

## TERMS AND CONDITIONS OF THE CAPITAL SECURITIES

*The following (other than the italicised text) is the text of the terms and conditions of the Capital Securities.*

The U.S.\$ 2,536,000,000 4.90 per cent. Non-Cumulative Subordinated Additional Tier 1 Capital Securities (the “Capital Securities”) of by Industrial and Commercial Bank of China (Asia) Limited (the “Issuer”) became effective on 21 March 2018 (the “Settlement Date”) were authorised by the board of directors of the Issuer on 26 January 2018. In these terms and conditions of the Capital Securities (the “Conditions”), references to the “Fiscal Agent”, the “Paying Agent” (which expression shall include the Fiscal Agent), the “Registrar”, the “Transfer Agent” and the “Calculation Agent” (and “Agents” shall mean any of the Fiscal Agent, Paying Agent, Registrar, Transfer Agent and Calculation Agent and any other agent or agents appointed from time to time with respect to the Capital Securities) shall initially mean the Issuer and/or such other fiscal agent, paying agent, registrar, transfer agent or calculation agent as may be appointed from time to time by the Issuer in respect of the Capital Securities. The Securityholders (as defined below) are deemed to have notice of all of the provisions of these Conditions, including the exhibits hereto, and all the provisions of any agency agreement subsequently entered into with the Agents and which are applicable to the Securityholders.

Any reference to “Securityholders” or “holders” in relation to any Capital Securities shall mean the persons in whose name the Capital Securities are registered.

### 1 FORM, DENOMINATION AND TITLE

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 6) in accordance with Condition 6 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.

Title to the Capital Securities will pass upon registration of transfers in the register which is kept by the Registrar. The Issuer and the Agents will (except as otherwise required by law) deem and treat the registered holder of any Capital Security 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.

### 2 TRANSFERS OF THE CAPITAL SECURITIES

#### 2.1 Transfers of interests in Capital Securities

One or more Capital Securities may be transferred upon the surrender (at the specified office of the Registrar or any Transfer Agent) of the Certificate representing such Capital Securities to be transferred, together with the form of transfer (as set out in Exhibit A hereto) endorsed on such Certificate, (or another form of transfer substantially in the same form and containing the same representations and certifications (if any), unless otherwise agreed by the Issuer), duly completed and executed and any other evidence as the Registrar or Transfer Agent may reasonably require to prove the title of the transferor and the authority of the individuals that have executed the form of transfer. In the case of a transfer of part only of a holding of Capital Securities represented by one Certificate, a new Certificate shall be issued to the transferee in respect of the part transferred and a further new Certificate in respect of the balance of the holding not transferred shall be issued to the transferor. All transfers of Capital Securities and entries on the Register will be made in accordance with these Conditions and subject to the detailed regulations concerning transfers of Capital Securities set out in Exhibit B hereto. The regulations may be changed by the Issuer, with the prior written approval of the Registrar and the Fiscal Agent. A copy of the current regulations will be made available by the Registrar or any Transfer Agent to any Securityholder upon request.

#### 2.2 Delivery of New Certificates

Each new Certificate to be issued pursuant to Condition 2.1 shall be available for delivery within seven business days of receipt of the form of transfer and surrender of the Certificate for exchange. Delivery of new Certificate(s) shall be made at the specified office of the Registrar or any Transfer Agent (as the

case may be) to whom delivery or surrender of such form of transfer or Certificate shall have been made or, at the option of the holder making such delivery or surrender as aforesaid and as specified in the relevant form of transfer or otherwise in writing, be mailed by uninsured post at the risk of the holder entitled to the new Certificate to such address as may be so specified, unless such holder requests otherwise and pays in advance to the Transfer Agent the costs of such other method of delivery and/or such insurance as it may specify. In this Condition 2.2, “business day” means a day, other than a Saturday or Sunday, on which banks are open for business in the place of the specified office of the Registrar or the Transfer Agent (as the case may be).

### **2.3 Cost of Registration**

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.

### **2.4 Closed Periods**

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 or (ii) during the period commencing on the date of a Non-Viability Event Notice (as defined in Condition 6 below) and ending on (and including) the close of business in Hong Kong on the effective date of the related Write-off.

## **3 STATUS OF THE CAPITAL SECURITIES**

### **3.1 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:

“Authorized Institution” has the meaning given to that term in the Banking Ordinance (Cap. 155 of the Laws of Hong Kong).

“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 by operation of law or contract.

“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.

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

“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, and of all claims of the unsubordinated creditors of the Issuer (including its depositors) other than those whose claims rank or is expressed to rank by operation of law or contract *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 that rank or are expressed to rank senior to the Capital Securities by operation of law or contract.

“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).

### **3.2 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 set-off, counter-claim or retention.

Notwithstanding the preceding sentence, if any of the amounts owing to any Securityholder by the Issuer in respect of, or arising under or in connection with the Capital Securities is discharged by set-off, counterclaim or retention, such Securityholder shall, subject to applicable law, immediately pay an amount equal to the amount of such payment or discharge to the Issuer (or, in the event of its Winding-Up, the liquidator or, as appropriate, administrator of the Issuer) and, until such time as payment is made, shall hold an amount equal to such amount in trust for the Issuer (or the liquidator or, as appropriate, administrator of the Issuer (as the case may be)) and accordingly any such discharge shall be deemed not to have taken place and each Securityholder, by virtue of becoming a Securityholder of 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 DISTRIBUTION**

### **4.1 Non-Cumulative Distribution**

Subject to Condition 5 below, the Capital Securities confer a right to receive non-cumulative distributions (each a “Distribution”) on their principal amount (subject to adjustments following the occurrence of a Non-Viability Event in accordance with Condition 6) from, and including, the Settlement Date at the applicable Distribution Rate, payable semi-annually in arrear on 21 March and 21 September in each year in equal instalments, commencing on 21 September 2018 (each a “Distribution Payment Date”), provided that in respect of the first Distribution Payment Date on 21 September 2018 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.\$24.50 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 this Condition 4 and Condition 5 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.

#### **4.2 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 Settlement Date to, but excluding, 21 March 2023 (the “First Call Date”), 4.90 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 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 third Calculation Business Day immediately preceding the relevant 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.

“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 the relevant dates falling every five calendar years after the First Call Date.

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

“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, 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 5:00 pm (New York City time), on the Fallback 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) the then prevailing Treasury Rate (as determined as set out below) 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 2.25 per cent. per annum.

“Treasury Rate” means the rate per annum (expressed as a percentage) as 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 of five years on the Calculation Date.

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 Fallback Calculation Date. 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 there is no Comparable Treasury Price on the relevant Fallback Calculation Date for whatever reason, “Treasury Rate” means the rate per annum (expressed as a percentage) as 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 Fallback 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 of five years on the last available date preceding the Fallback Calculation Date on which such rate was set forth in such release (or any successor release).

#### **4.3 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 twelve 30-day months).

The Calculation Agent will 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, the Fiscal Agent and the Registrar.

All notifications, opinions, determinations, certificates, calculations, quotations and decisions given, expressed, made or obtained for the purposes of this Condition 4 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.

#### **4.4 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.

#### **4.5 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 4, 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.

## **5 Distribution Restrictions**

### **5.1 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 (the “Optional Distribution Cancellation Event”). The Issuer shall have no obligation to pay any Distribution on any Distribution Payment Date if it validly elects not to do so in accordance with this Condition 5.1 and any failure to pay such Distribution shall not constitute an Event of Default. Distributions are non-cumulative and any Distribution that is cancelled shall therefore not be payable at any time thereafter, whether in a Winding-Up or otherwise.

“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.

### **5.2 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 during the Issuer’s then current 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 Determination 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”).

### **5.3 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.

### **5.4 Distributable Reserves**

Any Distribution may only be paid out of Distributable Reserves.

For the purpose of this Condition 5.4:

“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 the Laws of Hong Kong), as amended or modified from time to time, as at the date of the Issuer’s audited balance sheet last preceding the relevant Distribution Determination Date, and subject to the Monetary Authority’s 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 Determination

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 of the Laws of Hong Kong), 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 of the Laws of Hong Kong), 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.*

## **5.5 Dividend Stopper**

If, on any Distribution Payment Date, payment of Distribution scheduled to be paid is not made in full by reasons of Condition 5, 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 these 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 of the Securityholders.

## **6 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 or conversion of any other Subordinated Capital Securities so reduced and cancelled or converted upon the occurrence of a Non-Viability Event, where applicable, being 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.

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

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

Any references in these Conditions to principal in respect of the Capital Securities shall thereafter refer to the principal amount of the Capital Securities reduced by any applicable Write-off(s). In the case of a partial Write-off, a new Certificate shall be issued thereafter to each Securityholder in respect of the balance of the holding of Capital Securities not Written-off.

Once the principal amount of, and any accrued but unpaid Distribution under, the Capital Securities has been Written-off, the relevant amount(s) Written-off will not be restored in any circumstances including where the relevant Non-Viability Event ceases to continue. No Securityholder may exercise, claim or plead any right to

any amount that has been Written-off, and each Securityholder shall, by virtue of his holding of any Capital Securities, be deemed to have waived all such rights to such amount that has been Written-off.

For the purpose of these Conditions:

“Non-Viability Event” means the earlier of:

- (a) 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
- (b) 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 in accordance with Condition 15, and to the Paying Agents in writing and which shall state:

- (a) in reasonable detail the nature of the relevant Non-Viability Event; and
- (b) the Non-Viability Event Write-off Amount for (i) each Capital Security and (ii) each other Subordinated Capital Security in accordance with its terms.

“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 within 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 Obligation or Parity Obligation which contain provisions relating to a write-down or conversion into ordinary shares in respect of its principal amount on the occurrence, or as a result, of a Non-Viability Event and in respect of which the conditions (if any) to the operation of such provisions are (or with the giving of any certificate or notice which is capable of being given by the Issuer, would be) satisfied.

## **7 Hong Kong Resolution Authority Power**

Notwithstanding any other term of the Capital Securities, including without limitation Condition 6, or any other agreement or arrangement, each Securityholder shall be subject, and shall be deemed to agree, be bound by and acknowledge that they are each subject, to having the Capital Securities held by such Securityholder being written off, cancelled, converted or modified, or to having the form of the Capital Securities changed, in the exercise of any Hong Kong Resolution Authority 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 of this Condition 7, 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 redemption date), but which have not been paid, prior to the exercise of any Hong Kong Resolution Authority 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 Resolution Authority 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 Resolution Authority 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 Resolution Authority Power by the relevant Hong Kong Resolution Authority with respect to the Capital Securities, the Issuer shall provide a written notice as soon as practicable regarding such exercise of the Hong Kong Resolution Authority 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 share, security or other 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 Resolution Authority Power by the relevant Hong Kong Resolution Authority with respect to the Issuer nor the exercise of the Hong Kong Resolution Authority Power by the relevant Hong Kong Resolution Authority with respect to the Capital Securities shall constitute an Event of Default under Condition 12.1.

*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 became effective on 7 July 2017 and all licensed banks in Hong Kong are subject to the Ordinance.*

For the purposes of these Conditions:

"Hong Kong Resolution Authority Power" means any power which may exist from time to time under the Ordinance relating to the financial institutions, including licensed banks, deposit-taking companies, restricted licence 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 (including, for the avoidance of doubt, powers under Part 4 and Part 5 of the Ordinance) or any other laws, regulations, rules or requirements relating thereto, 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 licence 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 Resolution Authority Power in relation to the Issuer from time to time.

## **8 PAYMENTS**

### **8.1 Payments in Respect of the Capital Securities**

- (i) Payments of principal in respect of Capital Securities shall be made in U.S. dollars against presentation and surrender of the relevant Certificates at the specified office of the Transfer Agent or of the Registrar and in the like manner provided in Condition 8.1(ii) in respect of payments of Distributions.
- (ii) Distributions shall be paid to the person shown on the Register at the close of business on the fifteenth day before the due date for payment thereof (the "Record Date"). Payments of Distributions in respect of each Capital Security shall be made in U.S. dollars by cheque drawn on a bank and mailed to the holder (or to the first named of joint holders) of such Capital Security at its address appearing in the Register. Upon application by the holder to the specified office of the Registrar or the Transfer Agent before the Record Date, such payment of

Distributions may be made by transfer to an account in the relevant currency maintained by the payee with a bank.

- (iii) Securityholders will not be entitled to any Distribution or other payment for any delay after the due date in receiving the amount due on a Capital Security if the due date is not a Payment Business Day, if the Securityholder is late in surrendering or cannot surrender its Certificate (if required to do so) or if a cheque mailed in accordance with Condition 8.1(ii) arrives after the due date for payment.

## **8.2 Payments subject to Fiscal Laws**

Payments will be subject in all cases, to (i) any fiscal or other laws and regulations applicable thereto, but without prejudice to the provisions of Condition 10, in the place of payment, 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 “Internal Revenue Code”) or otherwise imposed pursuant to Sections 1471 through 1474 of the Internal Revenue Code, any regulations or agreements thereunder, any official interpretations thereof, or (without prejudice to the provisions of Condition 10) any law implementing an intergovernmental approach thereto.

## **8.3 Non-Payment Business Days**

If any date for payment in respect of any Capital Security is not a Payment Business Day, the holder shall not be entitled to payment until the next following Payment Business Day nor to any distribution or other sum in respect of such postponed payment. In this Condition 8, “Payment Business Day” means a day (other than a Saturday, a Sunday or a public holiday) on which banks and foreign exchange markets are open for business in the relevant place of presentation (if presentation and/or surrender of such Capital Security is required) in New York City and Hong Kong and where payment is to be made by transfer to an account maintained with a bank in U.S. dollars, on which foreign exchange transactions may be carried on in U.S. dollars in New York City and Hong Kong.

# **9 REDEMPTION AND PURCHASE**

## **9.1 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.

## **9.2 Redemption for tax reasons**

Subject to Condition 9.6, 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 in accordance with Condition 15, 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 21 March 2018; and
- (ii) such obligation will apply on the occasion of the next payment due in respect of the Capital Securities and 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 (if appropriate) with Distributions accrued to (but excluding) the date of redemption, subject to adjustment following the occurrence of a Non-Viability Event in accordance with Condition 6.

### **9.3 Redemption for tax deduction reasons**

Subject to Condition 9.6, 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 in accordance with Condition 15, the Securityholders (which notice shall be irrevocable) following the occurrence of a Tax Deduction Event.

A "Tax Deduction 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 having power to tax 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 21 March 2018; 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 21 March 2018.

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 Event has occurred or will occur and (iii) a copy of the written consent of the Monetary Authority as referred to in Condition 9.6; and the Fiscal Agent shall be entitled to accept the certificate and consent 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 (if appropriate) with Distributions accrued to (but excluding) the date of redemption, subject to adjustment following the occurrence of a Non-Viability Event in accordance with Condition 6.

### **9.4 Redemption of the Capital Securities for regulatory reasons**

Subject to Condition 9.6, 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 in accordance with Condition 15, the Securityholders (which notice shall be irrevocable) following the occurrence of a Capital Event). For the purposes of these Conditions, "Capital Event" occurs if 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 the Laws of Hong Kong), the Banking (Capital) Rules (Cap. 155L of the Laws of Hong Kong), or any successor legislation or regulations made thereunder, or any supervisory guidance 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), 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 Capital 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 Capital Event has or occurred or will occur and (ii) a copy of the written consent of the Monetary Authority as referred to in Condition 9.6; and the Fiscal Agent shall be entitled to accept the certificate and consent 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 (if appropriate) with Distributions accrued to (but excluding) the date of redemption, subject to adjustment following the occurrence of a Non-Viability Event in accordance with Condition 6.

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

Subject to Condition 9.6, 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 (if appropriate) with Distributions accrued to (but excluding) the date of redemption, subject to adjustment following the occurrence of a Non-Viability Event in accordance with Condition 6.

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

#### **9.6 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 12.1), and neither the Issuer nor any of its Controlled Affiliates 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 the Laws 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 9.6 shall not apply for so long as such consent is not required.

Any Capital Securities so purchased in accordance with this Condition 9.6 (which may be in the open market or otherwise and at any price), while held by or on behalf of the Issuer or any such Controlled Affiliate, shall not entitle the holder to vote at any meetings of the Capital Securityholders and shall not be deemed to be outstanding for, among other things, the purposes of calculating quorums at meetings of the Securityholders or for the purposes of Condition 12.1.

All Certificates representing Securityholders purchased by or on behalf of the Issuer shall be surrendered for cancellation to the Transfer Agent or Registrar and upon surrender thereof, all such Capital Securities shall be cancelled forthwith. Any Certificates so surrendered for cancellation may not be reissued or resold and the obligations of the Issuer in respect of any such Capital Securities shall be discharged.

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.

In these Conditions, a “Controlled Affiliate” of the Issuer means any affiliates of the Issuer over which the Issuer exercises control or significant influence (excluding any holding company of the Issuer).

## **10 TAXATION**

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.

## **11 PRESCRIPTION**

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 10) therefor.

## **12 EVENTS OF DEFAULT AND ENFORCEMENT**

### **12.1 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 (if appropriate) Distributions accrued to (but excluding) the date of repayment, subject to adjustment following the occurrence of a Non-Viability Event in accordance with Condition 6, 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.



## **12.2 Enforcement**

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 12.1 above will be available to the Securityholders.

## **13 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.

## **14 AGENTS**

The Fiscal Agent, the Paying Agent, the Registrar, the Transfer Agent and the Calculation Agent shall initially mean the Issuer and its specified office for this purpose is listed in Exhibit D hereto. The Fiscal Agent, the Paying Agent, the Registrar, the Transfer Agent and the Calculation Agent and any Calculation Agent appointed from time to time in respect of any Capital Securities (save in the case of the Issuer) act solely as agents of the Issuer and do not assume any obligation or relationship of agency or trust for or with any Securityholder. The Issuer reserves the right at any time to vary or terminate the appointment of the Paying Agent, any other Paying Agent, any Registrar, any Transfer Agent or any Calculation Agent and to appoint additional or other Paying Agents or Transfer Agents, in each case, provided that the Issuer shall at all times maintain (i) a Fiscal Agent, (ii) a Registrar, (iii) a Transfer Agent, and (iv) a Calculation Agent.

Notice of any such change or any change of any specified office shall promptly be given by the Issuer to the Securityholders.

## **15 NOTICES**

Notices to the Securityholders shall be mailed to them at their respective addresses in the Register and deemed to have been given on the fourth weekday (being a day other than a Saturday or a Sunday) after the date of mailing.

## **16 MEETINGS OF SECURITYHOLDERS AND MODIFICATIONS**

### **16.1 Meetings of Securityholders**

Exhibit C hereto contains provisions for convening meetings of Securityholders to consider any matter affecting their interests, including the sanctioning by Extraordinary Resolution (as defined in Exhibit C hereto) of a modification of any of these Conditions. Such a meeting may be convened by Securityholders holding not less than 10 per cent. in nominal amount of the Capital Securities for the time being outstanding. The quorum for any meeting convened to consider an Extraordinary Resolution (as defined in Exhibit C hereto) shall be 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 held or represented, unless the business of such meeting includes consideration of proposals, inter alia, (i) to change any date scheduled for payment of principal or Distribution in respect of the Capital Securities, to reduce or cancel the amount of principal or Distribution payable on any date in respect of the Capital Securities, or to alter the method of calculating the amount of any payment in respect of the Capital Securities on redemption or the date for any such payment, (ii) to effect the exchange, conversion or substitution of the Capital Securities for, or the conversion of the Capital Securities into, shares, bonds or other obligations or securities of the Issuer or any other person or body corporate formed or to be formed, (iii) to change the currency of payments under the Capital Securities, (iv) to amend any provision of Condition 3.1, Condition 6 or Condition 7 or (v) to modify the provisions concerning the quorum required at any meeting of Securityholders or the majority required to pass the Extraordinary Resolution (as defined in Exhibit C hereto), in which case the necessary quorum shall be one or more persons holding or representing not less than  $66\frac{2}{3}$  per cent., or at any adjourned meeting not less than 25 per cent., in nominal amount of the Capital Securities for the time being outstanding. Any Extraordinary Resolution (as defined in Exhibit C hereto) duly passed shall be binding on all Securityholders (whether or not they were present at the meeting at which such resolution was passed).

## **16.2 Modifications of Exhibit C**

The Issuer shall only permit any modification of, or any waiver or authorisation of any breach or proposed breach of or any failure to comply with, Exhibit C hereto, if to do so could not reasonably be expected to be prejudicial to the interests of the Securityholders or if such modification 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, authorisation or waiver shall be binding on the Securityholders, and such modification, authorisation or waiver shall be notified to the Securityholders as soon as practicable.

## **17 CONTRACTS (RIGHTS OF THIRD PARTIES) ORDINANCE (CAP 623 OF THE LAWS OF HONG KONG)**

No person shall have any right to enforce any term or condition of the Capital Securities under the Contracts (Rights of Third Parties) Ordinance (Cap. 623 of the Laws of Hong Kong).

## **18 GOVERNING LAW**

### **18.1 Governing law**

The Capital Securities are governed by, and shall be construed in accordance with the laws of Hong Kong.

### **18.2 Jurisdiction**

The courts of Hong Kong are to have exclusive jurisdiction to settle any disputes that may arise out of or in connection with any Capital Security and accordingly any legal action or proceedings arising out of or in connection with any Capital Security (a "Proceeding") may be brought in such courts. The Issuer irrevocably submits to the 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 forum.

### **18.3 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.

**EXHIBIT A  
FORM OF TRANSFER**

FOR VALUE RECEIVED the undersigned hereby transfers to

.....  
.....

(PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS OF THE TRANSFEREE, THE TELEPHONE AND FACSIMILE NUMBERS OF THE RELEVANT CONTACT PERSONS FOR SUCH TRANSFEREE AND THE NAMES OF AUTHORISED SIGNATORIES OF SUCH TRANSFEREE)

U.S.\$[●] ([●] U.S. dollars) principal amount of the Capital Securities in respect of which this Certificate (Certificate No.: [●]) is issued, and all rights in respect thereof.

All payments in respect of the Capital Securities hereby transferred are to be made (unless otherwise instructed by the transferee) to the following account:

Name of bank:

U.S.\$ account number:

For the account of:

Dated: .....

Signed: ..... Certifying Signature

Notes:

- (a) A representative of the holder of the Capital Securities should state the capacity in which he signs, e.g. executor.
- (b) The signature of the persons effecting a transfer shall conform to any list of duly authorised specimen signatures supplied by the registered holder or be certified by a notary public or in such other manner as the Issuer may require.
- (c) This form of transfer should be dated as of the date it is deposited with the Issuer.
- (d) Transfers of the Capital Securities are subject to the restrictions set out in Condition 3 and Exhibit B.

**EXHIBIT B**  
**REGULATIONS CONCERNING THE TRANSFER AND REGISTRATION OF CAPITAL**  
**SECURITIES**

- 1 Each Capital Security shall be in the denomination of U.S.\$200,000, with integral multiples of U.S.\$1,000 in excess thereof. Certificates, each evidencing entitlement to one or more Capital Security, shall be issued in accordance with the Conditions.
- 2 The Capital Securities are transferable by execution of the form of transfer on each Certificate endorsed under the hand of the transferor or, where the transferor is a corporation, under its common seal or under the hand of a director or authorised signatory of the Issuer in writing. In this Exhibit “**transferor**” shall where the context permits or requires include joint transferors and be construed accordingly.
- 3 The Certificate issued in respect of the Capital Securities to be transferred must be delivered for registration to the specified office of the Issuer (currently 33/F, ICBC Tower, 3 Garden Road, Central, Hong Kong) accompanied by such other evidence (including certificates and/or legal opinions) as the Issuer may reasonably require to prove the title of the transferor or his right to transfer the Capital Security and his identity and, if the form of transfer is executed by some other person on his behalf or in the case of the execution of a form of transfer on behalf of a corporation by its officers, the authority of that person or those persons to do so. The signature of the person effecting a transfer of a Capital Security shall conform to any list of duly authorised specimen signatures supplied by the registered holder or be certified by a recognised bank, notary public or in such other manner as the Issuer may require.
- 4 The executors or administrators of a deceased holder of Capital Securities (not being one of several joint holders) and, in the case of the death of one or more of joint holders, the survivor or survivors of such joint holders, shall be the only persons recognised by the Issuer as having any title to such Capital Securities.
- 5 Any person becoming entitled to Capital Securities in consequence of the death or bankruptcy of the holder of such Capital Securities may, upon producing such evidence that he holds the position in respect of which he proposes to act under this paragraph or of his title as the Issuer shall require (including certificates and/or legal opinions), be registered himself as the holder of such Capital Securities or, subject to the preceding paragraphs as to transfer, may transfer such Capital Securities. The Issuer may retain any amount payable upon the Capital Securities to which any person is so entitled until such person shall be so registered or shall duly transfer the Capital Securities.
- 6 Unless otherwise requested by him and agreed by the Issuer, a holder of Capital Securities shall be entitled to receive only one Certificate in respect of his holding.
- 7 The joint holders of a Capital Security shall be entitled to one Certificate only in respect of their joint holding which shall, except where they otherwise direct, be delivered to the joint holder whose name appears first in the Register in respect of the joint holding.
- 8 The Issuer shall make no charge to the holders for the registration of any holding of Capital Securities or any transfer of Capital Securities or for the issue of any Certificates or for the delivery of Certificates at the principal place of business in Hong Kong of the Issuer to whom the request for registration, transfer or delivery was delivered or by uninsured post to the address specified by the holder. If any holder entitled to receive a Certificate wishes to have it delivered to him otherwise than at the principal place of business in Hong Kong of the Issuer, such delivery shall be made upon his written request to the Issuer, at his risk and (except where sent by uninsured post to the address specified by the holder) at his expense.
- 9 The Issuer will within five business days of a request to effect a transfer of a Capital Security deliver at its principal place of business in Hong Kong to the transferee or despatch by mail (at the risk of the transferee) to such address as the transferee may request, a new Certificate in respect of the Capital Security or Capital Securities transferred. In the case of a transfer, conversion or redemption of fewer than all the Capital Securities in respect of which a Certificate is issued, a new Certificate in respect of the Capital Securities not transferred, converted or redeemed will be so delivered to the holder of the Capital Securities to its address appearing on the register of holders of Capital Securities.

- 10 Notwithstanding any other provisions of this Certificate, the Issuer shall register the transfer of any Capital Security only upon presentation of an executed and duly completed form of transfer substantially in the form set forth in Exhibit A together with any other documents thereby required.
- 11 The Issuer may promulgate any other regulations that it may deem reasonably necessary to facilitate the registration and transfer of the Capital Securities.



**EXHIBIT C**  
**PROVISIONS GOVERNING SECURITYHOLDER MEETINGS**

**(A) Definitions**

In this Exhibit:

**“Extraordinary Resolution”** means a resolution passed at a meeting duly convened and held in accordance with this Exhibit by a majority of at least  $66\frac{2}{3}$  per cent. of the votes cast;

**“Majority Securityholders”** means, at any time, any one or more holders holding Capital Securities or being proxies or representatives in respect of Capital Securities and representing, in the aggregate, more than 50 per cent. of the aggregate principal amount of all Capital Securities then outstanding;

**(B) Poll**

On a poll each Securityholder, proxy or representative will have a vote in respect of each Capital Security held or for which it is a proxy or representative. All votes will be conducted by poll.

**(C) Conduct and Quorum**

Any meeting of the Securityholders shall (subject to the provisions of this Exhibit and Condition 16) be convened by Securityholders holding not less than 10 per cent. in nominal amount of the Capital Securities for the time being outstanding, conducted and held in all respects as near as possible in the same way as shall be provided by the bye-laws for the time being of the Issuer with regard to general meetings of the Issuer provided that no member of the Issuer not being a director or officer of the Issuer shall be entitled to notice thereof or to attend thereat unless he is also a Securityholder. The quorum at any such meeting convened to consider an Extraordinary Resolution one or more persons holding or representing a clear majority 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 held or represented, unless the business of such meeting includes consideration of proposals, inter alia, (i) to change any date scheduled for payment of principal or Distribution in respect of the Capital Securities, to reduce or cancel the amount of principal or Distribution payable on any date in respect of the Capital Securities, or to alter the method of calculating the amount of any payment in respect of the Capital Securities on redemption or the date for any such payment, (ii) to effect the exchange, conversion or substitution of the Capital Securities for, or the conversion of the Capital Securities into, shares, bonds or other obligations or securities of the Issuer or any other person or body corporate formed or to be formed, (iii) to change the currency of payments under the Capital Securities, (iv) to amend any provision of Condition 3.1, Condition 6 or Condition 7 or (v) to modify the provisions concerning the quorum required at any meeting of Securityholders or the majority required to pass the Extraordinary Resolution, in which case the necessary quorum shall be one or more persons holding or representing not less than  $66\frac{2}{3}$  per cent., or at any adjourned meeting not less than 25 per cent., in nominal amount of the Capital Securities for the time being outstanding. Any Extraordinary Resolution duly passed shall be binding on all Securityholders (whether or not they were present at the meeting at which such resolution was passed). In the event of any conflict between the bye-laws of the Issuer for the time being and Condition 16 and this Exhibit, the Conditions and this Exhibit shall prevail.

**(D) Proxies**

Any Securityholder shall be permitted to appoint a proxy to represent him at any Securityholders' meeting held in accordance with this Instrument. A proxy need not be a Securityholder and need not be a member of the Issuer. Any Securityholder wishing to appoint a proxy must deliver to the principal place of business of the Issuer in Hong Kong a notice in writing signed by the Securityholder or, in the case of a corporation, executed under its common seal or signed on its behalf by an attorney or a duly authorised officer of the corporation stating that the Securityholder desires to appoint a proxy to represent the Securityholder at the meeting. The notice shall state the name of the proxy and the notice will only be valid if delivered to the principal place of business in Hong Kong of the Issuer at least 48 hours prior to the time appointed for the commencement of the meeting. A validly appointed proxy shall have the right to vote on a resolution or act on his or its behalf in connection with any meeting or proposed meeting. A holder of a Capital Security which is a corporation may by delivering to the principal place of the Issuer in Hong Kong not later than 48 hours before the time fixed for any meeting a resolution of its directors or other governing body in Hong Kong authorise any person to act as its representative (a **“representative”**) in connection with any meeting or proposed meeting of Securityholders.

A proxy or representative so appointed shall so long as such appointment remains in force be deemed, for all purposes in connection with any meeting or proposed meeting of Securityholders specified in such appointment, to be the holder of the Capital Securities to which such appointment relates and the holder of the Capital Security shall be deemed for such purposes not to be the holder.

**(E) Adjournments**

If within a quarter of an hour after the time appointed for any meeting of Securityholders a quorum as set out in paragraph (B) above is not present the meeting shall stand adjourned to such day (not being less than fourteen (14) or more than twenty-eight (28) days after the date of the meeting from which such adjournment takes place) and time and place as the chairman of the meeting may determine and at the adjourned meeting the Securityholders present (whatever the amount held or represented by them) shall form a quorum. Notice of an adjourned meeting shall be given in like manner as for the original meeting and such notice shall state that the Securityholders present at such meeting whatever their number or the Capital Securities held or represented by them will constitute a quorum for all purposes.

The chairman of the meeting may with the consent of (and shall if directed by) a meeting adjourn the meeting from time to time and from place to place but no business shall be transacted at an adjourned meeting which may not lawfully have been transacted at the meeting from which the adjournment took place.

The chairman shall be selected by the Issuer, failing whom the Majority Securityholders shall be entitled to elect a chairman (who need not be a Securityholder).

The following shall be entitled to attend and vote at any meeting of Securityholders:

- (i) Securityholders, proxies and representatives.

The following shall be entitled to attend any meeting of the Securityholders:

- (i) Representatives of the Issuer;
- (ii) The Issuer's legal and financial advisers.

**(F) Written Resolutions**

A resolution in writing signed by or on behalf of 90 per cent. of the aggregate principal amount of the Securityholders who for the time being are entitled to receive notice of a meeting in accordance with these provisions shall for all purposes be as valid as a resolution passed at a meeting of Securityholders convened and held in accordance with these provisions. Such resolution in writing may be in one document or several documents in like form each signed by or on behalf of one or more of the Securityholders.

**EXHIBIT D**  
**AGENTS**

**FISCAL AGENT, REGISTRAR, TRANSFER AGENT AND CALCULATION AGENT**

Industrial and Commercial Bank of China (Asia) Limited  
33/F, ICBC Tower, 3 Garden Road, Hong Kong