be noted that the provisions of this Policy only apply to non-distributable sources of Performers' Remuneration collected by BECS from other collective management organisations. They do not apply to revenue that BECS may administer for Equity or any other third party in the capacity of an appointed distribution agent. Separate contractual terms govern the treatment of monies that we have not been able to distribute for such third parties within agreed timescales.