



上海商業銀行  
SHANGHAI COMMERCIAL BANK

TERMS AND CONDITIONS OF US\$300,000,000  
TIER 2 SUBORDINATED NOTES DUE 2029



## TERMS AND CONDITIONS OF THE NOTES

*The following is the text of the Terms and Conditions of the Notes (subject to completion and modification and excluding italicised text) which will be endorsed on each definitive certificate evidencing the Notes.*

The U.S.\$ 300,000,000 5.00 per cent. Tier 2 Subordinated Notes due 2029 (each a "**Note**" and together, the "**Notes**") of Shanghai Commercial Bank Limited (the "**Issuer**") are constituted by, and have the benefit of, a trust deed (such trust deed as amended and/or supplemented and/or restated from time to time, the "**Trust Deed**") dated 17 January 2019 (the "**Issue Date**") and made between the Issuer and The Hongkong and Shanghai Banking Corporation Limited (the "**Trustee**", which expression shall include any successor as Trustee) as trustee for the Noteholders (as defined below). These terms and conditions (the "**Conditions**") include summaries of, and are subject to, the detailed provisions of the Trust Deed, which includes the form of the Notes. The Noteholders (as defined below) are entitled to the benefit of, and are bound by, and are deemed to have notice of, all of the provisions of the Trust Deed, and are deemed to have notice of those provisions applicable to them of the agency agreement (such agency agreement as amended and/or supplemented and/or restated from time to time, the "**Agency Agreement**") dated 17 January 2019 and made between the Issuer, The Hongkong and Shanghai Banking Corporation Limited as principal paying agent (the "**Principal Paying Agent**", which expression shall include any successor thereto) and as transfer agent (the "**Transfer Agent**", which expression shall include any successor thereto), The Hongkong and Shanghai Banking Corporation Limited as registrar (the "**Registrar**", which expression shall include any successor thereto), the other paying agents and transfer agents named therein and the Trustee. References to the "**Paying Agents**" include the Principal Paying Agent and references to the "**Transfer Agents**" include the Transfer Agent. References to the "**Principal Paying Agent**", the "**Registrar**", the "**Transfer Agent**" and the "**Agents**" below are to the principal paying agent, the registrar, the transfer agent and the agents for the time being for the Notes. Copies of the Trust Deed and the Agency Agreement are available for inspection following prior written request and satisfactory proof of holding at all reasonable times during usual business hours at the principal office of the Trustee (being at the Issue Date at Level 30, HSBC Main Building, 1 Queen's Road Central, Hong Kong) and at the specified office of the Principal Paying Agent.

All capitalised terms that are not defined in these Conditions will have the meanings given to them in the Trust Deed.

### 1. **Form, Denomination and Title**

- (a) *Form and Denomination:* The Notes are issued in registered form in the denomination of U.S.\$250,000 and integral multiples of U.S.\$1,000 in excess thereof (referred to as the "**principal amount**" of a Note). The principal amount of a Note is subject to adjustments following the occurrence of a Non-Viability Event (as defined in Condition 5 (*Non-Viability Loss Absorption*)) in accordance with Condition 5 (*Non-Viability Loss Absorption*) and references in these Conditions to the "principal amount" of a Note shall mean the principal amount of a Note as so adjusted. The Notes are represented by registered certificates ("**Certificates**") and each Certificate shall represent the entire holding of Notes by the same holder. Each Certificate will be numbered serially with an identifying number which will be recorded on the relevant Certificate and in the register of Noteholders which the Issuer will procure to be kept by the Registrar and at the office of the Issuer.

*Upon issue, the Notes will be represented by a Global Certificate (the "**Global Certificate**") deposited with a common depositary for Euroclear Bank SA/NV ("**Euroclear**") and Clearstream Banking S.A. ("**Clearstream**"). The Conditions are modified by certain provisions contained in the Global Certificate. The Notes are not issuable in bearer form.*

- (b) *Title:* Title to the Notes passes only by registration in the register that the Issuer shall procure to be kept by the Registrar in accordance with the provisions of the Agency Agreement (the "**Register**"). Except as ordered by a court of competent jurisdiction or as required by law, the holder (as defined below) of any Note shall be deemed to be and may be treated as its absolute owner for all purposes (whether or not it is overdue and regardless of any notice of ownership, trust or an interest in it, any writing on it (or on the Certificate representing it) or its theft or loss (or that of the related Certificate)) and no person shall be liable for so treating the Noteholder.

In these Conditions, reference to "**Noteholders**" or "**holders**" in relation to any Notes shall mean the persons in whose name the Notes are registered in the Register (or in the case of a joint holding, the first name thereof).

## 2. Transfers of the Notes

- (a) *Transfers of Interests in Notes:* One or more Notes may be transferred upon the surrender (at the specified office of the Registrar or any Transfer Agent) of the Certificate representing such Notes to be transferred, together with the form of transfer 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 such Transfer Agent may 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 Notes 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 Notes and entries on the Register will be made subject to the detailed regulations concerning transfers of Notes scheduled to the Agency Agreement. The regulations may be changed by the Issuer, with the prior written approval of the Registrar and the Trustee, and by the Registrar, with the prior written approval of the Trustee. A copy of the current regulations will be made available (free of charge to the Noteholders and at the Issuer's expense) by the Registrar to any Noteholder following prior written request and satisfactory proof of holding.
- (b) *Delivery of New Certificates:* Each new Certificate to be issued pursuant to Condition 2(a) (*Transfers of Interests in Notes*) shall be available for delivery within seven business days of receipt of a duly completed form of transfer and surrender of the existing Certificate for exchange. Delivery of the 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 Registrar or, as the case may be, such Transfer Agent the costs of such other method of delivery and/or such insurance as it may specify. In this Condition 2(b), "**business day**" means a day, other than a Saturday, Sunday or public holiday, on which banks are open for business in the place of the specified office of the Registrar or the relevant Transfer Agent (as the case may be).
- (c) *Transfers Free of Charge:* Registration of a transfer of Notes and issuance of new Certificates shall be effected without charge by or on behalf of the Issuer or any Agent, but upon (i) payment (or the giving of such indemnity and/or security and/or pre-funding as the Issuer or any Agent may require) of any tax or other governmental charges that may be imposed in relation to such transfer; (ii) the Registrar or the relevant Transfer Agent being satisfied in its absolute discretion with the documents of title or identity of the person making the application; and (iii) the relevant Agent being satisfied that the regulations concerning transfer of Notes have been complied with.
- (d) *Closed Periods:* No Noteholder may require the transfer of a Note to be registered (i) during the period of 15 days prior to (and including) the due date of any payment of principal or Interest in respect of the Notes or (ii) during the period commencing on the date of a Non-Viability Event Notice (as defined in Condition 5 (*Non-Viability Loss Absorption*) below) and ending on (and including) the close of business in Hong Kong on the effective date of the related Write-off (as defined below).

*So long as Notes are represented by a Global Certificate and such Global Certificate is held on behalf of Euroclear or Clearstream or any other clearing system, no holder may require the transfer of a Note to be registered during the period of five Clearing System Business Days (or such other period as the relevant clearing systems shall determine in accordance with their rules and procedures) commencing on the Clearing System Business Day immediately following the date on which the Non-Viability Event Notice has been received by the relevant clearing systems (the*

*"Suspension Period"). "Clearing System Business Day" means a weekday (Monday to Friday, inclusive except 25 December and 1 January).*

- (e) *Exercise of Options or Partial Write-off in Respect of Notes in Definitive Form:* In the case of an exercise of the Issuer's option in respect of, or a partial Write-off of (as the case may be), Notes, and where a holding of Notes is represented by a single Certificate, a new Certificate shall be issued to the relevant Noteholder to reflect the exercise of such option, or such partial Write-off, or in respect of the balance of the holding not redeemed or Written-off (as the case may be). New Certificates shall only be issued against surrender of the existing Certificates to the Registrar or the Transfer Agent.

### 3. **Status, Qualification and Subordination of the Notes**

- (a) *Status of the Notes:* The Notes constitute direct, unsecured and subordinated obligations of the Issuer and shall at all times rank *pari passu* and without any preference among themselves. The rights and claims of the Noteholders are subordinated in the manner described below.
- (b) *Qualification of the Notes:* The Notes are intended to qualify as Tier 2 capital under the Banking (Capital) Rules (Cap.155L) (as amended).
- (c) *Subordination:* Subject to the insolvency laws of Hong Kong and other applicable laws, in the event of a Winding-Up (as defined below) of the Issuer (other than pursuant to a Permitted Reorganisation (as defined below)), the rights of the Noteholders to payment of principal and interest on the Notes, and any other obligations in respect of the Notes, shall rank (i) subordinate and junior in right of payment to, and of all claims of, (a) all unsubordinated creditors of the Issuer (including its depositors), and (b) all other Subordinated Creditors of the Issuer whose claims are stated to rank senior to the Notes or rank senior to the Notes by operation of law or contract; (ii) *pari passu* in right of payment to and of all claims of the holders of Parity Obligations; and (iii) senior in right of payment to, and of all claims of, (a) the holders of Junior Obligations, and (b) holders of Tier 1 Capital Instruments (as defined below) of the Issuer, in each case in the manner provided in the Trust Deed.

In the event of a Winding-Up that requires the Noteholders or the Trustee to provide evidence of their claim to principal or interest under the Notes, such claims of the Noteholders will only be satisfied after all senior ranking obligations of the Issuer have been satisfied in whole.

For the purposes of these Conditions:

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

**"Capital Regulations"** means capital regulations from time to time applicable to the regulatory capital of Authorized Institutions incorporated in Hong Kong as published by the Monetary Authority.

**"Group"** means the Issuer and its Subsidiaries.

**"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 shares) issued or guaranteed by the Issuer that ranks or is expressed to rank junior to the Notes by operation of law or contract.

**"Monetary Authority"** means the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance (Cap 66.) of Hong Kong.

**"Parity Obligation"** means any instrument or other obligation issued or entered into by the Issuer that constitutes or qualifies as a Tier 2 Capital Instrument (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 Notes by operation of law or contract, which excludes any Junior Obligations of the Issuer.

"**Permitted Reorganisation**" means a solvent reconstruction, amalgamation, reorganisation, merger or consolidation whereby all or substantially all the business, undertaking or assets of the Issuer are transferred to a successor entity which assumes all the obligations of the Issuer under the Notes.

"**Shares**" means the ordinary share capital of the Issuer.

"**Subordinated Creditors**" means all creditors the indebtedness of 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 by operation of law or contract *pari passu* with, or junior to, the claims of the Noteholders. For this purpose, indebtedness shall include all liabilities, whether actual or contingent.

"**Subsidiary**" of the Issuer means any entity whose financial statements at any time are required by law or in accordance with generally accepted accounting principles to be fully consolidated with those of the Issuer.

"**Tier 1 Capital Instruments**" means any instrument issued by the Issuer that constitutes Tier 1 capital of (x) the Issuer, on an unconsolidated basis, or (y) the Group, on a consolidated basis, pursuant to the Capital Regulations. For the avoidance of doubt, Tier 1 Capital Instruments does not include Shares.

"**Tier 2 Capital Instruments**" means any instrument issued by the Issuer that constitutes Tier 2 capital of (x) the Issuer, on an unconsolidated basis, or (y) the Group, on a consolidated basis, pursuant to the Capital Regulations.

"**Winding-Up**" means, with respect to the Issuer, a final and effective order or resolution by a competent authority in the jurisdiction of the Issuer for the bankruptcy, winding up, liquidation, administrative receivership, or similar proceeding in respect of the Issuer.

- (d) *Set-off*: Subject to applicable law, no Noteholder 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 Notes and each Noteholder shall, by virtue of being the Noteholder of any Note be deemed to have waived all such rights of such set-off, counter-claim or retention.

In the event that any Noteholder 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 Notes, other than in accordance with this Condition 3(c), such Noteholder 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 interest and each Noteholder, by virtue of becoming a Noteholder of any Note, 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. **Interest**

- (a) *Interest*: The Notes bear interest on their principal amount (subject to adjustments following the occurrence of a Non-Viability Event in accordance with Condition 5 (*Non-Viability Loss Absorption*)) from, and including, the Issue Date at the applicable Interest Rate, payable semi-annually in arrear on 17 January and 17 July in each year (each a "**Interest Payment Date**") in equal instalments.

Unless otherwise provided in these Conditions, each Note will cease to confer the right to receive any interest from the due date for redemption unless, upon surrender of the Certificate representing such Note, payment of principal is improperly withheld or refused. In such event, interest 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 Note have been paid; and (b) seven days after the date on which the full amount of moneys payable in respect of such Note has been received by the Principal Paying Agent and notice to that effect has been given to the Noteholders in accordance with Condition 13 (*Notice*).

- (b) *Interest Rate*: The rate of interest (the "**Interest Rate**") applicable to the Notes shall be:
- (i) in respect of the period from, and including, the Issue Date to, but excluding, 17 January 2024 (the "**Reset Date**"), 5.00 per cent. per annum; and
  - (ii) in respect of the period from, and including, the Reset Date to, but excluding, 17 January 2029 (the "**Maturity Date**"), the Reset Interest Rate.

For the purposes of these Conditions:

"**Calculation Agent**" means the Principal Paying Agent and shall include any successor as calculation agent.

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

"**Calculation Date**" means the third Calculation Business Day immediately preceding the Reset Date.

"**Comparable Treasury Issue**" means the U.S. Treasury security selected and appointed by a financial institution of international repute (which is appointed by the Issuer and notified by the Issuer to the Calculation Agent and the Trustee) 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 the second Calculation Business Day immediately preceding the Reset Date, the average of three Reference Treasury Dealer Quotations for the second Calculation Business Day immediately preceding the Reset Date.

"**Reference Treasury Dealer**" means each of the three nationally recognised investment banking firms selected and appointed by the Issuer (at its own cost) 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 Issuer by such Reference Treasury Dealer at 5.00 p.m. (New York City time), on the second Calculation Business Day immediately preceding the Reset Date and then notified in writing by the Issuer to the Calculation Agent and the Trustee.

"**Reset Interest Rate**" means a fixed rate per annum (expressed as a percentage) equal to the aggregate of (a) the then-prevailing U.S. Treasury Rate (as determined as set out below) and (b) the Spread.

"**Spread**" means 2.500 per cent. per annum, which is calculated as (a) 5.041 per cent. per annum (being the yield of the Notes as at 10 January 2019, minus (b) 2.541 per cent.

*For information purposes only, part (b) of the above definition is the rate expressed as a percentage per annum equal to the yield on U.S. Treasury securities having a maturity of five years that were utilised at the time of pricing, in accordance with customary financial practice, in pricing new issues of corporate debt securities with a maturity of five years as on 10 January 2019.*

"**U.S. Treasury Rate**" means the rate in percentage per annum as notified by the Calculation Agent to the Issuer and the Trustee equal to the yield on U.S. Treasury securities having a maturity of five years as set forth in H.15(519) (at the website: <http://www.federalreserve.gov/releases/h15/current/default.htm> on the Issue Date) under the caption "Treasury constant maturities", as displayed on Reuters page "FRBCMT" (or any successor page or service displaying yields on U.S. Treasury securities as agreed between the Issuer and the Calculation Agent), at 5.00 p.m. (Hong Kong time) on the Calculation Date.

If such page (or any successor page or service) does not display the relevant yield at 5.00 p.m. (New York time) on the Calculation Date, "U.S. Treasury Rate" shall mean the rate in percentage 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 second Calculation Business Day immediately preceding the Reset Date.

If there is no Comparable Treasury Price on the second Calculation Business Day immediately preceding the Reset Date for whatever reason, "**U.S. Treasury Rate**" means the rate in per cent. per annum as notified by the Calculation Agent to the Issuer and the Trustee equal to the yield on U.S. Treasury securities having a maturity of five years as set forth in H.15(519) under the caption "Treasury constant maturities", as was displayed on Reuters page "FRBCMT" (or any successor page or service displaying yields on U.S. Treasury securities as agreed between the Issuer and the Calculation Agent), at 5.00 p.m. (New York time) on the last available date preceding the Calculation Date on which such rate was displayed on Reuters page "FRBCMT" (or any successor page or service displaying yields on U.S. Treasury securities as agreed between the Issuer and the Calculation Agent).

(c) *Calculation of Interest and Reset Interest Rate:* The Calculation Agent will calculate the amount of interest in respect of any period by applying the applicable Interest Rate to the Calculation Amount. If interest is required to be paid in respect of a Note on any date other than the Interest Payment Date, it shall be calculated by applying the applicable Interest 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 Note divided by the Calculation Amount, where:

(i) "**Calculation Amount**" means U.S.\$1,000 subject to adjustments following occurrence of a Non-Viability Event; and

(ii) "**Day Count Fraction**" means, in respect of any period, the number of days in the relevant period divided by 360 calculated on a formula basis as follows:

$$\text{Day Count Fraction} = \frac{[360 \times (Y_2 - Y_1)] + [30 \times (M_2 - M_1)] + (D_2 - D_1)}{360}$$

where:

"Y<sub>1</sub>" is the year, expressed as a number, in which the first day of the Calculation Period falls;

"Y<sub>2</sub>" is the year, expressed as a number, in which the day immediately following the last day included in the Calculation Period falls;

"M<sub>1</sub>" is the calendar month, expressed as a number, in which the first day of the Calculation Period falls;

"M<sub>2</sub>" is the calendar month, expressed as a number, in which the day immediately following the last day included in the Calculation Period falls;

"D<sub>1</sub>" is the first calendar day, expressed as a number, of the Calculation Period, unless (i) that day is the last day of February or (ii) such number would be 31, in which case D<sub>1</sub> will be 30; and

"D<sub>2</sub>" is the calendar day, expressed as a number, immediately following the last day included in the Calculation Period, unless (i) that day is the last day of February but not the Maturity Date or (ii) such number would be 31, in which case D<sub>2</sub> will be 30.

The Calculation Agent will, prior to the Reset Date, calculate the Reset Interest Rate payable in respect of each Note. The Calculation Agent will cause the Interest Rate and the Reset Interest Rate determined by it to be promptly notified to the Issuer and the Principal Paying Agent.

All notifications, opinions, determinations, certificates, calculations, quotations and decisions given, expressed, made or obtained for the purposes of this Condition 4(a) by the Calculation Agent will (in the absence of manifest error) be binding on the Issuer, the Principal Paying Agent and the Noteholders and 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 unless caused directly by the fraud, gross negligence or wilful misconduct of the Calculation Agent.

- (d) *Publication of Reset Interest Rate:* The Calculation Agent shall cause notice of the Reset Interest Rate to be notified to the Noteholders as soon as practicable in accordance with Condition 13 (*Notice*) 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 Reset Interest 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(a), 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. **Non-Viability Loss Absorption**

*The ability to operationally effect any Write-off of any Notes under this Condition 5 with respect to the clearing and/or settlement of any Notes in or through the relevant clearing system(s) is subject to the availability of procedures to effect any such Write-off in such clearing system(s). However, any Write-off of any Notes with respect to the Issuer under this Condition 5 will be effective upon the date that the Issuer specifies in the Non-Viability Event Notice notwithstanding any inability to operationally effect any such Write-off in the relevant clearing system(s).*

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 Noteholders) reduce the then principal amount of, and cancel any accrued but unpaid interest in respect of, each Note (in each case in whole or in part) by an amount equal to the Non-Viability Event Write-off Amount per Note (such reduction and cancellation, and the reduction and cancellation or conversion of any other Subordinated Capital Instruments 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 the notice of a Non-Viability Event, the Issuer shall procure unless otherwise directed by the Monetary Authority that (i) a similar notice be given in respect of other Subordinated Capital Instruments in accordance with their terms and (ii) concurrently and rateably with the Write-off of the Notes, the aggregate principal amount of such other Parity Capital Instruments is subject to a Write-off on a pro rata basis with the Notes.



Any Write-off pursuant to this provision will not constitute an Event of Default under the Notes.

Any Note may be subject to one or more Write-offs in part (as the case may be), except where such Note has been Written-off in its entirety. Any references in these Conditions to principal in respect of the Notes shall thereafter refer to the principal amount of the Notes reduced by any applicable Write-off(s).

Once the principal amount of, and any accrued but unpaid interest under, the Notes 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 Noteholder may exercise, claim or plead any right to any amount that has been Written-off, and each Noteholder shall, by virtue of his holding of any Notes, be deemed to have waived all such rights to such amount that has been Written-off.

Each Noteholder shall be deemed to have authorised, ratified, directed (in the case of the Trustee only) and consented to the Trustee and the Agents to take any and all necessary action to give effect to any Write-off following the occurrence of the Non-Viability Event.

The Trustee and the Agents shall not be: (a) responsible or liable to any Noteholder for monitoring or determining whether a Non-Viability Event has occurred or not, (b) responsible for verifying or calculating any amount in connection with a Non-Viability Event or for any Write-off of Notes made pursuant to the Issuer's directions, (c) responsible for preparing any Non-Viability Event Notice, (d) liable to the Noteholders or to any other person or the clearing systems (or its participants, members, broker-dealers or any other third parties) with respect to the notification and/or implementation of any Non-Viability Event by any of them in respect of such Notes.

*The Trustee and the Agents have no responsibility for nor liability with respect to actions taken or not taken by the clearing systems or its participants or members or any broker — dealers with respect to the notification or implementation of the Write-off, nor any application of funds or delivery of notices prior to a Write-off, or with respect to the return of any amount that was paid to any Noteholder following a Non-Viability Event in excess of the amount that should have been paid to such Noteholder.*

For the purposes of this Condition 5:

**"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 Noteholders, in accordance with Condition 13 (*Notice*), and to the Trustee and 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 Note and (ii) each other Subordinated Capital Instrument in accordance with its terms.

*Following the receipt of a Non-Viability Event Notice by Euroclear and/or Clearstream and the commencement of the Suspension Period, Euroclear and/or Clearstream shall suspend all clearance and settlement of the Notes. As a result, Noteholders will not be able to settle the transfer of any Notes from the commencement of the Suspension Period, and any sale or other transfer of the Notes that a Noteholder may have initiated prior to the commencement of the Suspension Period that is scheduled to settle during the Suspension Period will be rejected by Euroclear and/or Clearstream and will not be settled within*

*Euroclear and/or Clearstream. See "Investment Considerations — Considerations Relating to the Notes — Transfers scheduled to settle through Euroclear and Clearstream (the "ICSDs") are expected to be rejected if the scheduled settlement is after any suspension by the ICSDs of clearance and settlement of the Notes in connection with a Non-Viability Event Notice or the exercise of the Hong Kong Resolution Authority Power. Furthermore, because of time zone differences and the delay between the time when a Non-Viability Event occurs or the Hong Kong Resolution Authority Power is exercised and when the ICSDs receive and process the Non-Viability Event Notice or the notice that the Hong Kong Resolution Authority Power has been exercised, it is possible that transfers may either (i) fail to settle through the ICSDs even though such transfers were initiated prior to the Non-Viability Event or the relevant cut-off time specified in the Hong Kong Resolution Authority Power Instrument or (ii) are settled through the ICSDs even though such transfers were initiated after the Non-Viability Event or the relevant cut-off time specified in the Hong Kong Resolution Authority Power Instrument".*

**"Non-Viability Event Write-off Amount"** means the amount of interest and/or principal 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, (a) the full amount of the Notes 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 (b) 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 Note will be calculated based on a percentage of the principal amount of that Note.

**"Parity Capital Instrument"** means any Parity Obligation which contains 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.

**"Subordinated Capital Instrument"** means any Junior Obligation or Parity Obligation which contains 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.

*If a Non-Viability Event Notice has been given in respect of the Notes in accordance with this Condition 5, transfers of the Notes shall not be permitted during the Suspension Period (as defined in Condition 2(d) (Closed Periods)). From the date on which a Non-Viability Event Notice in respect of the Notes in accordance with this Condition 5 is provided by the Issuer to the end of the Suspension Period, the Registrar shall not register any attempted transfer of any Notes. As a result, such an attempted transfer will not be effective.*

## 6. **Hong Kong Resolution Authority Power**

Notwithstanding any other term of the Notes, including without limitation Condition 5 (*Non-Viability Loss Absorption*), or any other agreement or arrangement, each Noteholder and the Trustee shall be subject, and shall be deemed to agree, be bound by and acknowledge that they are each subject, to having the Notes being written off, cancelled, converted or modified, or to having the form of the Notes 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 interest on, the Notes;
- (b) the conversion of all or a part of the principal amount of, or interest on, the Notes 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 Notes; and

- (c) the amendment or alteration of the maturity of the Notes or amendment or alteration of the amount of interest payable on the Notes, or the date on which the interest becomes 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 6, references to principal and interest shall include payments of principal and interest 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 Noteholders and the Trustee under the Notes 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 Notes or payment of interest on the Notes 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 Notes, the Issuer shall provide a written notice as soon as practicable regarding such exercise of the Hong Kong Resolution Authority Power to the Noteholders in accordance with Condition 13 (*Notice*) and to the Trustee in writing.

Neither the reduction or cancellation, in part or in full, of the principal amount of, or interest on the Notes, 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 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 Notes shall constitute an Event of Default under Condition 11(a) (*Events of Default and Winding-up Proceedings*).

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

For the purposes of this Condition 6:

**"Hong Kong Resolution Authority Power"** means any power which may exist from time to time under the Ordinance relating to 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.

*See "Investment Considerations — Considerations Relating to the Notes — The operation of the resolution regime in Hong Kong may override the contractual terms of the Notes".*

## 7. Payments

(a) *Payments in Respect of the Notes:*

- (i) Payments of principal in respect of Notes shall be made against presentation and surrender of the relevant Certificates at the specified office of a Paying Agent and in the manner provided in Condition 7(a)(ii) (*Payments in Respect of the Notes*).
- (ii) Interest 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 interest in respect of each Note 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 Note 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 interest may be made by transfer to an account in the relevant currency maintained by the payee with a bank.

*So long as the Global Certificate is held on behalf of Euroclear and Clearstream or any other clearing system, each payment in respect of the Global Certificate will be made to the person shown as the holder in the Register at the close of business of the relevant clearing system on the Clearing System Business Day before the due date for such payments.*

- (iii) Noteholders will not be entitled to any interest or other payment for any delay after the due date in receiving the amount due on a Note if the due date is not a business day, if the Noteholder is late in surrendering or cannot surrender its Certificate (if required to do so) or if a cheque mailed in accordance with Condition 7(a)(ii) (*Payment in Respect of the Notes*) arrives after the due date for payment.

- (b) *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 9 (*Taxation*), 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 "**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 (*Taxation*)) any law implementing an intergovernmental approach thereto.

- (c) *Appointment of Agents:* The Principal Paying Agent, the Registrar, the Transfer Agent and the Calculation Agent initially appointed by the Issuer and their respective specified offices are listed below. The Principal Paying Agent, the Registrar, the Transfer Agent and the Calculation Agent appointed under the Agency Agreement act solely as agents of the Issuer and do not assume any obligation or relationship of agency or trust for or with any Noteholder. The Issuer reserves the right at any time with the prior written approval of the Trustee to vary or terminate the appointment of the Principal Paying Agent, any other Paying Agent, the Registrar, any Transfer Agent or the Calculation Agent and to appoint additional or other Paying Agents or Transfer Agents or Calculation Agents, in each case in accordance with the Agency Agreement, provided that the Issuer shall at all times maintain (i) a Principal Paying Agent, (ii) a Registrar, (iii) a Transfer Agent, (iv) one or more Calculation Agent(s), and (v) such other agents as may be required by any other stock exchange on which the Notes may be listed, in each case, as approved in writing by the Trustee.

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

- (d) *Non-Business Days:* If any date for payment in respect of any Note is not a business day, the holder shall not be entitled to payment until the next following business day nor to any interest or other sum in respect of such postponed payment. In this Condition 7, "**business day**" means a day (other

than a Saturday or a Sunday) on which banks and foreign exchange markets are open for business in the relevant place of presentation (if presentation and/or surrender of such Note 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.

## 8. Redemption and Purchase

- (a) *Redemption at Maturity*: Unless previously redeemed or purchased and cancelled as provided below, the Issuer will redeem the Notes at their principal amount on the Maturity Date. The Notes may not be redeemed at the option of the Issuer other than in accordance with these Conditions.
- (b) *Redemption for Tax Reasons*: Subject to Condition 8(g) (*Conditions for Redemption and Purchase in Respect of the Notes*), the Notes 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 Trustee, the Principal Paying Agent and the Registrar in writing and to the Noteholders in accordance with Condition 13 (*Notice*) (which notice shall be irrevocable and shall specify the date fixed for redemption), if the Issuer satisfies the Trustee immediately before the giving of such notice that (a) it has or will become obliged to pay additional amounts as described under Condition 9 (*Taxation*) 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 the 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 10 January 2019 and (b) such obligation will apply on the occasion of the next payment due in respect of the Notes and cannot be avoided by the Issuer taking reasonable measures available to it (a "**Withholding Tax Event**"); 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 Notes then due.

Prior to giving any notice of redemption pursuant to this Condition 8(b), the Issuer shall deliver to the Trustee (i) a certificate signed by one Authorised Signatory of the Issuer stating that the requirement referred to in (a) above of this Condition 8(b) will apply on the next Interest Payment Date and cannot be avoided by the Issuer taking reasonable measures available to it and (ii) a copy of the written consent of the Monetary Authority as referred to in Condition 8(g) (*Conditions for Redemption and Purchase in Respect of the Notes*); and the Trustee 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 Noteholders.

Notes redeemed pursuant to this Condition 8(b) will be redeemed at their outstanding principal amount together (if appropriate) with interest accrued to (but excluding) the date of redemption, subject to adjustments following the occurrence of a Non-Viability Event in accordance with Condition 5 (*Non-Viability Loss Absorption*).

For the purposes of these Conditions, "**Authorised Signatory**" means, in relation to the Issuer, any director or any other officer of the Issuer who has been authorised by the Issuer to sign the certificates as contemplated under these Conditions on behalf of, and so as to bind, the Issuer and which the Issuer has notified in writing to the Trustee and the Agents as provided in the Agency Agreement.

- (c) *Redemption of the Notes for Tax Deduction Reasons*: Subject to Condition 8(g) (*Redemption and Purchase — Conditions for Redemption and Purchase in Respect of the Notes*), the Notes 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 Trustee, the Principal Paying Agent and the Registrar in writing and to the Noteholders in accordance with Condition 13 (*Notices*) (which notice shall be irrevocable, subject to Condition 5 (*Non-Viability Loss Absorption*), and shall specify the date fixed for redemption), following the occurrence of a Tax Deduction Event.

For the purposes of this Condition 8(c), a "**Tax Deduction Event**" occurs if the Issuer satisfies the Trustee immediately before the giving of such notice that:

- (i) in respect of the interest payable on the Notes, 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; and
- (ii) such non tax deductibility cannot be avoided by the Issuer taking reasonable measures available to it,

*provided that:* (A) the Conditions for redemption set out in Condition 8(g) (*Redemption and Purchase — Conditions for Redemption and Purchase in Respect of the Notes*) have been satisfied; and (B) 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 interest payable on the Notes as provided in paragraph (i) 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.

Prior to the publication of any notice of redemption pursuant to this Condition 8(c) (*Redemption of the Notes for Tax Deduction Reasons*), the Issuer shall deliver to the Trustee (i) a certificate signed by one Authorised Signatory of the Issuer stating that the Issuer is entitled to effect such redemption and setting forth a statement of facts showing that: (A) the conditions precedent to the right of the Issuer so to redeem have occurred, and (B) such non tax deductibility cannot be avoided by the Issuer taking reasonable measures available to it and (ii) a copy of the written consent of the Monetary Authority as referred to in Condition 8(g) (*Redemption and Purchase — Conditions for Redemption and Purchase in Respect of the Notes*) and the Trustee 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 Noteholders.

Notes redeemed pursuant to this Condition 8(c) (*Redemption of the Notes for Tax Deduction Reasons*) will be redeemed at their outstanding principal amount together (if appropriate) with interest accrued to (but excluding) the date of redemption, subject to adjustment following the occurrence of a Non-Viability Event in accordance with Condition 5 (*Non-Viability Loss Absorption*).

- (d) *Redemption of the Notes for Regulatory Reasons:* Subject to Condition 8(g) (*Conditions for Redemption and Purchase in Respect of the Notes*), the Notes 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 Trustee, the Principal Paying Agent and the Registrar in writing and to the Noteholders in accordance with Condition 13 (*Notice*) (which notice shall be irrevocable and shall specify the date fixed for redemption) following the occurrence of a Capital Event.

For the purposes of this Condition 8(d), a "**Capital Event**" occurs if immediately before the Issuer gives the notice of redemption referred in this Condition 8(d), the Notes, after having qualified as such, will no longer qualify (in whole or in part) as Tier 2 Capital (or equivalent) of the Issuer (other than non-qualification solely as a result of any discounting or amortisation requirements as to the eligibility of the Notes for such inclusion pursuant to the relevant legislation and supervisory guidance in force from time to time), as a result of a change or amendment in (or any change in the application or official interpretation of) the relevant provisions of the Banking Ordinance (Cap. 155) of Hong Kong, the Banking (Capital) Rules (Cap. 155L) (as amended) of Hong Kong, or any successor legislation or regulations made thereunder, or any supervisory guidance issued by the Monetary Authority in relation thereto. 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 has occurred.

Prior to giving any notice of redemption pursuant to this Condition 8(d), the Issuer shall deliver to the Trustee (i) a certificate signed by one Authorised Signatory 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 (ii) a copy of the written consent of the Monetary Authority; and the Trustee 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 Noteholders.

Notes redeemed pursuant to this Condition 8(d) will be redeemed at their outstanding principal amount together (if appropriate) with interest accrued to (but excluding) the date of redemption, subject to adjustments following the occurrence of a Non-Viability Event in accordance with Condition 5 (*Non-Viability Loss Absorption*).

(e) *Redemption at the Option of the Issuer:* Subject to Condition 8(g), the Issuer may, having given:

- (i) not less than 15 nor more than 45 days' notice to the Noteholders in accordance with Condition 13 (*Notice*); and
- (ii) not less than 15 days before the giving of the notice referred to in (i) above of this Condition 8(e), notice to the Trustee, the Principal Paying Agent and the Registrar;

(which notices shall be irrevocable and shall specify the date fixed for redemption), redeem all but not some only of the Notes then outstanding on the Reset Date, at their outstanding principal amount together (if appropriate) with interest accrued to (but excluding) the date of redemption, subject to adjustments following the occurrence of a Non-Viability Event in accordance with Condition 5 (*Non-Viability Loss Absorption*).

The Issuer does not provide any undertaking that it will redeem the Notes at any time.

(f) *Purchase and Cancellation:* Subject to Condition 8(g) (*Conditions for Redemption and Purchase in Respect of the Notes*), the Issuer and any of its Subsidiaries may, at any time, purchase Notes in the open market or otherwise at any price. The Notes so purchased, while held by or on behalf of the Issuer or any such Subsidiary, shall not entitle the holder to vote at any meetings of the Noteholders and shall not be deemed to be outstanding for, among other things, the purposes of calculating quorums at meetings of the Noteholders or for the purposes of Condition 12(a) (*Meetings of Noteholders, Modifications and Consolidations*).

All Certificates representing Notes purchased by or on behalf of the Issuer and any of its Subsidiaries shall be surrendered for cancellation to the Transfer Agent or Registrar and, upon surrender thereof, all such Notes 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 Notes shall be discharged.

(g) *Conditions for Redemption and Purchase in Respect of the Notes:* Notwithstanding any other provision in these Conditions, the Issuer shall not redeem any of the Notes (other than pursuant to Condition 11 (*Events of Default and Enforcement*)) and neither the Issuer nor any of its affiliates shall purchase any of the Notes unless the prior written consent of the Monetary Authority thereto shall have been obtained, to the extent such consent is required under the Banking Ordinance (Cap. 155) of Hong Kong or the Banking (Capital) Rules (Cap. 155L) (as amended) of Hong Kong, or any successor legislation or regulations made thereunder, or any supervisory guidance issued by the Monetary Authority in relation thereto.

This provision shall not apply to the Issuer or any of its Subsidiaries holding the Notes in a purely nominee capacity.

## 9. Taxation

All payments of principal and interest by or on behalf of the Issuer in respect of the Notes shall be made free and clear of, and without withholding or deduction for, any taxes, duties, assessments or governmental charges of whatever nature imposed, levied, collected, withheld or assessed by or within Hong Kong or any authority therein or thereof having power to tax, unless such withholding or deduction is required by law. If the Issuer is required to make a deduction or withholding by or within Hong Kong, the Issuer shall pay such additional amounts ("**Additional Tax Amounts**") as shall result in receipt by the Noteholders of such amounts as would have been received by them had no such withholding or deduction been required, except that no such additional amounts shall be payable with respect to any Note:

- (a) *Other connection:* to, or to a third party on behalf of, a holder who is liable to such taxes, duties, assessments or governmental charges in respect of such Notes by reason of his having some connection with Hong Kong other than the mere holding of the Notes; or
- (b) *Presentation more than 30 days after the Relevant Date:* presented (or in respect of which the Certificate representing it is presented) for payment more than 30 days after the Relevant Date except to the extent that the holder of it would have been entitled to such additional amounts on presenting it for payment on the thirtieth day.

Notwithstanding any other provision of these Conditions or the Trust Deed, any amounts to be paid on the Notes by or on behalf of the Issuer, will be paid net of any deduction or withholding imposed or required pursuant to an agreement described in the Code, or otherwise imposed pursuant to Sections 1471 through 1474 of the Code (or any regulations thereunder or official interpretations thereof) or an intergovernmental agreement between the United States and another jurisdiction facilitating the implementation thereof (or any fiscal or regulatory legislation, rules or practices implementing such an intergovernmental agreement) (any such withholding or deduction, a "**FATCA Withholding**"). Neither the Issuer nor any other person will be required to pay any additional amounts in respect of FATCA Withholding.

Neither the Trustee nor any Agent shall be responsible for paying any tax, duty, charges, withholding or other payment referred to in this Condition 9 or for determining whether such amounts are payable or the amount thereof, and none of them shall be responsible or liable for any failure by the Issuer, any Noteholder or any third party to pay such tax, duty, charges, withholding or other payment in any jurisdiction or to provide any notice or information to the Trustee or any Agent that would permit, enable or facilitate the payment of any principal, premium (if any), interest or other amount under or in respect of the Notes without deduction or withholding for or on account of any tax, duty, charge, withholding or other payment imposed by or in any jurisdiction.

As used in these Conditions, "**Relevant Date**" in respect of any Note means the date on which payment in respect of it first becomes due or (if any amount of the money payable is improperly withheld or refused) the date on which payment in full of the amount outstanding is made or (if earlier) the date seven days after that on which notice is duly given to the Noteholders that, upon further presentation of the Note (or relative Certificate) being made in accordance with these Conditions, such payment will be made, provided that payment is in fact made upon such presentation.

References in these Conditions to "**principal**" and/or "**interest**" shall be deemed to include any Additional Tax Amounts that may be payable under this Condition 9 or any undertaking given in addition to or in substitution for it under the Trust Deed.

## 10. Prescription

Claims against the Issuer for payment in respect of the Notes shall be prescribed and will become void unless made within a period of 10 years (in the case of principal) or five years (in the case of interest) from the Relevant Date (as defined in Condition 9 (*Taxation*)).



## 11. Events of Default and Enforcement

### (a) *Events of Default and Winding-up Proceedings:*

- (i) If default is made in the payment of any amount of principal or interest in respect of the Notes on the due date for payment thereof and such failure continues for a period of seven days in the case of principal or 14 days in the case of interest (each, an "**Event of Default**") then in order to enforce the obligations of the Issuer, the Trustee at its sole discretion may and, if so requested in writing by holders of at least 25 per cent. in principal amount of the outstanding Notes or if so directed by an Extraordinary Resolution (as defined in the Trust Deed), shall (subject to the Trustee in any such case having been indemnified and/or provided with security and/or put in funds to its satisfaction) institute a Winding-Up Proceeding against the Issuer. Any Write-off pursuant to these Conditions will not constitute an Event of Default under the Notes.
- (ii) 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 the Trustee at its sole discretion may and, if so requested in writing by holders of at least 25 per cent. in principal amount of the outstanding Notes or if so directed by an Extraordinary Resolution, shall (subject to the Trustee in any such case having been indemnified and/or provided with security and/or put in funds to its satisfaction) give written notice to the Issuer declaring the Notes to be immediately due and payable, whereupon they shall become immediately due and payable at their outstanding principal amount together (if appropriate) with interest accrued to (but excluding) the date of actual payment, subject to adjustments following the occurrence of a Non-Viability Event in accordance with Condition 5, without further action or formality.

In these Conditions, "**Winding-Up Proceedings**" means, with respect to the Issuer, proceedings for the bankruptcy, liquidation, winding-up, administrative receivership, or other similar proceeding of the Issuer.

### (b) *Enforcement:*

- (i) Without prejudice to Condition 11(a) (*Events of Default and Winding — up Proceedings*), the Trustee may subject as provided below, at its discretion and without further notice, take such steps and/or actions and/or institute such proceedings against the Issuer if the Issuer fails to perform, observe or comply with any obligation, condition or provision relating to the Notes binding on it under these Conditions or the Trust Deed (other than any obligation of the Issuer for the payment of any principal or interest in respect of the Notes), provided that the Issuer shall not as a consequence of such steps, actions or proceedings be obliged to pay any sum or sums representing or measured by reference to principal or interest in respect of the Notes sooner than the same would otherwise have been payable by it.
- (ii) The Trustee shall not be bound to take action as referred to in Conditions 11(a) (*Events of Default and Winding-up Proceedings*) and 11(b)(i) (*Enforcement*) or any other action under these Conditions or the Trust Deed unless (a) it shall have been so requested in writing by Noteholders holding at least 25 per cent. in principal amount of the Notes then outstanding or if so directed by an Extraordinary Resolution of the Noteholders and (b) it shall have been indemnified and/or secured and/or pre-funded to its satisfaction.
- (iii) No Noteholder shall be entitled to proceed directly against the Issuer unless the Trustee, having become bound so to proceed, fails to do so within a reasonable period and such failure is continuing.
- (iv) 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(a) (*Events of Default and*

*Winding-up Proceedings*) and Conditions 11(b)(i) (*Enforcement*) and 11(b)(ii) (*Enforcement*) above or submitting a claim in the Winding-Up of the Issuer will be available to the Trustee or the Noteholders.

- (v) No Noteholder shall be entitled either to institute proceedings for the Winding-Up of the Issuer or to submit a claim in such Winding-Up, except that if the Trustee, having become bound to institute such proceedings as aforesaid, fails to do so, or, being able and bound to submit a claim in such Winding-Up, fails to do so, in each case within a reasonable period and such failure is continuing, then any such Noteholder may, on giving an indemnity and/or security and/or pre-funding satisfactory to the Trustee in its discretion, in the name of the Trustee (but not otherwise), himself institute Winding-Up Proceedings and/or submit a claim in the Winding-Up of the Issuer to the same extent (but not further or otherwise) that the Trustee would have been entitled to do.

## 12. Meetings of Noteholders, Modifications and Consolidations

- (a) *Meetings of Noteholders:* The Trust Deed contains provisions for convening meetings of Noteholders to consider any matter affecting their interests, including the sanctioning by Extraordinary Resolution (as defined in the Trust Deed) of a modification of any of these Conditions or any provisions of the Trust Deed. Such a meeting may be convened by the Issuer or the Trustee and shall be convened by the Trustee if requested in writing to do so by Noteholders holding not less than 10 per cent. in principal amount of the Notes for the time being outstanding and subject to the Trustee being indemnified and/or secured and/or pre-funded to its satisfaction against all costs and expenses. The quorum for any meeting convened to consider an Extraordinary Resolution shall be two or more persons holding or representing more than 50 per cent. in principal amount of the Notes for the time being outstanding, or at any adjourned meeting two or more persons being or representing Noteholders whatever the principal amount of the Notes held or represented, unless the business of such meeting includes consideration of proposals, inter alia, (i) to amend the dates of maturity or redemption of the Notes or any date for payment of interest on the Notes, (ii) to reduce or cancel the principal amount of, or any premium payable on redemption of, the Notes, (iii) to reduce the rate or rates of interest in respect of the Notes or to vary the method or basis of calculating the rate or rates or amount of interest or the basis for calculating any interest in respect of the Notes, (iv) to vary any method of, or basis for, calculating the relevant redemption amount, (v) to vary the currency or currencies of payment or denomination of the Notes, (vi) to amend the subordination or loss absorption provisions in the Trust Deed or (vi) to modify the provisions concerning the quorum required at any meeting of Noteholders or the majority required to pass an Extraordinary Resolution, in which case the necessary quorum shall be two 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 principal amount of the Notes for the time being outstanding. Any Extraordinary Resolution duly passed shall be binding on the Noteholders (whether or not they were present at the meeting at which such resolution was passed).

The Trust Deed provides that a resolution in writing signed by or on behalf of the Noteholders of not less than 90 per cent. in principal amount of the Notes for the time being outstanding and who are entitled to receive notice of a meeting of the Noteholders pursuant to the Trust Deed shall for all purposes be as valid and effective as an Extraordinary Resolution passed at a meeting of Noteholders duly convened and held. Such a resolution in writing may be contained in one document or several documents in the same form, each signed by or on behalf of one or more Noteholders.

- (b) *Modifications and Waivers:*
  - (i) *Modification:* The Trustee may (but shall not be obliged to) agree, without the consent of the Noteholders, to (a) any modification of any of the provisions of the Trust Deed or these Conditions that is of a formal, minor or technical nature or is made to correct a manifest error or to comply with any mandatory provision of law, and (b) any other modification (except as mentioned in the Trust Deed), and any waiver or authorisation of any breach or proposed breach, of any of the provisions of the Trust Deed and/or these

Conditions that is in the opinion of the Trustee not materially prejudicial to the interests of the Noteholders. Any such modification, authorisation or waiver shall be binding on the Noteholders, and unless the Trustee otherwise agrees, such modification, authorisation or waiver shall be notified to the Noteholders as soon as practicable.

(ii) *Substitution:* The Trust Deed contains provisions permitting (but not obliging) the Trustee to agree, subject to such amendment of the Trust Deed and such other conditions as the Trustee may require, but without the consent of the Noteholders, to the substitution of the Issuer's successor in business or any Subsidiary of the Issuer or its successor in business or any holding company of the Issuer or any other subsidiary of any such holding company or their respective successor in business in place of the Issuer, or of any previous substituted company, as principal debtor under the Trust Deed and the Notes. In the case of such a substitution the Trustee may agree, without the consent of the Noteholders, to a change of the law governing the Notes and/or the Trust Deed provided that such change would not in the opinion of the Trustee be materially prejudicial to the interests of the Noteholders.

(c) *Entitlement of the Trustee:* In connection with the exercise of its functions, powers, rights and discretions (including but not limited to those referred to in this Condition 12 (*Meetings of Noteholders, Modifications and Consolidations*)), the Trustee shall have regard to the interests of the Noteholders as a class and shall not have regard to the consequences of such exercise for individual Noteholders and the Trustee, acting for and on behalf of Noteholders, shall not be entitled to require, nor shall any Noteholder be entitled to claim, from the Issuer or the Trustee any indemnification or payment in each case in respect of any tax consequence of any such exercise upon individual Noteholders.

### 13. **Notices**

Notices to the holders of the Notes 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 and, so long as the Notes are listed on a stock exchange or admitted to trading by another relevant authority and the rules of that exchange or a relevant authority so require, published in a daily newspaper having general circulation in the place or places required by those rules. If any such publication is not practicable, notice shall be validly given if published in another leading daily English language newspaper with general circulation in Asia. Any such notice shall be deemed to have been given on the date of such publication or, if published more than once or on different dates, on the first date on which publication is made, as provided above.

*So long as the Notes are represented by a Global Certificate and such Global Certificate is held on behalf of Euroclear or Clearstream or any other clearing system, notices to the holders of the Notes may be given by delivery of the relevant notice to that clearing system for communication by it to entitled accountholders in substitution for publication as required by the Conditions.*

### 14. **Indemnification of the Trustee**

The Trust Deed contains provisions for the indemnification of the Trustee and for its relief from responsibility and to be paid or reimbursed for any liabilities incurred by it in priority to the claims of the Noteholders. The Trustee is entitled to enter into business transactions with the Issuer and any entity related to the Issuer without accounting for any profit.

The Trustee may rely without liability to Noteholders on any report, confirmation or certificate or any advice or opinion of any legal counsel, accountants, financial advisers, financial institution or any other expert, whether or not addressed to it and whether their liability in relation thereto is limited (by its terms or by any engagement letter relating thereto entered into by the Trustee or in any other manner) by reference to a monetary cap, methodology or otherwise. The Trustee may accept and shall be entitled to rely on any such report, confirmation, certificate, advice or opinion, in which event such report, confirmation, certificate, advice or opinion shall be binding on the Issuer and the Noteholders.

Whenever the Trustee is required or entitled by the terms of the Trust Deed, the Agency Agreement or these Conditions to exercise any discretion or power, take any action, make any decision or give any direction, the Trustee is entitled, prior to exercising any such discretion or power, taking any such action, making any such decision or giving any such direction, to seek directions from the Noteholders by way of Extraordinary Resolution, and shall have been indemnified and/or provided with security and/or pre-funded to its satisfaction against all action, proceedings, claims and demands to which it may be or become liable and all costs, charges, damages expenses (including but not limited to legal expenses) and liabilities which may be incurred by it in connection therewith, and the Trustee is not responsible for any loss or liability incurred by any person as a result of any delay in it exercising such discretion or power, taking such action, making such decision, or giving such direction or certification where the Trustee is seeking such directions.

None of the Trustee or any of the Agents shall be responsible for the performance by the Issuer and any other person appointed by the Issuer in relation to the Notes of the duties and obligations on their part expressed in respect of the same and, unless it has written notice from the Issuer to the contrary, the Trustee and each Agent shall be entitled to assume that the same are being duly performed. None of the Trustee or any Agent shall be liable to any Noteholder, the Issuer or any other person for any action taken by the Trustee in accordance with the instructions of the Noteholders. The Trustee shall be entitled to rely on any direction, request or resolution of Noteholders given by Noteholders holding the requisite principal amount of Notes outstanding or passed at a meeting of Noteholders convened and held in accordance with the Trust Deed.

The Trustee shall have no obligation to monitor whether an Event of Default has occurred, and shall not be liable to the Noteholders or any other person for not doing so.

Each Noteholder shall be solely responsible for making and continuing to make its own independent appraisal and investigation into the financial condition, creditworthiness, condition, affairs, status and nature of the Issuer, and the Trustee shall not at any time have any responsibility for the same and each Noteholder shall not rely on the Trustee in respect thereof.

## 15. **Replacement of Certificates**

If a Certificate is lost, stolen, mutilated, defaced or destroyed, it may be replaced, subject to applicable laws, regulations and stock exchange or other relevant authority regulations, at the specified office of the Principal Paying Agent and of the Registrar, in each case on payment by the claimant of the fees and costs incurred in connection therewith and on such terms as to evidence, security and indemnity (which may provide, inter alia, that if the allegedly lost, stolen or destroyed Certificate is subsequently presented for payment, there shall be paid to the Issuer on demand the amount payable by the Issuer in respect of such Certificates) and otherwise as the Issuer may require. Mutilated or defaced Certificates must be surrendered before replacements will be issued.

## 16. **Contracts (Rights of Third Parties) Act 1999**

No person shall have any right to enforce any term or condition of the Notes under the Contracts (Rights of Third Parties) Act 1999.

## 17. **Governing Law and Submission to Jurisdiction**

- (a) *Governing Law:* The Trust Deed, the Notes and any non-contractual obligations arising out of or in connection with the Trust Deed and the Notes are governed by, and shall be construed in accordance with, English law, save that the subordination provisions set out in Condition 3(b) (*Subordination*) (and related provisions of the Trust Deed) shall be governed by, and construed in accordance with, the laws of Hong Kong.
- (b) *Submission to Jurisdiction:* The Courts of England are to have jurisdiction to settle any disputes that may arise out of or in connection with the Trust Deed or any Notes and accordingly any legal action or proceedings arising out of or in connection with any Notes (a "**Proceeding**") may be brought in such courts. Each of the Issuer and the Trustee has in the Trust Deed irrevocably and unconditionally submitted to the jurisdiction of such courts.

- (c) *Appointment of Process Agent:* The Issuer has irrevocably appointed Shanghai Commercial Bank Limited, London Branch at its registered office for the time being in England, currently at 65 Cornhill, London EC3V 3NB, United Kingdom as its agent for service of process in any proceedings before the English courts in relation to any Proceeding, and agrees that, in the event of such agent being unable or unwilling for any reason so to act, it will immediately appoint another person as its agent for service of process in England in respect of any Proceeding and will notify the Trustee of such new process agent within 30 days of the Issuer's such becoming unable or unwilling for any reason so to act. Nothing herein shall affect the right to serve process in any other manner permitted by law.