

**SCHEDULE**  
**TERMS AND CONDITIONS OF THE CAPITAL SECURITIES**

*The following is the text of the Terms and Conditions of the Capital Securities (subject to completion and modification and excluding italicised text) will be endorsed on each of the Capital Securities in definitive form. The numbering and title of the following Terms and Conditions of the Capital Securities follow the numbering of the Terms and Conditions of the Notes as set out in the Offering Circular dated 7 July 2016.*

The U.S.\$1,000,000,000 4.25 per cent. Non-Cumulative Subordinated Additional Tier 1 Capital Securities (the “Capital Securities”) are issued by Industrial and Commercial Bank of China (Asia) Limited (the “Issuer”) pursuant to the Issuer’s U.S.\$5,000,000,000 Medium Term Note Programme.

The Capital Securities have the benefit of an Agency Agreement (such Agency Agreement as amended and/or supplemented and/or restated from time to time, the “Agency Agreement”) dated 22 November 2010 and made between the Issuer, The Hongkong and Shanghai Banking Corporation Limited as fiscal agent (the “Fiscal Agent”, which expression shall include any successor fiscal agent) and the other paying agents named therein (together with the Fiscal Agent, the Paying Agents, which expression shall include any additional or successor paying agents) and The Hongkong and Shanghai Banking Corporation Limited as registrar (the “Registrar”, which expression shall include any successor registrar) and as transfer agent (together with the Registrar and the other transfer agents named therein, the “Transfer Agents”, which expression shall include any additional or successor transfer agents).

The Securityholders are entitled to the benefit of the Deed of Covenant (such Deed of Covenant as amended and/or supplemented and/or restated from time to time, the “Deed of Covenant”) dated 22 November 2010 and made by the Issuer. The original of the Deed of Covenant is held by the common depositary for Euroclear (as defined below) and Clearstream, Luxembourg (as defined below).

For the purposes of the Agency Agreement and the Global Certificate, these Capital Securities are “Subordinated Notes”.

Any reference to “Securityholders” or “holders” in relation to any Capital Securities shall mean the persons in whose name the Capital Securities are registered and shall, in relation to any Capital Securities represented by a global note (“Global Note”), be construed as provided below.

As used herein, “Tranche” means Capital Securities which are identical in all respects (including as to listing and admission to trading) and “Series” means a Tranche of Capital Securities.

Copies of the Agency Agreement and the pricing supplement (the “Pricing Supplement”) relating to the Capital Securities are available for inspection during normal business hours at the registered office for the time being of the Fiscal Agent being at Level 30, HSBC Main Building, 1 Queen’s Road Central, Hong Kong and at the specified office of each of the Registrar, the other Paying Agents and Transfer Agents (such Paying Agents and the Registrar being together referred to as “Agents”). The Securityholders are deemed to have notice of, and are entitled to the benefit of, and are bound by, all the provisions of the Agency Agreement and the Deed of Covenant which are applicable to them. The statements in these Terms and Conditions (the “Conditions”) include summaries of, and are subject to, the detailed provisions of the Agency Agreement.

Words and expressions defined in the Agency Agreement shall have the same meanings where used in these Conditions unless the context otherwise requires or unless otherwise stated and provided that, in the event of inconsistency between the Agency Agreement and these Conditions, these Conditions will prevail.

## **1 FORM, DENOMINATION AND TITLE**

*Condition 1 of the Terms and Conditions of the Notes as set out in the Offering Circular is deemed to be deleted in its entirety and replaced with the following:*

The Capital Securities are issued in registered form in denominations of U.S.\$200,000 each and integral multiples of U.S.\$1,000 in excess thereof (referred to as the “principal amount” of a Capital Security). The principal amount of a Capital Security is subject to adjustment following the occurrence of a Non-Viability Event (as defined in Condition 6C) in accordance with Condition 6C and references in the Conditions to the “principal amount” of a Capital Security shall mean the principal amount of a Capital Security as so adjusted. A certificate (each a “Certificate”) will be issued to each Securityholder in respect of its registered holding of Capital Securities. Each Certificate will be numbered serially with an identifying number which will be recorded on the relevant Certificate and in the register of Securityholders which the Issuer will procure to be kept by the Registrar and at the office of the Issuer.

Subject as set out below, by title to definitive Capital Securities in registered form (“Definitive Registered Notes”) will pass upon registration of transfers in the register which is kept by the Registrar in accordance with the provisions of the Agency Agreement. The Issuer and the Agents will (except as otherwise required by law) deem and treat the registered holder of any Definitive Registered Note as the absolute owner thereof (whether or not overdue and notwithstanding any notice of ownership or writing thereon or notice of any previous loss or theft thereof) for all purposes, but, in the case of any Global Note, without prejudice to the provisions set out in the next succeeding paragraph.

*For so long as any of the Capital Securities 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 Clearstream, Luxembourg as the holder of a particular nominal amount of such Capital Securities (in which regard any certificate or other document issued by Euroclear or Clearstream, Luxembourg as to the nominal amount of such Capital Securities 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 Issuer and the Agents as the holder of such nominal amount of such Capital Securities for all purposes other than with respect to the payment of principal or interest on such nominal amount of such Capital Securities, for which purpose the registered holder of the relevant Registered Global Note (as defined in Condition 2.1) shall be treated by the Issuer and any Agent as the holder of such nominal amount of such Notes in accordance with and subject to the terms of the relevant Global Note and the expression “Securityholder” and related expressions shall be construed accordingly.*

## **2 TRANSFERS OF REGISTERED NOTES**

### **2.1 Transfers of interests in Registered Global Notes**

*Condition 2.1 of the Terms and Conditions of the Notes as set out in the Offering Circular is deemed to be deleted in its entirety and replaced with the following:*

Transfers of beneficial interests in Capital Securities represented by a global note in registered form (“Registered Global Notes”) will be effected by Euroclear or Clearstream, Luxembourg, as the case may be, and, in turn, by other participants and, if appropriate, indirect participants in such clearing system acting on behalf of beneficial transferors and transferees of such interests. A beneficial interest in a Registered Global Note will, subject to compliance with all applicable legal and regulatory restrictions, be transferable for definitive Capital Securities in registered form (“Definitive Registered Notes”) or for a beneficial interest in another Registered Global Note only in the denominations set out in Condition 1.1 and only in accordance with the rules and operating procedures for the time being of Euroclear or Clearstream, Luxembourg and in

accordance with the terms and conditions specified in the Agency Agreement. Transfers of a Registered Global Note registered in the name of a nominee for Euroclear or Clearstream, Luxembourg shall be limited to transfers of such Registered Global Note, in whole but not in part, to another nominee of Euroclear or Clearstream, Luxembourg or to a successor if Euroclear or Clearstream, Luxembourg or such successor's nominee.

## **2.2 Transfers of Definitive Registered Notes**

*Condition 2.2 of the Terms and Conditions of the Notes as set out in the Offering Circular is deemed to be deleted in its entirety and replaced with the following:*

Subject as provided in Condition 2.5 below, upon the terms and subject to the provisions set forth in the Agency Agreement, a Definitive Registered Note may be transferred in whole or in part (in the denomination set out in Condition 1). In order to effect any such transfer (i) the holder or holders must (A) surrender the Definitive Registered Note for registration of the transfer of the Definitive Registered Note (or the relevant part of the Definitive Registered Note) at the specified office of the Registrar or any Transfer Agent, with the form of transfer thereon duly executed by the holder or holders thereof or his or their attorney or attorneys duly authorised in writing and (B) complete and deposit such other certifications as may be required by the Registrar or, as the case may be, the relevant Transfer Agent and (ii) the Registrar or, as the case may be, the relevant Transfer Agent must, after due and careful enquiry, be satisfied with the documents of title and the identity of the person making the request. Any such transfer will be subject to such reasonable regulations as the Issuer and the Registrar may from time to time prescribe (the initial such regulations being set out in Schedule 8 to the Agency Agreement). Subject as provided above, the Registrar or, as the case may be, the relevant Transfer Agent will, within three business days (being for this purpose a day on which banks are open for business in the city where the specified office of the Registrar or, as the case may be, the relevant Transfer Agent is located) of the request (or such longer period as may be required to comply with any applicable fiscal or other laws or regulations), authenticate and deliver, or procure the authentication and delivery of, at its specified office to the transferee or (at the risk of the transferee) send by uninsured mail, to such address as the transferee may request, a new Definitive Registered Note in definitive form of a like aggregate nominal amount to the Definitive Registered Note (or the relevant part of the Definitive Registered Note) transferred. In the case of the transfer of part only of a Definitive Registered Note, a new Definitive Registered Note in respect of the balance of the Definitive Registered Note not transferred will be authenticated and delivered or (at the risk of the transferor) sent to the transferor.

## **2.3 Registration of transfer upon partial redemption**

*Condition 2.3 of the Terms and Conditions of the Notes as set out in the Offering Circular does not apply to the Capital Securities.*

## **2.4 Cost of Registration**

*Condition 2.4 of the Terms and Conditions of the Notes as set out in the Offering Circular is deemed to be deleted in its entirety and replaced with the following:*

Securityholders will not be required to bear the costs and expenses of effecting any registration of transfer as provided above, except for any costs or expenses of delivery other than by regular uninsured mail and except that the Issuer may require the payment of a sum sufficient to cover any stamp duty, tax or other governmental charge that may be imposed in relation to the registration.

## **2.5 Closed Periods**

*Condition 2.5 of the Terms and Conditions of the Notes as set out in the Offering Circular is deemed to be deleted in its entirety and replaced with the following:*

No Securityholder may require the transfer of a Capital Security to be registered (i) during the period of 15 days ending on (and including) the due date for redemption of, or payment of any principal or Distributions in respect of the Capital Securities, (ii) during the period of seven days ending on (and including) any Record Date or (iii) during the period commencing on the second Hong Kong Business Day immediately following the Non-Viability Event Notice (as defined in Condition 6C below) and ending on (and including) the close of business in Hong Kong on the effective date of the related Write-off.

## **2.6 Exchanges and transfers of Definitive Registered Notes generally**

Holder of Definitive Registered Notes may exchange such Notes for interests in a Registered Global Note of the same type at any time.

## **3 STATUS OF THE NOTES**

### **3.1 Status of the Senior Notes**

*Condition 3.1 of the Terms and Conditions of the Notes as set out in the Offering Circular does not apply to the Capital Securities.*

### **3.2 Status of the Subordinated Notes**

*Condition 3.2 of the Terms and Conditions of the Notes as set out in the Offering Circular does not apply to the Capital Securities.*

*The following Condition 3.3 shall be inserted after Condition 3.2:*

### **3.3 Status of the Capital Securities**

#### **(a) Provision relating to the Capital Securities**

The Capital Securities constitute direct, unconditional, unsecured and subordinated obligations of the Issuer ranking *pari passu* without any preference among themselves. The rights and claims of the Securityholders are subordinated in the manner described below.

In the event of a Winding-Up of the Issuer, the claims of the Securityholders against the Issuer in respect of the Capital Securities shall be (x) subordinated in right of payment to the claims of, (i) depositors and all other unsubordinated creditors of the Issuer, (ii) creditors in respect of Tier 2 Capital Instruments, and (iii) all other Subordinated Indebtedness of the Issuer; (y) *pari passu* in right of payment to the claims of the holders of Parity Obligations; and (z) senior in right of payment to the claims of the holders of Junior Obligations, in each case, present and future.

For the purpose of these Conditions:

“Capital Regulations” means capital regulations applicable from time to time to the regulatory capital of authorized institutions incorporated in Hong Kong as published by the Monetary Authority.

“Directors” means the Board of Directors from time to time of the Issuer and “Director” means any one of them.

“Group” means the Issuer and its Subsidiaries taken as a whole.

“Junior Obligation” means the Shares, and any other class of the Issuer’s share capital and any instrument or other obligation (including without limitation any preference share) issued or guaranteed by the Issuer that ranks or is expressed to rank junior to the Capital Securities.

“Monetary Authority” means the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance (Cap 66 of the Laws of Hong Kong) or any successor thereto or such other authority having primary bank supervisory authority with respect to the Issuer.

“Parity Obligation” means any instrument or other obligation issued, entered into, or guaranteed by the Issuer that constitutes or qualifies as Additional Tier 1 Capital (or its equivalent) under applicable Capital Regulations or that ranks or is expressed to rank *pari passu* with the Capital Securities.

“Shares” means the ordinary share capital of the Issuer.

“Subordinated Indebtedness” means all indebtedness which is subordinated, in the event of the Winding-Up of the Issuer, in right of payment to the claims of depositors and other unsubordinated creditors of the Issuer other than those whose claims rank or is expressed to rank *pari passu* with, or junior to, the claims of the holders of the Capital Securities. For this purpose indebtedness shall include all liabilities, whether actual or contingent.

“Subsidiary” means any company (i) in which the Issuer holds a majority of the voting rights, (ii) of which the Issuer is a member and has the right to appoint or remove a majority of the Directors or (iii) of which the Issuer is a member and controls a majority of the voting rights, and includes any company which is a Subsidiary of a Subsidiary of the Issuer.

“Tier 2 Capital Instruments” means any instrument or other similar obligation issued by the Issuer or a Subsidiary that constitutes Tier 2 Capital of either (i) the Issuer, on an unconsolidated basis or (ii) the Group on a consolidated basis for the purposes of the Capital Regulations.

“Winding-Up” shall mean, with respect to the Issuer, a final and effective order or resolution for the bankruptcy, winding-up, liquidation, receivership or similar proceeding in respect of the Issuer (except for the purposes of a consolidation, amalgamation, merger or reorganisation the terms of which have previously been approved by an Extraordinary Resolution of the Securityholders).

**(b) Set-off**

Subject to applicable law, no Securityholder may exercise, claim or plead any right of set-off, counter-claim or retention in respect of any amount owed to it by the Issuer arising under or in connection with the Capital Securities and each Securityholder shall, by virtue of being the Securityholder of any Capital Security be deemed to have waived all such rights of such setoff, counter-claim or retention.

In the event that any Securityholder nevertheless receives (whether by set-off or otherwise) directly in a Winding-Up Proceeding (as defined below) in respect of the Issuer any payment by, or distribution of assets of, the Issuer of any kind or character, whether in cash, property or securities, in respect of any amount owing to it by the Issuer arising under or in connection with the Capital Securities, other than in accordance with this Condition 3.3, such Securityholder shall, subject to applicable law, immediately pay an amount equal to the amount of such payment or discharge to the liquidator for the time being in the winding

up of the Issuer for distribution and each Securityholder, by virtue of becoming a Securityholder or any Capital Security, shall be deemed to have so agreed and undertaken with and to the Issuer and all depositors and other unsubordinated creditors of the Issuer for good consideration.

#### **4 NEGATIVE PLEDGE (SENIOR NOTES ONLY)**

*Condition 4 of the Terms and Conditions of the Notes as set out in the Offering Circular does not apply to the Capital Securities.*

#### **5 REDENOMINATION**

*Condition 5 of the Terms and Conditions of the Notes as set out in the Offering Circular does not apply to the Capital Securities.*

#### **6 INTEREST**

*Condition 6 of the Terms and Conditions of the Notes as set out in the Offering Circular does not apply to the Capital Securities.*

*The following Conditions 6A, 6B, 6C and 6D shall be inserted after Condition 6:*

#### **6A DISTRIBUTION**

##### **(a) Non-Cumulative Distribution**

Subject to Condition 6B below, the Capital Securities confer a right to receive non-cumulative distributions (each a "Distribution") on the principal amount (subject to adjustments following the occurrence of a Non-Viability Event in accordance with Condition 6C) from, and including, the Issue Date at the applicable Distribution Rate, payable semi-annually in arrear on 21 January and 21 July in each year in equal instalments, commencing on 21 January 2017 (each a "Distribution Payment Date"), provided that in respect of the first Distribution Payment Date on 21 January 2017 and each Distribution Payment Date thereafter up to the First Call Date, the Distributions payable shall, subject to the paragraphs below, be equal to U.S.\$21.25 per Calculation Amount.

Distributions will not be cumulative and Distributions which are not paid in accordance with these Conditions will not accumulate or compound and Securityholders will have no right to receive such Distributions at any time, even if subsequent Distributions are paid in the future, or be entitled to any claim in respect thereof against the Issuer. Unless otherwise provided in these Conditions, each Capital Security will cease to confer the right to receive any Distribution from the due date for redemption unless, upon surrender of the Certificate representing such Capital Security, payment of principal is improperly withheld or refused. In such event Distribution shall continue to accrue at such rate (both before and after judgment) until whichever is the earlier of (a) the date on which all amounts due in respect of such Capital Security have been paid; and (b) five days after the date on which the full amount of moneys payable in respect of such Capital Security has been received by the Fiscal Agent and notice to that effect has been given to the Securityholders in accordance with Condition 15.

No Securityholder shall have any claim in respect of any Distribution or part thereof cancelled and/or not due or payable pursuant to Condition 6A and Condition 6B below. Accordingly, such Distribution shall not accumulate for the benefit of the Securityholders or entitle the Securityholders to any claim in respect thereof against the Issuer.

**(b) Distribution Rate**

The rate of distribution (the “Distribution Rate”) applicable to the Capital Securities shall be:

- (i) in respect of the period from, and including, the Issue Date to, but excluding, 21 July 2021 (the “First Call Date”), 4.25 per cent. per annum; and
- (ii) in respect of the period from, and including, the First Call Date and each Distribution Reset Date thereafter to, but excluding, the immediately following Distribution Reset Date, the Reset Distribution Rate.

For the purposes of these Conditions:

“Calculation Agent” means the Fiscal Agent and shall include any successor as calculation agent.

“Calculation Business Day” means any day, excluding a Saturday and a Sunday, on which banks are open for general business (including dealings in foreign currencies) in New York City and Hong Kong.

“Calculation Date” means, in relation to a Reset Distribution Period, the Calculation Business Day immediately preceding the Distribution Reset Date on which such Reset Distribution Period commences.

“Comparable Treasury Issue” means the U.S. Treasury security selected by the Calculation Agent as having a maturity of five years that would be utilised, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities with a maturity of five years, which for the time being, will be such U.S. Treasury security corresponding to the section headed “Treasury constant maturities — nominal — 5-year”.

“Comparable Treasury Price” means, with respect to any Calculation Date, the average of three Reference Treasury Dealer Quotations for such Calculation Date.

“Distribution Reset Date” means the First Call Date and each five year anniversary thereafter.

“Reference Treasury Dealer” means each of the three nationally recognised investment banking firms selected by the Calculation Agent that are primary U.S. Government securities dealers.

“Reference Treasury Dealer Quotations” means with respect to each Reference Treasury Dealer and any Calculation Date, the average, as determined by the Calculation Agent, of the bid and asked prices for the Comparable Treasury Issue, expressed in each case as a percentage of its principal amount, quoted in writing to the Calculation Agent by such Reference Treasury Dealer at or about 10:00 a.m. (New York City time), on such Calculation Date.

“Reset Distribution Rate” means, in relation to a Reset Distribution Period, a fixed rate per annum (expressed as a percentage) equal to the aggregate of (a) Treasury Rate with respect to the relevant Distribution Reset Date and (b) the Spread.

“Reset Distribution Period” means the period from, and including, a Distribution Reset Date to, but excluding, the immediately following Distribution Reset Date.

“Spread” means 3.135 per cent. per annum.

“Treasury Rate” means the rate in per cent. per annum notified by the Calculation Agent to the Issuer and the Securityholders equal to the yield, under the heading that represents the average for the week immediately prior to the relevant Calculation Date, appearing in the most recently published statistical release designated “H.15(519)” (currently set out on the website <http://www.federalreserve.gov/releases/h15/current/default.htm>) or any successor publication that is published weekly by the Board of Governors of the Federal Reserve System and that establishes yields on actively traded U.S. Treasury securities adjusted to constant maturity under the caption “Treasury constant maturities” for the maturity corresponding to the Comparable Treasury Issue. If there is no Comparable Treasury Issue with a maturity within three months before or after the next succeeding Distribution Reset Date, yields for the two published maturities most closely corresponding to such Distribution Reset Date will be determined and the Treasury Rate will be interpolated or extrapolated from such yields on a straight line basis, rounding to the nearest month). If such release (or any successor release) is not published during the week preceding the relevant Calculation Date or does not contain such yields, “Treasury Rate” means the rate in per cent. per annum equal to the semi-annual equivalent yield to maturity of the Comparable Treasury Issue, calculated using a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for the relevant Calculation Date.

**(c) Calculation of Distribution and Relevant Reset Distribution Rate**

The Calculation Agent will calculate the amount of Distribution in respect of any period by applying the applicable Distribution Rate to the Calculation Amount. If Distribution is required to be paid in respect of a Capital Security on any date other than the Distribution Payment Date, it shall be calculated by applying the applicable Distribution Rate to the Calculation Amount, multiplying the product by the relevant Day Count Fraction, rounding the resulting figure to the nearest cent (half a cent being rounded upwards) and multiplying such rounded figure by a fraction equal to the principal amount of such Capital Security divided by the Calculation Amount, where “Calculation Amount” means U.S.\$1,000, subject to adjustment following occurrence of a Non-Viability Event, and “Day Count Fraction” means, in respect of any period, the number of days in the relevant period divided by 360 (the number of days to be calculated on the basis of a year of 360 days with 12 30-day months).

The Calculation Agent will, on the Calculation Date prior to each Distribution Reset Date, calculate the applicable Reset Distribution Rate payable in respect of each Capital Security. The Calculation Agent will cause the Distribution and applicable Reset Distribution Rate determined by it to be promptly notified to the Fiscal Agent. Notice thereof shall also promptly be given by the Calculation Agent to the Issuer and the Registrar.

All notifications, opinions, determinations, certificates, calculations, quotations and decisions given, expressed, made or obtained for the purposes of this Condition 6A by the Calculation Agent will (in the absence of manifest error) be binding on the Issuer, the Fiscal Agent and the Securityholders and (subject as aforesaid) no liability to any such person will attach to the Calculation Agent in connection with the exercise or non-exercise by it of its powers, duties and discretions for such purposes.

**(d) Publication of Relevant Reset Distribution Rate**

The Issuer shall cause notice of the then applicable Reset Distribution Rate to be notified to the Securityholders as soon as practicable in accordance with Condition 15 after determination thereof.



**(e) Determination or Calculation by Successor Calculation Agent**

If the Calculation Agent does not at any time for any reason so determine the applicable Reset Distribution Rate, the Issuer shall as soon as practicable appoint a reputable financial institution of good standing as a successor calculation agent to do so and such determination or calculation shall be deemed to have been made by the Calculation Agent. In doing so, the successor calculation agent shall apply the foregoing provisions of this Condition 6A, with any necessary consequential amendments, to the extent that, in the opinion of the successor calculation agent, it can do so and, in all other respects it shall do so in such manner as it shall deem fair and reasonable in all the circumstances.

**6B Distribution Restrictions**

**(a) Optional Distribution Cancellation Event**

Unless a Distribution has already been cancelled in full pursuant to a Mandatory Distribution Cancellation Event, prior to any Distribution Payment Date the Issuer may, at its sole discretion, elect to cancel any payment of Distributions, in whole or in part, by the giving of a notice to the Securityholders signed by two Directors of the Issuer (a “Distribution Cancellation Notice”) at least 10 Hong Kong Business Days prior to the relevant Distribution Payment Date.

“**Hong Kong Business Day**” means a day (other than a Saturday or Sunday) on which commercial banks and foreign exchange markets are open for general business in Hong Kong.

**(b) Mandatory Distribution Cancellation Event**

Notwithstanding that a Distribution Cancellation Notice may not have been given, the Issuer shall not be obliged to pay, and shall not pay, any Distribution on the applicable Distribution Payment Date, in whole or in part, as applicable, if and to the extent that:

- (i) the Distributions scheduled to be paid together with any dividends, distributions or other payments scheduled to be paid or made in respect of the same fiscal year on any Parity Obligations or any instruments which rank or are expressed to rank *pari passu* with any Parity Obligations shall exceed the Distributable Reserves (as defined below) as at such Distribution Payment Date; or
- (ii) the Monetary Authority directs the Issuer to cancel such Distribution (in whole or in part) or applicable Hong Kong banking regulations or other requirements of the Monetary Authority prevent the payment in full of dividends or other distributions when due on Parity Obligations,

(each a “Mandatory Distribution Cancellation Event”).

**(c) No Obligation to Pay**

The Issuer shall have no obligation to pay a Distribution on any Distribution Payment Date if such non-payment complies with the Conditions and any failure to pay such Distribution shall not constitute an Event of Default. Distributions are non-cumulative and therefore any Distribution which is cancelled in accordance with the Conditions shall no longer be payable at any time thereafter whether in a Winding-Up or otherwise.

**(d) Distributable Reserves**

Any Distribution may only be paid out of Distributable Reserves.

For the purpose of this Condition 6(B)(d):

“Auditors” means the independent certified public accountants for the time being of the Issuer.

“Distributable Reserves” means the amounts for the time being available to the Issuer for distribution as a distribution in compliance with section 297 of the Companies Ordinance (Cap.622) of Hong Kong, as amended or modified from time to time, as at the Issuer’s audited balance sheet last preceding the relevant Distribution Payment Date, and subject to the Monetary Authority’s then current capital conservation requirements as applicable to the Issuer on the relevant Distribution Payment Date (the “Available Amount”); provided that if the Issuer reasonably determines that the Available Amount as at any Distribution Determination Date is lower than the Available Amount as at the date of the Issuer’s audited balance sheet last preceding the relevant Distribution Payment Date and is insufficient to pay the Distributions and any payments due on Parity Obligations on the relevant Distribution Payment Date in full, then on certification by two Directors and the Auditors of such revised amount, the Distributable Reserves shall for the purposes of Distributions mean the Available Amount as set forth in such certificate.

“Distribution Determination Date” means the day falling two Hong Kong Business Days prior to a Distribution Payment Date.

*As at the date hereof, pursuant to section 297(1) of the Companies Ordinance (Cap. 622), the Issuer may only make a distribution out of profits available for distribution. For the purposes of section 297 of the Companies Ordinance (Cap. 622), the Issuer’s profits available for distribution are its accumulated, realised profits, so far as not previously utilised by distribution or capitalisation, less its accumulated, realised losses, so far as not previously written off in a reduction or reorganization of capital.*

**(e) Dividend Stopper**

If, on any Distribution Payment Date, payment of Distribution scheduled to be paid is not made in full by reasons of Condition 6(B), the Issuer shall not:

- (i) declare or pay in cash any distribution or dividend or make any other payment in cash on, and will procure that no distribution or dividend in cash or other payment in cash is made on, any Shares; or
- (ii) purchase, cancel or otherwise acquire any Shares or permit any of its subsidiaries to do so,

in each case, unless or until the earlier of: (A) the Distribution scheduled to be paid on any subsequent Distribution Payment Date (which, for the avoidance of doubt, shall exclude any Distribution that has been cancelled in accordance with the Conditions prior to, and in respect of a Distribution Payment Date preceding, such subsequent Distribution Payment Date) has been paid in full to Securityholders or a designated third party trust account for the benefit of the Securityholders, or (B) the redemption or purchase and cancellation of the Capital Securities in full, or reduction of the principal amount of the Capital Securities in accordance with the Conditions to zero, or (C) the Issuer is permitted to do so by an Extraordinary Resolution.

**6C Non-Viability Loss Absorption**

If a Non-Viability Event occurs and is continuing, the Issuer shall, upon the provision of a Non-Viability Event Notice, irrevocably (without the need for the consent of the Securityholders) reduce the then principal amount of, and cancel any accrued but unpaid Distribution in respect of, each Capital Security (in each case in whole or in part) by an amount equal to the

Non-Viability Event Write-off Amount per Capital Security (such reduction and cancellation, and the reduction and cancellation of any other Subordinated Capital Securities so reduced and cancelled upon the occurrence of a Non-Viability Event, where applicable, being generically referred to herein as the “Write-off”, and “Written-off” shall be construed accordingly).

Concurrently with the giving of a Non-Viability Event Notice, the Issuer shall procure (unless otherwise directed by the Monetary Authority) that a similar notice be given in respect of other Subordinated Capital Securities in accordance with their terms.

Once any principal amount of, and any accrued but unpaid Distributions under, the Capital Securities has been Written-off, it will not be restored in any circumstances, including where the relevant Non-Viability Event ceases to continue.

Any Capital Security may be subject to one or more Write-offs in part, except where such Capital Security has been Written-off in its entirety.

Any reference in these Conditions to principal in respect of the Capital Security shall thereafter refer to the principal amount of the Capital Security, subject to any applicable Write-off.

For the avoidance of doubt, any Write-off pursuant to this Condition will not constitute an Event of Default under the Capital Securities.

For the purpose of these Conditions:

“Non-Viability Event” means the earlier of:

- (aa) the Monetary Authority notifying the Issuer in writing that the Monetary Authority is of the opinion that a Write-off or conversion is necessary, without which the Issuer would become non-viable; and
- (bb) the Monetary Authority notifying the Issuer in writing that a decision has been made by the government body, a government officer or other relevant regulatory body with the authority to make such a decision, that a public sector injection of capital or equivalent support is necessary, without which the Issuer would become non-viable.

“Non-Viability Event Notice” means the notice which shall be given by the Issuer not more than two Hong Kong Business Days after the occurrence of a Non-Viability Event, to the Securityholders of the Capital Securities and the Fiscal Agent, in accordance with the Conditions and which shall state in reasonable detail the nature of the relevant Non-Viability Event and the Non-Viability Event Write-off Amount for each Capital Security and each other Subordinated Capital Security.

“Non-Viability Event Write-off Amount” means the amount of principal and/or Distributions to be Written-off as the Monetary Authority may direct or, in the absence of such a direction, as the Issuer shall (in consultation with the Monetary Authority) determine to be necessary to satisfy the Monetary Authority that the Non-Viability Event will cease to continue. For the avoidance of doubt, (i) the full amount of the Capital Securities will be Written-off in full in the event that the amount Written-off is not sufficient for the Non-Viability Event to cease to continue and (ii) in the case of an event falling with paragraph (b) of the definition of Non-Viability Event, the Write-off will be effected in full before any public sector injection of capital or equivalent support. Further, the Non-Viability Event Write-off Amount in respect of each Capital Security will be calculated based on a percentage of the principal amount of that Capital Security.

“Subordinated Capital Securities” means any Junior Obligations, Parity Obligations or Tier 2 Capital Instruments, that are capable of being converted, cancelled or reduced. in accordance with their terms.

## 6D Hong Kong Bail-in Power

Notwithstanding any other term of the Capital Securities, including without limitation Condition 6C, or any other agreement or arrangement, each Securityholder shall be subject, and shall be deemed to agree and acknowledge that they are each subject, to the exercise of any Hong Kong Bail-in Power by the relevant Hong Kong Resolution Authority without prior notice and which may include (without limitation) and result in any of the following or some combination thereof:

- (a) the reduction or cancellation of all or a part of the principal amount of, or Distributions on, the Capital Securities;
- (b) the conversion of all or a part of the principal amount of, or Distributions on, the Capital Securities into shares or other securities or other obligations of the Issuer or another person (and the issue to or conferral on the holder of such shares, securities or obligations), including by means of an amendment, modification or variation of the terms of the Capital Securities; and
- (c) the amendment or alteration of the maturity of the Capital Securities or amendment or alteration of the amount of Distributions payable on the Capital Securities, or the date on which the Distributions become payable, including by suspending payment for a temporary period, or any other amendment or alteration of these Conditions.

With respect to (a), (b) and (c) above, references to principal and Distributions shall include payments of principal and Distributions that have become due and payable (including principal that has become due and payable at the maturity date), but which have not been paid, prior to the exercise of any Hong Kong Bail-in Power. The rights of the Securityholders under the Capital Securities and these Conditions are subject to, and will be amended and varied, if necessary, solely to give effect to, the exercise of any Hong Kong Bail-in Power by the relevant Hong Kong Resolution Authority.

No repayment of the principal amount of the Capital Securities or payment of Distributions on the Capital Securities shall become due and payable or be paid after the exercise of any Hong Kong Bail-in Power by the relevant Hong Kong Resolution Authority unless, at the time that such repayment or payment, respectively, is scheduled to become due, such repayment or payment would be permitted to be made by the Issuer under the laws and regulations applicable to the Issuer and the Group.

Upon the exercise of any Hong Kong Bail-in Power by the relevant Hong Kong Resolution Authority with respect to the Capital Securities, the Issuer shall provide a written notice not more than two Hong Kong Business Days after the occurrence of such exercise regarding such exercise of the Hong Kong Bail-in Power to the Securityholders in accordance with Condition 15.

Neither the reduction or cancellation, in part or in full, of the principal amount of, or Distributions on the Capital Securities, the conversion thereof into another security or obligation of the Issuer or another person, or any other amendment or alteration of these Conditions as a result of the exercise of any Hong Kong Bail-in Power by the relevant Hong Kong Resolution Authority with respect to the Issuer nor the exercise of the Hong Kong Bail-in Power by the relevant Hong Kong Resolution Authority with respect to the Capital Securities shall constitute an Event of Default under Condition 11.2A.

*The Financial Institutions (Resolution) Ordinance (the "Ordinance") was passed by the Legislative Council of Hong Kong and published in the gazette of the Hong Kong Special Administrative Region Government (the "HKSAR Government") in June 2016. The Ordinance has yet to become effective and will commence operation on a date to be appointed by the*

*Secretary for Financial Services and the Treasury of the HKSAR Government pending the Legislative Council's passing of certain of the regulations to be made as subsidiary legislation under the Ordinance. It is expected that all licensed banks in Hong Kong will be subject to such legislation when it comes into effect.*

For the purposes of these Conditions:

“Hong Kong Bail-in Power” means any power which may exist from time to time under the Ordinance, or any other laws, regulations, rules or requirements relating to the resolution of financial institutions, including licensed banks, deposit-taking companies, restricted licensed banks, banking group companies, insurance companies and/or investment firms incorporated in or authorised, designated, recognised or licensed to conduct regulated financial activities in Hong Kong in effect and applicable in Hong Kong to the Issuer or other members of the Group, as the same may be amended from time to time (whether pursuant to the Ordinance or otherwise), and pursuant to which obligations of a licensed bank, deposit-taking company, restricted licensed bank, banking group company, insurance company or investment firm or any of its affiliates can be reduced, cancelled, transferred, modified and/or converted into shares or other securities or obligations of the obligor or any other person.

“relevant Hong Kong Resolution Authority” means any authority with the ability to exercise a Hong Kong Bail-in Power in relation to the Issuer.

## **7 PAYMENTS**

### **7.1 Method of payment**

*Condition 7.1 of the Terms and Conditions of the Notes as set out in the Offering Circular is deemed to be deleted in its entirety and replaced with the following:*

Payments in U.S. dollars will be made by credit or transfer to an account in U.S. dollar maintained by the payee with, or at the option of the payee, by a cheque in U.S. dollar drawn on, a bank in the New York City.

Payments will be subject in all cases to (i) any fiscal or other laws and regulations applicable thereto in the place of payment, but without prejudice to the provisions of Condition 9, and (ii) any withholding or deduction required pursuant to an agreement described in Section 1471(b) of the U.S. Internal Revenue Code of 1986 (the “Code”) or otherwise imposed pursuant to Sections 1471 through 1474 of the Code, any regulations or agreements thereunder, any official interpretations thereof, or (without prejudice to the provisions of Condition 9) any law implementing an intergovernmental approach thereto.

### **7.2 Presentation of Definitive Bearer Notes, Receipts and Coupons**

*Condition 7.2 of the Terms and Conditions of the Notes does not apply to the Capital Securities.*

### **7.3 Payments in respect of Bearer Global Notes**

*Condition 7.3 of the Terms and Conditions of the Notes does not apply to the Capital Securities.*

### **7.4 Payments in respect of Definitive Registered Notes**

*Condition 7.4 of the Terms and Conditions of the Notes as set out in the Offering Circular is deemed to be deleted in its entirety and replaced with the following:*

Payments of principal in respect of each Definitive Registered Note and each Registered Global Note will be made against presentation and surrender (or, in the case of part payment of any sum

due, endorsement) of the Definitive Registered Note or Registered Global Note at the specified office of the Registrar or any of the Paying Agents. Such payments will be made by transfer to the Designated Account (as defined below) of the holder (or the first named of joint holders) of the Capital Security appearing in the register of holders of the Capital Securities in registered form maintained by the Registrar (the “Register”) (i) where in global form, at the close of the business day (being for this purpose, a day on which Euroclear and Clearstream, Luxembourg are open for business) before the relevant due date, and (ii) where in definitive form, at the close of business on the fifth business day (being for this purpose a day on which banks are open for business in the city where the specified office of the Registrar is located) before the relevant due date. Notwithstanding the previous sentence, if (a) a holder does not have a Designated Account or (b) the principal amount of the Capital Securities held by a holder is less than US\$250,000, payment will instead be made by a cheque in U.S. dollar drawn on a Designated Bank (as defined below). For these purposes, “Designated Account” means the account maintained by a holder with a Designated Bank and identified as such in the Register and “Designated Bank” means a bank in the New York City.

Payments of Distribution in respect of each Definitive Registered Note and each Registered Global Note will be made by a cheque in U.S. dollar drawn on a Designated Bank and mailed by uninsured mail on the business day in the city where the specified office of the Registrar is located immediately preceding the relevant due date to the holder (or the first named of joint holders) of the Capital Security in registered form appearing in the Register (i) where in global form, at the close of the business day (being for this purpose, a day on which Euroclear and Clearstream, Luxembourg are open for business) before the relevant due date, and (ii) where in definitive form, at the close of business on the 15th day (whether or not such 15th day is a business day) before the relevant due date (the “Record Date”) at his address shown in the Register on the Record Date and at his risk. Upon application of the holder to the specified office of the Registrar not less than three business days in the city where the specified office of the Registrar is located before the due date for any payment of Distribution in respect of a Capital Security in registered form, the payment may be made by transfer on the due date in the manner provided in the preceding paragraph. Any such application for transfer shall be deemed to relate to all future payments of Distribution (other than Distribution due on redemption) in respect of the Capital Securities in registered form which become payable to the holder who has made the initial application until such time as the Registrar is notified in writing to the contrary by such holder. Payment of the Distribution due in respect of each Capital Security in registered form on redemption will be made in the same manner as payment of the principal amount of such Capital Security.

Holders of Capital Securities in registered form will not be entitled to any Distribution or other payment for any delay in receiving any amount due in respect of any Capital Security in registered form as a result of a cheque posted in accordance with this Condition arriving after the due date for payment or being lost in the post. No commissions or expenses shall be charged to such holder by the Registrar in respect of any payments of principal or Distribution in respect of Capital Securities in registered form.

None of the Issuer or the Agents will have any responsibility or liability for any aspect of the records relating to, or payments made on account of, beneficial ownership interests in the Registered Global Notes or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

## **7.5 General provisions applicable to payments**

*Condition 7.5 of the Terms and Conditions of the Notes as set out in the Offering Circular is deemed to be deleted in its entirety and replaced with the following:*

The holder of a Capital Security represented by a global note (“Global Note”) shall be the only person(s) entitled to receive payments in respect of Capital Securities represented by such Global

Note and the Issuer will be discharged by payment to, or to the order of, the holder of such Global Note in respect of each amount so paid. Each of the persons shown in the records of Euroclear, Clearstream, Luxembourg, as the beneficial holder of a particular nominal amount of Capital Securities represented by such Global Note must look solely to Euroclear, Clearstream, Luxembourg, for his share of each payment so made by the Issuer to, or to the order of, the holder of such Global Note.

## **7.6 Payment Day**

*Condition 7.6 of the Terms and Conditions of the Notes as set out in the Offering Circular is deemed to be deleted in its entirety and replaced with the following:*

If the date for payment of any amount in respect of any Capital Security is not a Payment Day (as defined below), the holder thereof shall not be entitled to payment until the next following Payment Day in the relevant place and shall not be entitled to further Distribution or other payment in respect of such delay. For these purposes, "Payment Day" means any day which (subject to Condition 10) is:

- (a) a day on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealing in foreign exchange and foreign currency deposits) in:
  - (i) in the case of Capital Securities in definitive form only the relevant place of presentation;
  - (ii) London;
  - (iii) Hong Kong; and
- (b) a day on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealing in foreign exchange and foreign currency deposits) in New York City.

## **7.7 Interpretation of principal and interest**

*Condition 7.7 of the Terms and Conditions of the Notes as set out in the Offering Circular does not apply to the Capital Securities.*

## **8 REDEMPTION AND PURCHASE**

### **8.1 Redemption at maturity**

*Condition 8.1 of the Terms and Conditions of the Notes as set out in the Offering Circular does not apply to the Capital Securities.*

*The following Condition 8.1A shall be inserted after Condition 8.1:*

#### **8.1A No Fixed Redemption Date**

The Capital Securities are perpetual securities in respect of which there is no fixed redemption date. The Capital Securities may not be redeemed at the option of the Issuer other than in accordance with this Condition.

## 8.2 Redemption for tax reasons

*Condition 8.2 of the Terms and Conditions of the Notes as set out in the Offering Circular is deemed to be deleted in its entirety and replaced with the following:*

Subject to Condition 8.13A, the Capital Securities then outstanding may be redeemed at the option of the Issuer in whole, but not in part, at any time, on giving not less than 30 nor more than 60 days' notice to the Fiscal Agent and the Securityholders (which notice shall be irrevocable), if:

- (i) on the occasion of the next payment due under the Capital Securities, the Issuer has or will become obliged to pay additional amounts as provided or referred to in the Conditions as a result of any change in, or amendment to, the laws or regulations of Hong Kong or any political subdivision or any authority thereof or therein having power to tax, or any change in the application or official interpretation of such laws or regulations, which change or amendment becomes effective on or after the date on which agreement is reached to issue the first tranche of the Capital Securities; and
- (ii) such obligation cannot be avoided by the Issuer taking reasonable measures available to it;

provided that no such notice of redemption shall be given earlier than 90 days prior to the earliest date on which the Issuer would be obliged to pay such additional amounts or give effect to such treatment, as the case may be, were a payment in respect of the Capital Securities then due.

Prior to giving any such notice of redemption, the Issuer shall deliver to the Fiscal Agent (i) a certificate signed by two Directors of the Issuer stating that the Issuer is entitled to effect such redemption and setting forth a statement of facts showing that the conditions precedent to the right of the Issuer to redeem have occurred, and an opinion of independent legal or tax advisers of recognised standing to the effect that the Issuer has or will become obliged to pay such additional amounts as a result of such change or amendment and (ii) a copy of the written consent of the Monetary Authority; and the Fiscal Agent shall be entitled to accept the certificate as sufficient evidence of the satisfaction of the conditions precedent set out above, in which event it shall be conclusive and binding on the Securityholders.

Capital Securities so redeemed will be redeemed at their outstanding principal amount together with Distributions accrued to (but excluding) the date of redemption.

*The following Condition 8.2A shall be inserted after Condition 8.2:*

### 8.2A Redemption for tax deduction reasons

Subject to Condition 8.13A, the Capital Securities may be redeemed at the option of the Issuer in whole, but not in part, at any time, on giving not less than 30 nor more than 60 days' notice to the Fiscal Agent and the Securityholders (which notice shall be irrevocable) following the occurrence of a Tax Deduction Redemption Event.

A "Tax Deduction Redemption Event" occurs if:

- (a) in respect of the Distributions payable on the Capital Securities, the Issuer is no longer, or will no longer be, entitled to claim a deduction in respect of computing its taxation liabilities in Hong Kong or any political subdivision or any authority thereof or therein as a result of any change in, or amendment to, the laws or regulations of Hong Kong or any political subdivision or any authority thereof or therein or any change in the application or official interpretation of such laws or regulations, which change or amendment becomes effective on or after the date on which agreement is reached to issue the first tranche of the Capital Securities; and



- (b) such tax non-deductibility cannot be avoided by the Issuer taking reasonable measures available to it,

provided that no such notice of redemption shall be given earlier than 90 days prior to the earliest date on which the Issuer would cease to be able to claim a tax deduction in respect of the Distribution payable on the Capital Securities as provided in paragraph (a) above as a result of any change in, or amendment to, the laws or regulations of Hong Kong or any political subdivision or any authority thereof or therein or any change in the application or official interpretation of such laws or regulations, which change or amendment becomes effective on or after the date on which agreement is reached to issue the first tranche of the Capital Securities.

Prior to giving any such notice of redemption, the Issuer shall deliver to the Fiscal Agent (i) a certificate signed by two Directors of the Issuer stating that the Issuer is entitled to effect such redemption and setting forth a statement of facts showing that (1) the conditions precedent to the right of the Issuer to redeem have occurred and (2) such tax non-deductibility cannot be avoided by the Issuer taking reasonable measures available to it, (ii) an opinion of independent legal or tax advisers of recognised standing to the effect that the event as described in paragraph (a) of a Tax Deduction Redemption Event has occurred or will occur and (iii) a copy of the written consent of the Monetary Authority; and the Fiscal Agent shall be entitled to accept the certificate as sufficient evidence of the satisfaction of the conditions precedent set out above, in which event it shall be conclusive and binding on the Securityholders.

Capital Securities so redeemed will be redeemed at their outstanding principal amount together with Distributions accrued to (but excluding) the date of redemption

### **8.3 Redemption of Subordinated Notes for regulatory reasons**

*Condition 8.3 of the Terms and Conditions of the Notes as set out in the Offering Circular does not apply to the Capital Securities.*

*The following Condition 8.3A shall be inserted after Condition 8.3:*

#### **8.3A Redemption of the Capital Securities for regulatory reasons**

Subject to Condition 8.13A, the Capital Securities may be redeemed at the option of the Issuer in whole, but not in part, at any time on giving not less than 30 nor more than 60 days' notice to the Fiscal Agent and the Securityholders (which notice shall be irrevocable), if for the purposes of the Banking Ordinance (Cap.155) of Hong Kong, or any successor legislation or regulations made thereunder, the Capital Securities, after having qualified as such, will no longer qualify (in whole or in part) as Additional Tier 1 Capital (or equivalent) of the Issuer as a result of any changes or amendments in (or any change in the application or official interpretation of) the relevant provisions of the Banking Ordinance (Cap. 155) of Hong Kong, Banking (Capital) Rules (Cap. 155L) of Hong Kong or any statutory guidelines issued by the Monetary Authority in relation thereto. in each case, as amended or modified from time to time (other than as a result of any discounting or amortisation requirements as to the eligibility of the Capital Securities for such inclusion pursuant to the relevant legislation and relevant guidelines in force from time to time) (a "Regulatory Redemption Event"), provided, however, that no such notice of redemption shall be given earlier than 90 days prior to the earliest date on which it is determined that a Regulatory Redemption Event will take effect.

Prior to giving any such notice of redemption pursuant, the Issuer shall deliver to the Fiscal Agent (i) a certificate signed by two Directors of the Issuer stating that the Issuer is entitled to effect such redemption and setting forth a statement of facts showing that the conditions precedent to the right of the Issuer to redeem have occurred, and an opinion of independent legal or auditors of recognised standing to the effect that a Regulatory Redemption Event has or

occurred or will occur and (ii) a copy of the written consent of the Monetary Authority; and the Fiscal Agent shall be entitled to accept the certificate as sufficient evidence of the satisfaction of the conditions precedent set out above, in which event it shall be conclusive and binding on the Securityholders.

Capital Securities so redeemed will be redeemed at their outstanding principal amount together with Distributions accrued to (but excluding) the date of redemption.

#### **8.4 Redemption at the option of the Issuer (Issuer Call)**

*Condition 8.4 of the Terms and Conditions of the Notes as set out in the Offering Circular is deemed to be deleted in its entirety and replaced with the following:*

Subject to Condition 8.13A, the Issuer may, having given:

- (a) not less than 15 nor more than 30 days' notice to the Securityholders in accordance with Condition 15; and
- (b) not less than 15 days before the giving of the notice referred to in (a) above, notice to the Fiscal Agent and the Registrar;

(which notices shall be irrevocable and shall specify the date fixed for redemption), redeem the Capital Securities then outstanding in whole, but not in part, on the First Call Date or any Distribution Payment Date thereafter, at their outstanding principal amount together with Distributions accrued to (but excluding) the date of redemption.

*For the avoidance of doubt, the Issuer does not provide any undertaking that it will call the Capital Securities at any time.*

#### **8.5 Redemption at the option of the Noteholders (Investor Put)**

*Condition 8.5 of the Terms and Conditions of the Notes as set out in the Offering Circular does not apply to the Capital Securities.*

#### **8.6 Put Notices**

*Condition 8.6 of the Terms and Conditions of the Notes as set out in the Offering Circular does not apply to the Capital Securities.*

#### **8.7 Early Redemption Amounts**

*Condition 8.7 of the Terms and Conditions of the Notes as set out in the Offering Circular does not apply to the Capital Securities.*

#### **8.8 Instalments**

*Condition 8.8 of the Terms and Conditions of the Notes as set out in the Offering Circular does not apply to the Capital Securities.*

#### **8.9 Partly Paid Notes**

*Condition 8.9 of the Terms and Conditions of the Notes as set out in the Offering Circular does not apply to the Capital Securities.*

## **8.10 Purchases**

*Condition 8.10 of the Terms and Conditions of the Notes as set out in the Offering Circular does not apply to the Capital Securities.*

## **8.11 Cancellation**

*Condition 8.11 of the Terms and Conditions of the Notes as set out in the Offering Circular does not apply to the Capital Securities.*

## **8.12 Late payment on Zero Coupon Notes**

*Condition 8.12 of the Terms and Conditions of the Notes as set out in the Offering Circular does not apply to the Capital Securities.*

## **8.13 Conditions for Redemption and Purchase in respect of Subordinated Notes**

*Condition 8.13 of the Terms and Conditions of the Notes as set out in the Offering Circular does not apply to the Capital Securities.*

*The following Condition 8.13A shall be inserted after Condition 8.13:*

### **8.13A Conditions for Redemption and Purchase in respect of the Capital Securities**

Notwithstanding any other provision in these Conditions, the Issuer shall not redeem any of the Capital Securities (other than pursuant to Condition 11.2A), and neither the Issuer nor any affiliate of the Issuer over which the Issuer exercises control or significant influence (excluding the holding company of the Issuer) shall purchase any of the Capital Securities, unless the prior written consent of the Monetary Authority thereto shall have been obtained, provided however, that if from time to time the consent of the Monetary Authority is not a requirement of any such Capital Securities to constitute Additional Tier 1 Capital (or equivalent) of the Issuer for the purposes of, and as defined in, the Banking Ordinance (Cap. 155) of Hong Kong, or any successor legislation, then the condition to the redemption or purchase and cancellation of the relevant Capital Securities set out in this Condition 8.13A shall not apply for so long as such consent is not required.

For the avoidance of doubt, this provision shall not apply to the Issuer or any of its Subsidiaries holding the Capital Securities in a purely nominee capacity.

## **9 TAXATION**

*Condition 9 of the Terms and Conditions of the Notes as set out in the Offering Circular is deemed to be deleted in its entirety and replaced with the following:*

All payments of principal and Distribution in respect of the Capital Securities by or on behalf of the Issuer shall be made without withholding or deduction for, or on account of, any present or future taxes, duties, assessments or governmental charges of whatever nature ("Taxes") imposed or levied by or on behalf of Hong Kong or any political subdivision or any authority thereof or therein having power to tax, unless the withholding or deduction of the Taxes is required by law. In that event, the Issuer will pay such additional amounts as shall be necessary in order that the net amounts received by the holders of the Capital Securities after such withholding or deduction shall equal the respective amounts of principal and Distribution which

would otherwise have been receivable in respect of the Capital Securities in the absence of the withholding or deduction; except that no such additional amounts shall be payable with respect to any Capital Security:

- (a) presented for payment by or on behalf of, a holder who is liable to the Taxes in respect of such Capital Security by reason of his having some connection with Hong Kong other than the mere holding of such Capital Security; or
- (b) presented for payment more than 30 days after the Relevant Date except to the extent that a holder would have been entitled to additional amounts on presenting the same for payment on the last day of the period of 30 days assuming that day to have been a Payment Day.

As used in these Conditions, “Relevant Date” means the date on which the payment first becomes due but, if the full amount of the money payable has not been received by the Fiscal Agent or the Registrar, as the case may be, on or before the due date, it means the date on which, the full amount of the money having been so received, notice to that effect is duly given to the Securityholders by the Issuer in accordance with Condition 15.

## **10 PRESCRIPTION**

*Condition 10 of the Terms and Conditions of the Notes as set out in the Offering Circular is deemed to be deleted in its entirety and replaced with the following:*

Claims against the Issuer for payment in respect of the Capital Securities will become void unless made within a period of 10 years (in the case of principal) and five years (in the case of Distribution) after the Relevant Date (as defined in Condition 9) therefor.

## **11 EVENTS OF DEFAULT AND ENFORCEMENT**

### **11.1 Events of Default relating to Senior Notes**

*Condition 11.1 of the Terms and Conditions of the Notes as set out in the Offering Circular does not apply to the Capital Securities.*

### **11.2 Events of Default relating to Subordinated Notes**

*Condition 11.2 of the Terms and Conditions of the Notes as set out in the Offering Circular does not apply to the Capital Securities.*

*The following Condition 11.2A shall be inserted after Condition 11.2:*

#### **11.2A Events of Default and Winding-up Proceedings**

If default is made in the payment of any amount of principal in respect of the Capital Securities on the due date for payment hereof or of any amount of Distribution in respect of the Capital Securities within seven days after the due date for payment thereof (each, an “Event of Default”) then in order to enforce the obligations of the Issuer, any holder of a Capital Securities may institute a Winding-Up Proceeding against the Issuer.

If an order is made or an effective resolution is passed for the Winding-Up of the Issuer (whether or not an Event of Default has occurred and is continuing) then any holder of a Capital Security may, by written notice to the Issuer at the specified office of the Fiscal Agent, effective upon the date of receipt there by the Fiscal Agent, declare any Capital Security held by it to be forthwith due and payable whereupon the same shall become forthwith due and payable at its outstanding principal amount together with Distributions accrued to (but excluding) the date of repayment, without presentment, demand, protest or other notice of any kind.

In these Conditions:

“Winding-Up Proceedings” shall mean, with respect to the Issuer, proceedings in Hong Kong in respect of the Issuer for the bankruptcy, liquidation, winding-up, receivership, or other similar proceeding of the Issuer.

### **11.3 Enforcement**

*Condition 11.3 of the Terms and Conditions of the Notes as set out in the Offering Circular is deemed to be deleted in its entirety and replaced with the following:*

Subject to applicable laws, no remedy (including the exercise of any right of set-off or analogous event) other than those provided for in Condition 11.2A above will be available to the Securityholders.

## **12 REPLACEMENT OF NOTES, RECEIPTS, COUPONS AND TALONS**

*Condition 12 of the Terms and Conditions of the Notes as set out in the Offering Circular does not apply to the Capital Securities.*

*The following Condition 12A shall be inserted after Condition 12:*

### **12A REPLACEMENT OF CAPITAL SECURITIES**

Should any Certificate be lost, stolen, mutilated, defaced or destroyed, it may be replaced at the specified office of the Registrar or the Transfer Agent upon payment by the claimant of such costs and expenses as may be incurred in connection therewith and on such terms as to evidence and indemnity as the Issuer may reasonably require. Mutilated or defaced Certificates must be surrendered before replacements will be issued.

## **13 AGENTS**

*Condition 13 of the Terms and Conditions of the Notes as set out in the Offering Circular is deemed to be deleted in its entirety and replaced with the following:*

The names of the initial Fiscal Agents and their initial specified offices are set out below.

The Issuer is entitled to vary or terminate the appointment of any Agent and/or appoint additional Agents and/or approve any change in the specified office through any of the same acts, provided that:

- (a) there will at all times be a Fiscal Agent and a Registrar; and
- (b) so long as the Capital Securities are listed on any stock exchange or admitted to trading by any other relevant authority, there will at all times be a Registrar and Transfer Agent with a specified office in such place as may be required by the rules and regulations of the relevant stock exchange or other relevant authority.

Any variation, termination, appointment or change shall only take effect (other than in the case of insolvency, when it shall be of immediate effect) after not less than 30 nor more than 45 days' prior notice thereof shall have been given to the Securityholders in accordance with Condition 15.

In acting under the Agency Agreement, the Agents act solely as agents of the Issuer and, in certain circumstances specified therein, and do not assume any obligation to, or relationship of agency with, any Securityholders. The Agency Agreement contains provisions permitting any entity into which any Agent is merged or converted or with which it is consolidated or to which it transfers all or substantially all of its assets to become the successor paying agent.

#### **14 EXCHANGE OF TALONS**

*Condition 14 of the Terms and Conditions of the Notes as set out in the Offering Circular does not apply to the Capital Securities.*

#### **15 NOTICES**

*Condition 15 of the Terms and Conditions of the Notes as set out in the Offering Circular is deemed to be deleted in its entirety and replaced with the following:*

All notices regarding the Capital Securities will be deemed to be validly given if (a) sent by first class mail or (if posted to an address overseas) by airmail to the Securityholders (or the first named of joint Securityholders) at their respective addresses recorded in the Register and will be deemed to have been given on the third day after mailing and (b) if and for so long as the Capital Securities are listed on a stock exchange or are admitted to trading by another relevant authority and the rules of that stock exchange or relevant authority so require, such notice will be published in a daily newspaper of general circulation in the place or places required by those rules.

Until such time as any definitive Capital Securities are issued, there may, so long as any Global Notes representing the Capital Securities are held in their entirety on behalf of (i) Euroclear and/or Clearstream, Luxembourg, be substituted for such publication in such newspaper(s) the delivery of the relevant notice to Euroclear and/or Clearstream, Luxembourg for communication by them to the holders of the Capital Securities and, in addition, for so long as any Capital Securities are listed on a stock exchange or are admitted to trading by another relevant authority and the rules of that stock exchange or relevant authority so require, such notice will be published in a daily newspaper of general circulation in the place or places required by those rules. Any such notice shall be deemed to have been given to the holders of the Capital Securities on the first day after the day on which the said notice was given to Euroclear and/or Clearstream, Luxembourg.

Notices to be given by any Securityholder shall be in writing and given by lodging the same, together (in the case of any Capital Security in definitive form) with the relative Capital Security or Capital Securities, with the Registrar. Whilst any of the Capital Security are represented by a Global Note, such notice may be given by any holder of a Capital Security to the Fiscal Agent or the Registrar through Euroclear and/or Clearstream, Luxembourg, as the case may be, in such manner as the Fiscal Agent, the Registrar and Euroclear and/or Clearstream, Luxembourg may approve for this purpose.

## **16 MEETINGS OF NOTEHOLDERS, MODIFICATIONS AND CONSOLIDATIONS**

*Condition 16 of the Terms and Conditions of the Notes as set out in the Offering Circular does not apply to the Capital Securities.*

*The following Condition 16A shall be inserted after Condition 16:*

### **16A MEETINGS OF SECURITYHOLDERS, MODIFICATIONS AND CONSOLIDATIONS**

#### **16A.1 Meetings of Securityholders**

The Agency Agreement contains provisions for convening meetings of the Securityholders to consider any matter affecting their interests, including the sanctioning by Extraordinary Resolution of a modification of the Capital Securities or any of the provisions of the Agency Agreement. Such a meeting may be convened by the Issuer and shall be convened by the Issuer if required in writing by Securityholders holding not less than five per cent., in nominal amount of the Capital Securities for the time being remaining outstanding. The quorum at any such meeting for passing an Extraordinary Resolution is one or more persons holding or representing not less than 50 per cent., in nominal amount of the Capital Securities for the time being outstanding, or at any adjourned meeting one or more persons being or representing Securityholders whatever the nominal amount of the Capital Securities so held or represented, except that at any meeting the business of which includes the modification of certain provisions of the Capital Securities (including modifying any date for payment of Distribution thereon, reducing or cancelling the amount of principal or the Distribution Rate in respect of the Capital Securities or altering the currency of payment of the Capital Securities), the quorum shall be one or more persons holding or representing not less than two-thirds in nominal amount of the Capital Securities for the time being outstanding, or at any adjourned such meeting one or more persons holding or representing not less than one-third in nominal amount of the Capital Securities for the time being outstanding. An Extraordinary Resolution passed at any meeting of the Securityholders shall be binding on all the Securityholders, whether or not they are present at the meeting.

#### **16A.2 Modifications**

The Fiscal Agent and the Issuer may agree, without the consent of the Securityholders, to:

- (a) any modification (except such modifications in respect of which an increased quorum is required as mentioned above) of the Capital Securities or the Agency Agreement which is not prejudicial to the interests of the Securityholders; or
- (b) any modification of the Capital Securities or the Agency Agreement which is of a formal, minor or technical nature or is made to correct a manifest error or to comply with mandatory provisions of the law.

Any such modification shall be binding on the Securityholders and any such modification shall be notified to the Securityholders in accordance with Condition 15 as soon as practicable thereafter

### **16A.3 Consolidation, Merger and Sale of Assets**

The Issuer shall not consolidate with or merge into any other company or entity, and the Issuer may not, directly or indirectly, sell, convey, transfer or lease all or substantially all of its properties and assets to any company or other entity unless:

- (a) the company or other entity formed by or surviving such consolidation or merger or the person, company or other entity which acquires by conveyance or transfer, or which leases, all or substantially all of the properties and assets of the Issuer shall expressly assume by way of supplemental agency agreement the due and punctual payment of the principal of, and Distribution on, the Capital Securities and the performance of the Capital Securities, the Agency Agreement on the part of the Issuer to be performed or observed;
- (b) immediately after giving effect to such transaction, no Event of Default with respect to the Capital Securities, and no event, which after notice or lapse of time, or both, would become an Event of Default with respect to the Capital Securities, shall have happened and be continuing;
- (c) the Issuer has delivered to the Fiscal Agent (i) a certificate signed by two directors of the Issuer and (ii) an opinion of independent legal advisers of recognised standing stating that such consolidation, merger, conveyance, transfer or lease and any such supplemental agency agreement comply with this Condition 16A.3 and that all conditions precedent relating to such transaction have been complied with; and
- (d) immediately after giving effect to such consolidation, amalgamation or merger of the Issuer, no internationally recognised rating agency has in respect of the Capital Securities, issued any notice downgrading its credit rating for such Capital Securities or indicating that it intends to downgrade its credit rating for such Capital Securities.

### **17 SUBSTITUTION**

*Condition 17 of the Terms and Conditions of the Notes as set out in the Offering Circular does not apply to the Capital Securities.*

### **18 FURTHER ISSUES**

*Condition 18 of the Terms and Conditions of the Notes as set out in the Offering Circular does not apply to the Capital Securities.*

### **19 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

*Condition 19 of the Terms and Conditions of the Notes as set out in the Offering Circular is deemed to be deleted in its entirety and replaced with the following:*

No person shall have any right to enforce any term or condition of this Capital Security under the Contracts (Rights of Third Parties) Act 1999, but this does not affect any right or remedy of any person which exists or is available apart from that Act.



## 20 GOVERNING LAW

*Condition 20 of the Terms and Conditions of the Notes as set out in the Offering Circular is deemed to be deleted in its entirety and replaced with the following:*

- (a) **Governing law:** The Agency Agreement, the Deed of Covenant, the Capital Securities and any non-contractual obligations arising out of or in connection with the Agency Agreement, the Deed of Covenant and the Capital Securities are governed by, and shall be construed in accordance with, English law, except that the subordination provisions set out in Condition 3.3(a) are governed by, and shall be construed in accordance with, the laws of Hong Kong.
- (b) **Jurisdiction:** The courts of England are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with the Capital Securities (including any dispute relating to any non-contractual obligations arising out of or in connection with the Capital Securities) and accordingly any legal action or proceedings arising out of or in connection with the Capital Securities (including any legal action or proceedings relating to any non-contractual obligations arising out of or in connection with the Capital Securities) (“Proceedings”) may be brought in such courts.

The Issuer irrevocably submits to the exclusive jurisdiction of such courts and waives any objection to Proceedings in such courts whether on the ground of venue or on the ground that the Proceedings have been brought in an inconvenient or inappropriate forum. This submission is made for the benefit of each of the Securityholders and shall not limit the right of any of them to take Proceedings in any other court of competent jurisdiction, nor shall the taking of Proceedings in one or more jurisdictions preclude the taking of Proceedings in any other jurisdiction (whether concurrently or not).

- (j) **Appointment of Process Agent:** The Issuer irrevocably appoints Industrial and Commercial Bank of China, (London) Limited of 36 King Street, London EC2V 8BB, United Kingdom as its agent in England to receive service of process in any Proceedings in England. If for any reason the Issuer does not have such an agent in England, it will promptly appoint a substitute process agent and notify the Securityholders of such appointment. Nothing herein shall affect the right to serve process in any other manner permitted by law.
- (k) **Waiver of immunity:** The Issuer hereby irrevocably and unconditionally waives with respect to the Capital Securities 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 or judgment made or given in connection with any Proceedings.