

EXECUTION VERSION

5 July 2016

**BANCO SANTANDER, S.A., HONG KONG BRANCH**  
AS ISSUER  
and

**CITIBANK EUROPE PLC, UK BRANCH**  
AS ARRANGER  
and

**BARCLAYS BANK PLC**

**BNP PARIBAS**

**CITIBANK EUROPE PLC, UK BRANCH**

**CITICORP INTERNATIONAL LIMITED**

**THE HONGKONG AND SHANGHAI BANKING  
CORPORATION LIMITED**

**NOMURA INTERNATIONAL (HONG KONG) LIMITED**

**STANDARD CHARTERED BANK (HONG KONG) LIMITED**

AS INITIAL PROGRAMME DEALERS

and

**CITICORP INTERNATIONAL LIMITED**  
**CITIBANK, N.A., LONDON BRANCH**  
AS INITIAL PROGRAMME AGENTS

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**EUR 5,000,000,000**  
**CERTIFICATE OF DEPOSIT**  
**AMENDED AND RESTATED PROGRAMME AGREEMENT**

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## SECTION 1 INTRODUCTION AND DEFINITIONS

### Parties

#### **BETWEEN:**

- (1) **BANCO SANTANDER, S.A., HONG KONG BRANCH**, the Hong Kong branch of a limited liability company incorporated under the laws of Spain, having its office in Hong Kong at Room 1501, One Exchange Square, 8 Connaught Place, Central, Hong Kong (the "**Issuer**");
- (2) **CITIBANK EUROPE PLC, UK BRANCH** (the "**Arranger**");
- (3) **BARCLAYS BANK PLC, BNP PARIBAS, CITIBANK EUROPE PLC, UK BRANCH, CITICORP INTERNATIONAL LIMITED, THE HONGKONG AND SHANGHAI BANKING CORPORATION LIMITED, NOMURA INTERNATINAL (HONG KONG) LIMITED AND STANDARD CHARTERED BANK (HONG KONG) LIMITED**, each acting in its capacity as an initial Programme Dealer (together with the Arranger, the "**Initial Programme Dealers**", and each an "**Initial Programme Dealer**"); and
- (4) **CITICORP INTERNATIONAL LIMITED and CITIBANK, N.A., LONDON BRANCH** (the "**Initial Programme Agents**", and each an "**Initial Programme Agent**").

Each Dealer and Syndicate Dealer which becomes party to a Dealer Appointment Agreement or Syndication Agreement and each Agent which enters into an Agency Appointment Agreement will become party to this Agreement in accordance with the terms of the relevant agreement.

#### **Background**

- (A) This Agreement sets out the terms of a programme for the Issuer to issue certificates of deposit, either directly to depositors, or to Dealers (on a solicited or unsolicited basis) or by way of syndications.
- (B) This Agreement and the related programme documents enable Dealers to join the programme for the purpose of private placements or syndications or on a permanent basis (until removal or resignation).
- (C) Certificates of deposit may be issued on the following basis:
  - (a) The Issuer may issue the certificate of deposit itself or through an issuing agent.
  - (b) The Issuer may make payments directly or through a paying agent.
  - (c) The Issuer may make interest and other calculations itself or through a calculation agent.
  - (d) As between the parties hereto, this Agreement amends and restates the Original Programme Agreement. Any Notes issued under the Programme on or after the date of this Agreement shall be issued pursuant to this Agreement. The

amendments contemplated by this Agreement do not affect any Notes issued under the Programme prior to the date of this Agreement.

Each party to this Agreement agrees the following:

**1. INTERPRETATION**

**1.1 Terms of CDs**

Terms defined and references construed in the form of the CDs (as defined below) set out in Schedule 2 (*Form of Global CD*) shall, unless the context requires otherwise, have the same meanings and construction in this Agreement.

**1.2 Definitions**

In this Agreement, in addition to the terms already defined, except where the context otherwise requires:

"**Accountholder**" has the meaning given to it in the Conditions.

"**Agency Appointment Agreement**" means an agreement between the Issuer and any Agent(s) substantially in the form set out in Schedule 8 (*Form of Agency Appointment Agreement*).

"**Agent**" means:

- (a) if relevant in respect of any Series, any person appointed as the Issuing Agent, the Paying Agent or the Calculation Agent for that specific Series by an Agency Appointment Agreement; or
- (b) the Initial Programme Agents and any other person appointed as the Issuing Agent, the Paying Agent or the Calculation Agent by an Agency Appointment Agreement as a Programme Agent generally for the Programme.

"**Agreed Denomination**" means the Nominal Definitive Principal Amount of each Definitive CD in a Series, being:

- (a) HK\$5,000,000 (or any whole multiple of that amount) for a HK\$ CD;
- (b) US\$500,000 (or any whole multiple of that amount) for a US\$ CD;
- (c) RMB5,000,000 (or any whole multiple of that amount) for a RMB CD,

or such other amount (subject to any applicable laws and regulations) as may be Agreed.

"**Agreement**" means this Agreement as amended or modified from time to time.

"**Alternative Currency**" means, for any Series, any freely transferable and available currencies other than Hong Kong dollars, US dollars or Renminbi that may be Agreed.

"**Alternative Currency CDs**" means CDs denominated or to be denominated in an Alternative Currency.

**"Alternative Floating Rate Benchmark"** means, for any Series, any method for calculating floating rate interest (other than HIBOR, LIBOR and SHIBOR) in respect of that Series which may be Agreed.

**"Business Day"** means a day (other than a Saturday, a Sunday or a public holiday) on which commercial banks and foreign exchange markets are open for business in Hong Kong and:

- (a) for a US\$ CD, on which commercial banks and foreign exchange markets are open for business in London and New York City;
- (b) for an Alternative Currency CD, in the principal financial centre on which dealings in the Alternative Currency are carried out and on which, if the Alternative Currency CD is a Floating Rate CD, the relevant Floating Rate Benchmark can be determined; and
- (c) if the CD is held by a Clearing System, on which that Clearing System is operating.

**"Calculation Agent"** means the Initial Programme Agent and any person appointed under an Agency Appointment Agreement as calculation agent either for the Programme generally or for a particular Series, or its successor in the relevant capacity.

**"CD"** means each duly signed and, if necessary, authenticated certificate of deposit to be issued by the Issuer under this Agreement substantially in the forms set out in Schedule 2 (*Form of Global CD*) for a Global CD or Definitive CD and the appendices thereto with a Tenor of, subject to any applicable regulatory requirements, not less than seven days or more than 364 days from and including the date of issue (with such changes thereto as may be Agreed by the Issuer and the relevant Agent(s) and Dealer(s)).

**"CMU Lodging Agent"** has the meaning given to it in Clause 8.8.1.

**"CMU Member(s)"** means one or more members of the CMU Service under a CMU membership agreement.

**"Conditions"** means the general terms and conditions applicable to each CD, in the form set out in Schedule 11 (*Terms and Conditions*) and to be scheduled to the form of Global CD set out in Schedule 2 (*Form of Global CD*).

**"Dealer"** means, at any relevant time:

- (a) each Initial Programme Dealer, who signs this Agreement as a Dealer and whose appointment has not been terminated;
- (b) each person who has been appointed as a "Programme Dealer" or a "Dealer" under a Dealer Appointment Agreement and whose appointment has not been terminated; and
- (c) each Syndicate Dealer appointed under a Syndication Agreement.

**"Dealer Appointment Agreement"** means an agreement supplemental to this Agreement containing, at least, the terms set out in Part 1 (*Dealer Appointment Agreement*) of Schedule 5 (*Dealer Appointment and Termination Forms*) under which the additional Dealer shall either become a Programme Dealer for all purposes of this Agreement or a Dealer for the purposes of a particular Series.

**"Deed of Covenant"** means the deed of covenant substantially in the form set out in Schedule 7 (*Form of Deed of Covenant*) dated on or about the date of this Agreement entered into by the Issuer for the benefit of Relevant Accountholders.

**"Definitive CD"** means a definitive negotiable certificate of deposit issued or to be issued by the Issuer under this Agreement, pursuant to an exchange substantially in the form set out in the Appendix to Schedule 2 (*Form of Global CD*) subject to any changes that may be Agreed.

**"Deposit"** means a deposit:

- (a) made or to be made under this Agreement by a Dealer or Dealers; and/or
  - (b) made with the Issuer under a Direct Issue by a depositor which is not a Dealer,
- and evidenced or to be evidenced on issue by an interest in a Global CD.

**"Deposit Date"** means, in respect of any Deposit evidenced or to be evidenced by a CD or Series, the date (which must be a Business Day) of the making of that Deposit and issue of that CD or Series.

**"Deposit Price"** means:

- (a) for any Discounted CD, the price payable for that Discounted CD by each relevant Dealer determined using the following formula:

$$\text{Deposit Price} = \frac{\text{FA}}{1 + \frac{(\text{D} \times \text{Y})}{\text{Z}}}$$

Where:

FA = the face amount of that Discounted CD;

Y = the Discounted Bid Rate offered by the relevant Dealer for that Discounted CD;

D = the number of days in the tenor of that Discounted CD; and

Z = 365 for HK\$ CDs and for RMB CDs or 360 for US\$ CDs, unless Agreed for a particular Series or when using Alternative Currency CDs, the number of days in a year conventionally used as a basis for the accrual of interest in that Alternative Currency;

- (b) for any Interest Bearing CD, the amount of the Deposit payable for that Interest Bearing CD by each relevant Dealer expressed as a percentage of the face amount of that Interest Bearing CD,
- (c) or such other amount as may be agreed by the Issuer and any relevant Dealer to be payable, expressed either by reference to an agreed formula or as a fixed amount.

**"Direct Issue"** means an issue by the Issuer of CDs to, and the taking of the related Deposits from, persons who are not Dealers and who will not become party to this Agreement, as provided in Clause 4 (*Direct Issues*).

**"Discounted Bid Rate"** means the rate of discount offered by a Dealer for Deposits to be evidenced by Discounted CDs to be issued by the Issuer to that Dealer which is:

- (a) expressed as either a fixed rate per cent. per annum or as a Margin to Floating Rate Benchmark;
- (b) expressed, if necessary, to five decimal places; and

in each case, calculated on the basis of an agreed Day Count Fraction.

**"Discounted CD"** means a non-interest bearing CD issued at a discount to its face amount.

**"DvP"** means the "delivery against payment" facility operated by the CMU Service.

**"Equivalent Value"** means:

- (a) for a HK\$ CD, its principal face amount; and
- (b) for a US\$ CD, RMB CD or Alternative Currency CD, the HK\$ Equivalent of its principal face amount.

**"Fixed Rate CD"** means a CD issued with a fixed rate interest payment obligation.

**"Floating Rate Benchmark"** means:

- (a) for Hong Kong dollars, HIBOR;
- (b) for US dollars, LIBOR;
- (c) for Renminbi, SHIBOR; or
- (d) any applicable Alternative Floating Rate Benchmark which may be Agreed.

**"Floating Rate CD"** means a CD issued with a floating rate interest payment obligation.

**"Global CD"** means a global certificate of deposit which represents Definitive CDs to be lodged with, and held by or on behalf of one or more of the Clearing Systems or the Issuer or a Nominated Custodian, in each case for the benefit of the Accountholders substantially in the form set out in Schedule 2 (*Form of Global CD*), subject to any changes that may be Agreed.



"**HIBOR**" shall be the rate determined by the Calculation Agent on the basis of "**Reuters**" as set out in the form of the relevant Issue Terms or Floating Rate CD or on such other basis as may be Agreed.

"**HK\$ CD**" means a CD denominated in Hong Kong dollars.

"**HK\$ Equivalent**" means the amount of Hong Kong dollars that can be purchased with US dollars, Renminbi or any Alternative Currency as determined by the Calculation Agent, in its discretion, by reference to foreign exchange markets on any relevant date for value on any date in respect of which that "HK\$ Equivalent" is to be determined.

"**Hong Kong RTGS**" means the Hong Kong Real Time Gross Settlement system.

"**Information Memorandum**" means the "Information Memorandum" dated 5 July 2016 which has been prepared in connection with this Agreement and the CDs, as amended, supplemented, updated or substituted from time to time by the Issuer in writing.

"**Interest Bearing CD**" means a Fixed Rate CD or a Floating Rate CD.

"**Interest Bid Rate**" means the rate of interest offered by a Dealer as the rate of interest for Deposits to be evidenced by Interest Bearing CDs to be issued by the Issuer to that Dealer which is:

- (a) expressed, if necessary, to five decimal places; and
- (b) expressed as either a fixed rate per cent. per annum or as a Margin above or below a particular Floating Rate Benchmark.

"**Interest Payment Date**" means, with respect to each Series of CDs, each such date specified in the relevant Issue Terms of such Series.

"**Interest Period**" means, in relation to an Interest Bearing CD, each period from (and including) one Period End Date to (but excluding) the following applicable Period End Date, except that the initial Interest Period will commence on (and include) the Deposit Date and the final Interest Period will end on (but exclude) the Maturity Date and which may be 1 or 3 months, or such other period as may be Agreed.

"**Issue Terms**" means a document substantially in the form of Schedule 1 (*Issue Terms*) completed to specify all the information relating to an actual or proposed CD or Series which is required to be specified for the particular purpose of that document in accordance with the completion instructions in Schedule 1 (*Issue Terms*) (together with any Alternative Floating Rate Benchmark (if applicable)) and which may be used (subject to the information which is specified on it and the basis on which it has been completed) as:

- (a) the basis of the information to be delivered in a Telephone Request for Bids;
- (b) an attachment to (and forming part of) a Written Request for Bids;
- (c) an attachment to (and forming part of) a Response to Request for Bids;

- (d) an attachment to (and forming part of) an Unsolicited Offer;
- (e) an attachment to (and forming part of) an Issue Terms Confirmation; or
- (f) an attachment to (and forming part of) a Global CD or a Definitive CD.

**"Issue Terms Confirmation"** means, in respect of any Series, a notice substantially in the form set out in Part 4 (*Issue Terms Confirmation*) of Schedule 4 (*Issue Forms*).

**"Issuing Agent"** means the Initial Programme Agent and any person appointed under an Agency Appointment Agreement as issuing agent either for the Programme generally or for a particular Series, or its successor in the relevant capacity.

**"LIBOR"** shall be the rate determined by the Calculation Agent on the basis of **"Reuters"** as set out in the Floating Rate CD or on such other basis as may be Agreed.

**"Margin"** means an amount specified as such in relation to a Floating Rate Benchmark which shall be expressed as a percentage figure per annum.

**"Maturity Date"** in relation to any CD, means the date specified in the relevant Issue Terms, which will be the date for repayment of the principal amount of the Deposit evidenced by that CD, or any earlier date on which the principal amount of the Deposit evidenced by that CD may become due and payable in accordance with the Conditions of that CD.

**"Minimum Issue Size Per Series"** means in respect of HK\$ CDs, HK\$35,000,000, in respect of US\$ CDs, US\$5,000,000, in respect of RMB CDs, RMB35,000,000, and in respect of Alternative Currency CDs, the HK\$ Equivalent of HK\$35,000,000, or such other amount as may be Agreed.

**"Nominated Custodian"** means any person appointed by the Issuer to act as custodian of a Global CD which is not held by or on behalf of a Clearing System.

**"Original Programme Agreement"** means the programme agreement dated 20 July 2011 between the Issuer, the Initial Programme Dealers and the Initial Programme Agents as identified therein.

**"Outstanding"** means, in relation to CDs, those which have been duly issued pursuant to this Agreement other than:

- (a) those in respect of which the relevant Deposits have been paid in full;
- (b) those in respect of which the Maturity Date has occurred and the full amount payable on the maturity of the relevant Deposits has been duly paid to a Paying Agent in the manner provided in an Agency Appointment Agreement and remains available to be paid to the CD Holders against presentation (or deemed presentation) of the CDs;
- (c) those which have been lost, destroyed or mutilated and have been replaced under the terms of an Agency Appointment Agreement or otherwise by the Issuer;

- (d) those in respect of which the relevant Deposits have become statute barred under the Limitation Ordinance (Cap.347);
- (e) those represented by a Global CD which has become void in accordance with its terms and payment in respect of the relevant Deposits has been made to or on behalf of the applicable CD Holders; and
- (f) those represented by a Global CD to the extent that it has been exchanged for Definitive CDs pursuant to its provisions.

**"Paying Agent"** means the Initial Programme Agent and any person appointed under an Agency Appointment Agreement as paying agent either as a Programme Agent generally for the Programme or for a particular Series or its successor in the relevant capacity.

**"Period End Date"** means each Interest Payment Date, except that in the case "No Adjustment" is specified in the Issue Terms, each such Interest Payment Date will not be subject to adjustment in accordance with the Business Day Convention for the purposes of this definition, notwithstanding that such date occurs on a day that is not a Business Day.

**"PRC"** means the People's Republic of China, which for the purpose of this Agreement, shall exclude the Hong Kong Special Administrative Region, the Macau Special Administrative Region of the People's Republic of China and Taiwan.

**"Programme"** means the programme under which Deposits, to be evidenced by CDs of an aggregate face amount of up to the Programme Limit, may be made subject to:

- (a) any increase of the Programme Limit under Clause 2.2 (*Increase of Programme Limit*); or
- (b) a cancellation of the Programme under Clause 2.3 (*Cancellation of Programme*).

**"Programme Agent"** means, at any relevant time, the Initial Programme Agent and any Agent appointed under an Agency Appointment Agreement to act as an Issuing Agent, Paying Agent or Calculation Agent for the Programme generally whose appointment has not been terminated.

**"Programme Dealer"** means, at any relevant time, each Initial Programme Dealer and a Dealer appointed under a Dealer Appointment Agreement to act as a Dealer for the Programme generally whose appointment has not been terminated.

**"Programme Documents"** means, at any relevant time:

- (a) this Agreement;
- (b) each Dealer Appointment Agreement for the Programme Dealers at that time;
- (c) each Agency Appointment Agreement for the Programme Agents at that time; and
- (d) the Deed of Covenant.

"**Programme Limit**" means EUR5,000,000,000 on the date of this Agreement as may be increased under Clause 2.2 (*Increase in Programme Limit*).

"**Programme Termination Date**" means the date determined in accordance with Clause 2.1 (*Term of Programme*).

"**Regulation S**" means Regulation S under the Securities Act.

"**Relevant Accountholder**" has the meaning given to it in the Deed of Covenant.

"**Renminbi**" and "**RMB**" means the lawful currency of the People's Republic of China.

"**Response to Request for Bids**" means, in respect of any Series, a notice substantially in the form set out in Part 2 (*Response to Request for Bids*) of Schedule 4 (*Issue Forms*).

"**RMB CD**" means a CD denominated in Renminbi.

"**Securities Act**" means the U.S. Securities Act of 1933, as amended.

"**Series**" means:

- (a) CDs having the same Tenor and, if relevant, Interest Period which are requested or agreed to be issued on the same date in any Issue Terms; or
- (b) where the context requires, CDs having the same Tenor and, if relevant, Interest Period and expressed to form part of the same Series (whether or not those CDs have been issued on the same Deposit Date).

"**SFC**" means the Securities and Futures Commission of Hong Kong.

"**SHIBOR**" shall be the rate determined by the Calculation Agent on the basis of "**Reuters**" as set out in the form of the relevant Issue Terms or Floating Rate CD or on such other basis as may be Agreed.

"**Small Deposit Priorities**" means the priority given to depositors with an authorised institution in Hong Kong in respect of deposits in aggregate of up to HK\$500,000 under Section 265 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) and any other statutory priority given, under the laws of Hong Kong or the PRC, to certain depositors.

"**Spain**" means Kingdom of Spain.

"**Syndication**" has the meaning given to it in Clause 5.1 (*Syndication*).

"**Syndication Agreement**" has the meaning given to it in Clause 5.2 (*Syndication Agreement*).

"**Syndicate Dealers**" has the meaning given to it in Clause 5.1 (*Syndication*).

"**Taxes**" include any tax, levy, impost, duty or other charge of a similar nature and "**Taxation**" shall be construed accordingly.

"**Telephone Request for Bids**" means a telephone call made by the Issuer to a Dealer soliciting bids for Deposits under Clause 6 (*Solicited Issues*) providing substantially the same information as would be contained in a Written Request for Bids.

"**Tenor**" in relation to any CD, means the period from the Deposit Date of that CD to the Maturity Date of that CD which shall be, subject to any applicable regulatory requirement, not less than seven days and not more than 364 days.

"**United States**" or "**U.S.**" means the United States of America, including the states and the District of Columbia and its possessions include Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Wake Island and the Northern Mariana Islands.

"**Unsolicited Offer**" means an offer made by a Dealer to the Issuer by telephone or in writing as described in Clause 7 (*Unsolicited Offers*).

"**US dollars**" and "**US\$**" means the lawful currency of the United States.

"**US\$ CD**" means a CD denominated in US dollars.

"**U.S. person**" means a citizen or resident of the United States, a partnership or corporation organised in the United States or any State or political subdivision thereof, or any estate or trust the income of which is subject to United States federal income taxation regardless of its source.

"**Written Request for Bids**" means, in respect of a Series, a notice substantially in the form set out in Part 1 (*Written Request for Bids*) of Schedule 4 (*Issue Forms*).

### 1.3 Construction

1.3.1 The **headings** in this Agreement are inserted for convenience only and shall be ignored in construing this Agreement.

1.3.2 Unless the context otherwise requires, words (including words defined herein) denoting the singular number only shall include the plural and vice versa. The words "**written**" or "**in writing**" include any means of visible reproduction.

1.3.3 References to any Ordinance or other law shall be deemed to be references to that Ordinance or other law as from time to time amended or re-enacted or substituted.

1.3.4 References to **Clauses**, **Schedules** and **Appendices** are to be construed as references to Clauses of, and Schedules and Appendices to this Agreement.

1.3.5 Any reference to a **paragraph** is to a paragraph of the Clause in which such reference appears.

1.3.6 References to a **time of the day** are to Hong Kong time unless otherwise stated.

1.3.7 References to a **month** are to a calendar month.

- 1.3.8 References to a **person** include the plural and vice versa.
- 1.3.9 References to the singular include the plural and vice versa.
- 1.3.10 References to the masculine include the feminine and vice versa.
- 1.3.11 A reference to something being "**Agreed**" means it has been or must be agreed in writing for a particular Series between the Issuer and any Dealer(s) and Agent(s) participating in that Series before the issue of the Series.
- 1.3.12 Any CDs issued on or after the date of this Agreement shall be issued pursuant to this Agreement. This does not affect any CDs issued prior to the date of this Agreement. Subject as aforesaid, the Original Programme Agreement shall continue in full force and effect.

**SECTION 2**  
**PROGRAMME STRUCTURE AND CONDITIONS**

**2. TERM OF PROGRAMME, APPOINTMENTS AND REMOVALS**

2.1 ***Term of Programme:*** This Programme is available indefinitely until the date (the "**Programme Termination Date**") on which:

2.1.1 any notice given under Clause 2.3 (*Cancellation of Programme*) expires; or

2.1.2 the Issuer elects to terminate the Programme and has given written notice of this to each Programme Dealer and each Programme Agent.

The cancellation or termination of the Programme shall not affect any of the parties' other rights or obligations under any Programme Document or CD.

2.2 ***Increase in Programme Limit:*** The Issuer may from time to time increase the Programme Limit by notifying each Programme Dealer and each Programme Agent in writing 30 days in advance of the amount and date of the increase. The Issuer may issue that notification by telephone or by e-mail but, in each such case, must subsequently send a written confirmation.

2.3 ***Cancellation of Programme:***

2.3.1 The Issuer may cancel its obligations under this Agreement (except insofar as they relate to Outstanding CDs) at any time by giving 14 days prior written notice to each Programme Dealer and each Programme Agent.

2.3.2 Accrued rights and obligations of any party shall not be terminated by any cancellation under this Clause.

2.4 ***Appointment and Termination of Dealers:***

2.4.1 The Issuer may at any time agree with a person to become an additional Dealer. After a person becomes a Programme Dealer, the Issuer shall advise the other Programme Dealers and each Programme Agent. The Issuer and any additional Programme Dealer shall enter into a Dealer Appointment Agreement under which the additional Programme Dealer shall become a Dealer for all the purposes of this Agreement.

2.4.2 The Issuer may at any time terminate the right of any Programme Dealer to make offers to purchase CDs by giving not less than 30 days' written notice of termination to that Programme Dealer and each Programme Agent. That notice may (but is not required to be) in the form set out in Part 2 (*Dealer Termination Letter*) of Schedule 5 (*Dealer Appointment and Termination Forms*).

2.4.3 Any Programme Dealer may, by giving not less than 30 days' written notice to the Issuer (which notice shall be copied to each Programme Dealer and each Programme Agent), resign as a Programme Dealer. Termination shall not affect any rights and/or obligations (including but not limited to those arising under Clauses 12 (*Indemnities*) and/or 16 (*Expenses and Stamp Duty*)) which have

accrued or incurred on or before the effective date of termination, in particular, the validity of any agreement made between such Dealer and the Issuer and any other Dealers under Clause 2.4 (on or before such date).

2.5 ***Agents for Issues:***

2.5.1 The Issuer may appoint persons to act in any of the capacities of the Agents, either as Programme Agents in respect of the Programme generally or for the purposes of a particular Series. Alternatively, the Issuer may issue CDs on the basis that the Issuer will itself make payments and calculate interest.

2.5.2 All other parties to this Agreement authorise the Issuer to execute Agency Appointment Agreements on their behalf and acknowledge and agree that each Agent appointed under an Agency Appointment Agreement will acquire the rights and be subject to the obligations relating to that type of Agent under this Agreement.

2.6 ***Use of Proceeds:*** The proceeds of the sale of the CDs shall be used for the general funding requirements of the Issuer.



### SECTION 3 CONDITIONS TO ISSUE

#### 3. CONDITIONS PRECEDENT

3.1 ***Documents to be available before first issue:*** The obligations of the Arranger and the Dealers under this Agreement are conditional upon the receipt by the Arranger before the first Series of CDs are issued of the following documents, each in form and substance reasonably satisfactory to the Arranger and the respective Dealer:

- 3.1.1 A duly executed copy of each Programme Document.
- 3.1.2 A copy of the notice given by the Issuer to the SFC in respect of the Information Memorandum under Section 110 of the Securities and Futures Ordinance (Cap. 571) relating to the update of the Programme.
- 3.1.3 An opinion of Clifford Chance, acting as Hong Kong law solicitors for the Issuer.
- 3.1.4 An opinion of the in-house counsel of the Issuer.
- 3.1.5 A true copy of the memorandum and articles of association of Banco Santander S.A..
- 3.1.6 A certified true copy of the current Hong Kong business registration certificate of the Issuer.
- 3.1.7 A certified copy of the list of "*Licensed banks in Hong Kong as at 5 July 2016*" published on the website of the Hong Kong Monetary Authority as of the date of this Agreement, stating that the Issuer is a licensed bank in Hong Kong under the Banking Ordinance (Cap.155).
- 3.1.8 Certified true copies and English translations of all relevant resolutions and other authorisations required to be passed or given, and evidence of any other action required to be taken, on behalf of the Issuer authorising the establishment of the Programme, the acceptance of Deposits and the issue of CDs thereunder, the execution and delivery of all documents relating to a Series under the Programme Agreement, each Global CD, any definitive CD and any and all other documents required or ancillary to the update of the Programme, the issue of any CD thereunder and the performance of the Issuer's obligations thereunder.
- 3.1.9 A list of the specimen signatures of the authorised signatories of the Issuer.

#### 3.2 ***Conditions to each Issue:***

- 3.2.1 The conditions set out in Schedule 3 (*Conditions Precedent and Checklist*) must be satisfied before:
  - (a) the Issuer makes a Telephone Request for Bids or issues a Written Request for Bids;

- (b) the Issuer accepts an Unsolicited Offer; or
- (c) a Dealer (including a Syndicate Dealer) is obliged to make any Deposits under Clause 6 (*Solicited Issues*) or Clause 7 (*Unsolicited Offers*) or under a Syndication Agreement.

3.2.2 If any of those conditions are not satisfied in respect of any Series:

- (a) each Dealer which has had an offer accepted to make Deposits, to be evidenced by the issue of CDs, shall be released from its obligations to make those Deposits and to purchase the related CDs; and
- (b) if applicable, the Issuing Agent shall be released from its obligations in respect of that Series to issue those CDs.

3.3 ***Force Majeure:*** Each relevant Dealer shall be released from its obligations to make a Deposit and purchase any CDs which are the subject of an agreement by it under Clause 6 (*Solicited Issues*) or Clause 7 (*Unsolicited Offers*) if, from the date of any relevant Telephone Request for Bids or Written Request for Bids or any agreement under Clause 7 (*Unsolicited Offers*), as the case may be, in the reasonable opinion of any relevant Dealer any change occurs in national or international monetary, financial, political or economic conditions or currency exchange rates or exchange controls which would in that Dealer's reasonable opinion, held in good faith, be likely to prejudice materially the success of the offering and distribution of the CDs in the primary market or dealings in the CDs in the secondary market.

## SECTION 4 ISSUANCE PROCEDURES

### 4. DIRECT ISSUES

The Issuer may agree with (i) any person which is not a Dealer and (ii) any Agent (if any) which would be acting as an Agent for a Direct Issue to issue and deliver CDs issued under this Agreement **provided that**, if a Programme Agent is intended to act as an Agent in respect of these CDs:

- 4.1 the Issuer must have obtained that Agent's consent (which consent shall not be unreasonably withheld or delayed); and
- 4.2 the Issuer must send an Issue Terms Confirmation to that Agent and confirm such other details required under this Agreement and the relevant Agency Appointment Agreement in the same manner and by the same time as if the Direct Issue was an issue of CDs following an Unsolicited Offer.

### 5. SYNDICATION

- 5.1 **Syndication:** The Issuer may agree with any relevant Agent(s) and Dealer(s) to issue a Series of CDs to a syndicate of banks and/or financial institutions as principal and for such purpose may appoint persons who are not already Dealers to act as Dealers ("**Syndicate Dealers**") and to become party to this Agreement for the purposes only of making Deposits and purchasing CDs in respect of that Series. The issue of such a Series shall be referred to as a "**Syndication**".
- 5.2 **Syndication Agreement:** For a Syndication, the Issuer, any relevant Agent(s) and existing Dealers and any Syndicate Dealers will sign an agreement (a "**Syndication Agreement**") substantially in the form of Schedule 6 (*Form of Syndication Agreement*) (subject to any terms agreed specifically for that Syndication) setting out the terms of the relevant Syndication and, on execution of that Syndication Agreement, each Syndicate Dealer shall become a Dealer for all purposes of this Agreement in relation to the relevant Series.
- 5.3 **Minimum Size:** A Series issued under a Syndication must have an aggregate face amount of at least the Minimum Issue Size Per Series or a higher whole multiple of the Agreed Denomination.

### 6. SOLICITED ISSUES

- 6.1 **Request for Bids:** At any time before the Programme Termination Date, the Issuer may request the making of Deposits, to be evidenced by the issue of a Series on the following basis:
  - 6.1.1 The Issuer must not make the request if the terms of Clause 3.2 (*Conditions to each issue*) are not satisfied.
  - 6.1.2 The aggregate face amount of the Series requested must equal or exceed the Minimum Issue Size Per Series and must be a whole multiple of the relevant Agreed Denomination.

6.1.3 For CDs to be lodged with the CMU Service:

- (a) The Issuer may make a Telephone Request for Bids (which must be subsequently confirmed by circulating a Written Request for Bids in writing) to one or more Programme Dealers at its discretion before 1:00 p.m. on the day falling six Business Days before the relevant Deposit Date.
- (b) The Issuer must issue a Written Request for Bids to one or more Dealers and, if elected by the Issuer, the Issuing Agent in writing before 3:00 p.m. on the day falling six Business Days before the relevant Deposit Date.
- (c) If the Issuer wishes to issue a Written Request for Bids to all Programme Dealers through an Issuing Agent, it may give the Written Request for Bids to that Issuing Agent at least six Business Days before the relevant Deposit Date and that Issuing Agent will distribute a copy to all Programme Dealers by not later than 10:00 a.m. on the Business Day following the date of receipt.

6.1.4 For CDs not to be lodged with the CMU Service:

- (a) The Issuer may make a Telephone Request for Bids or a Written Request for Bids to one or more Programme Dealers at any time before the relevant Deposit Date.

6.2 **Submission of Bids:** Each Programme Dealer that receives a Written Request for Bids or a Telephone Request for Bids may, before the deadline specified in the relevant Telephone Request for Bids or Written Request for Bids submit, at its own discretion, a bid to the Issuer by telephone or in writing, specifying the applicable Issue Terms for each Series. The Issue Terms will be set out in a Response to Request for Bids or, if initially given by telephone, will be subsequently confirmed by a Response to Request for Bids in writing.

6.3 **Procedure on Acceptance/Non-Acceptance:**

6.3.1 If the Issuer accepts an offer from a Dealer in whole or in part and the relevant CDs are to be lodged with the CMU Service:

- (a) before 3:00 p.m. on the fourth Business Day before the relevant Deposit Date, the relevant Dealer shall notifying the Issuer and the CMU Lodging Agent in writing of the CMU main account or other account to which the CDs are to be credited;
- (b) before 5:00 p.m. or any time as agreed by the Issuer and the Dealer on the day that the agreement is reached (which must not be later than the fourth Business Day before the relevant Deposit Date), the Issuer and the relevant Dealer shall each sign and send an Issue Terms Confirmation confirming the terms and details of the accepted offer to each other in writing or countersign an Issue Terms Confirmation prepared by one of them; and

- (c) before 9:00 a.m. or any time as agreed by the Issuer and the Dealer on the third Business Day before the relevant Deposit Date, the Issuer and the relevant Dealer shall send an Issue Terms Confirmation confirming the terms and details of the accepted offer to any applicable Issuing Agent and CMU Lodging Agent in writing.
- 6.3.2 If the Issuer accepts an offer from a Dealer in whole or in part and the relevant CDs are not to be lodged with the CMU Service:
  - (a) the Issuer and the relevant Dealer shall send an Issue Terms Confirmation confirming the terms and details of the accepted offer to any applicable Issuing Agent in writing on or before the first Business Day before the relevant Deposit Date in sufficient time to enable the Issuing Agent to deliver such CDs on the relevant Deposit Date.
- 6.3.3 Where an Interest Bid Rate for a Fixed Rate CD or a Discounted Bid Rate is expressed as a Margin above or below a Floating Rate Benchmark to be determined after the time on which an offer is made or accepted and it is therefore not possible to calculate the aggregate Interest Bid Rate or the aggregate Deposit Price until that Floating Rate Benchmark is set before the Deposit Date:
  - (a) all details other than the aggregate Interest Bid Rate and the aggregate Deposit Price shall be confirmed in an Issue Terms Confirmation delivered under Clause 6.3.1 or 6.3.2; and
  - (b) the Issuer or, if applicable, the Calculation Agent shall confirm the aggregate Interest Bid Rate and the aggregate Deposit Price promptly after determination on or before the Deposit Date, by circulating an amended Issue Terms Confirmation.
- 6.3.4 The Issuer shall promptly notify each Programme Dealer whose bid has been unsuccessful.

## 7. UNSOLICITED OFFERS

- 7.1 **Unsolicited Offers:** At any time before the Programme Termination Date, a Programme Dealer may make an unsolicited offer (an "**Unsolicited Offer**") to the Issuer on the following basis:
  - 7.1.1 The Issuer must not accept that offer if the terms of Clause 3.2 (*Conditions to each issue*) are not satisfied.
  - 7.1.2 The aggregate face amount of the Series in the offer must equal or exceed the Minimum Issue Size Per Series and must be a whole multiple of the relevant Agreed Denomination.
  - 7.1.3 For CDs to be lodged with the CMU Service, the Programme Dealer must send an Unsolicited Offer to the Issuer in writing or by making an offer by telephone to the Issuer (which will be subsequently confirmed by an Unsolicited Offer in

writing) at any time before 3:00 p.m. on the sixth Business Day before the proposed Deposit Date.

7.1.4 For CDs not to be lodged with the CMU Service, the Programme Dealer must send an Unsolicited Offer to the Issuer in writing or by making an offer by telephone to the Issuer at any time before the proposed Deposit Date.

7.1.5 The Issuer may, subject to the terms of Clause 7.2 (*Procedure on Acceptance/Non-Acceptance of Unsolicited Offers*), accept such an offer by telephone within the time specified in the Unsolicited Offer, but the Issuer is under no obligation to accept an unsolicited offer.

7.1.6 An offer will lapse at the time specified in the Unsolicited Offer unless it is accepted by the Issuer before that time.

## 7.2 ***Procedure on Acceptance/Non-Acceptance of Unsolicited Offers:***

7.2.1 If the Issuer accepts the Unsolicited Offer of a Dealer in whole or in part and the relevant CDs are to be lodged with the CMU Service:

(a) before 3:00 p.m. on the fourth Business Day before the relevant Deposit Date, the relevant Dealer shall notify the Issuer and the CMU Lodging Agent in writing of the CMU main account or other account to which the CDs are to be credited;

(b) before 5:00 p.m. or any time as agreed by the Issuer and the Dealer on the day that the agreement is reached (which must not be later than the fourth Business Day before the relevant Deposit Date), the Issuer and the relevant Dealer shall each sign and send an Issue Terms Confirmation confirming the terms and details of the accepted offer to each other in writing or countersign an Issue Terms Confirmation prepared by one of them;

(c) before 9:00 a.m. or any time as agreed by the Issuer and the Dealer on the third Business Day before the Deposit Date the Issuer (if it has not already done so) and the relevant Dealer, shall send an Issue Terms Confirmation confirming the terms and details of the accepted offer to any applicable Issuing Agent and the CMU Lodging Agent in writing.

7.2.2 If the Issuer accepts the Unsolicited Offer of a Dealer in whole or in part and the relevant CDs are not to be lodged with the CMU Service:

(a) the Issuer and the relevant Dealer shall send an Issue Terms Confirmation confirming the terms and details of the accepted offer to any applicable Issuing Agent in writing on or before the first Business Day before the relevant Deposit Date in sufficient time to enable the Issuing Agent to deliver such CDs on the relevant Deposit Date.

7.2.3 Where an Interest Bid Rate for a Fixed Rate CD or a Discounted Bid Rate is expressed as a Margin above or below a Floating Rate Benchmark to be

determined after the time on which an offer is made or accepted and it is therefore not possible to calculate the aggregate Interest Bid Rate or the aggregate Deposit Price until that Floating Rate Benchmark is set before the Deposit Date:

- (a) all details other than the aggregate Interest Bid Rate and the aggregate Deposit Price shall be confirmed in an Issue Terms Confirmation delivered under Clauses 7.2.1 and 7.2.2; and
- (b) the Issuer or, if applicable, the Calculation Agent shall confirm the aggregate Interest Bid Rate and the aggregate Deposit Price promptly after determination, by circulating an amended Issue Terms Confirmation.

7.2.4 The Issuer shall promptly advise each Dealer whose Unsolicited Offer has been unsuccessful.

## SECTION 5 ISSUANCE MECHANICS

### 8. FORM OF CDS

#### 8.1 *Definitive/Global Global:*

8.1.1 CDs will be represented initially by a Global CD, substantially in the form set out in Schedule 2 (*Form of Global CD*).

8.1.2 A Global CD will be exchangeable for Definitive CDs in the form and in the circumstances set out in the Global CD.

8.1.3 CDs will be signed manually or in facsimile by an authorised signatory of the Issuer. CDs may not initially be issued on a Deposit Date in definitive form.

#### 8.2 *Form of CDs:* Each Definitive CD to be issued under this Agreement, on an exchange for a Global CD, shall have a face amount equal to the relevant Agreed Denomination and shall be:

8.2.1 substantially in the form set out in the Appendix to Schedule 2 (*Form of Global CD*);

8.2.2 executed by the Issuer by persons authorised so to execute;

8.2.3 if an Issuing Agent is appointed for that Series or for the Programme generally, authenticated by that Issuing Agent; and

8.2.4 dated the relevant Deposit Date, with the Conditions and Issue Terms applicable to that CD incorporated.

#### 8.3 *Authorised Signatories:* If any authorised signatory of the Issuer whose signature appears on CD ceases to be authorised before that CD is duly issued, the obligations of the Issuer under this Agreement and under that CD shall be valid for all purposes as if that authority had remained in force at all relevant times.

#### 8.4 *Sufficient Supply:* The Issuer shall provide its Issuing Agent(s) with executed, unauthenticated Global CDs for each relevant Series. Those executed unauthenticated CDs shall be pre-signed manually or in facsimile on behalf of the Issuer by duly authorised persons, and shall be held in safe custody by each Issuing Agent to the order of the Issuer.

#### 8.5 *Completion:* The Issuer shall, in respect of each Series:

8.5.1 where there is no Issuing Agent, before 10:00 a.m. on the Business Day before the relevant Deposit Date (or such earlier time as is necessary to comply with the operating procedures of any relevant Clearing Systems) prepare; or

8.5.2 where there is an Issuing Agent, before 10:00 a.m. on the Business Day before the relevant Deposit Date (or such earlier time as is notified by the Issuing Agent to be necessary to comply with the operating procedures of any relevant Clearing Systems) deliver or procure the delivery of sufficient executed,



unauthenticated CDs in respect of such Series to the Issuing Agent and insert, or procure the Issuing Agent to prepare,

the Issue Terms to be attached to the relevant CD and at or about 10:00 a.m. (in the principal financial centre of the currency in which the CD is or is to be denominated) on the Deposit Date activate the CDs by:

- (i) attaching the Issue Terms to the CDs or procuring that the Issuing Agent attaches the Issue Terms; and
- (ii) where there is no Issuing Agent, executing them or where there is an Issuing Agent, the Issuing Agent authenticating them without recourse or warranty.

8.6 **Issue:** Subject to Clause 8.11 (*Reversal of CMU Credits*), the completion of the matters referred to in Clause 8.5 (*Completion*) shall constitute the issue of the CDs.

8.7 **Delivery to Clearing Systems:** Any Global CD agreed to be lodged, will initially be lodged with any relevant Clearing System either by the Issuer, by the Issuing Agent for that Series, if any, or by a relevant Dealer acting as the lodging agent of the Issuer. If the Issuer and the relevant Dealer(s) have agreed that the Issuing Agent or that Dealer will lodge the CD(s) then:

8.7.1 for CD(s) to be lodged with the CMU Service, the terms of Clauses 8.13 (*Acknowledgement of CMU exonerations*) to Clause 8.17 will apply; and

8.7.2 for CDs to be lodged into a Clearing System other than the CMU Service, the Issuer shall ensure that it, the Issuing Agent (if applicable) or the relevant Dealer shall make all necessary arrangements for that Clearing System and/or a custodian or common depositary to accept that CD.

8.8 **Lodging and Safe Custody:**

8.8.1 The Issuer or any relevant Issuing Agent or Dealer which has agreed to lodge a CD on issue with any relevant Clearing System shall ensure that any relevant CD to be lodged by it is properly lodged with that Clearing System on or before the relevant Deposit Date (and in the case of lodgement with the CMU Service, in accordance with the CMU Rules) so that all Dealers making Deposits to be represented by the relevant CD(s) are, subject to Clause 8.11 (*Reversal of CMU Credits*), credited with appropriate interests in the relevant CD(s) to the requested accounts with that Clearing System on that Deposit Date. If the CD(s) is to be lodged with the CMU Service, the Issuing Agent acting as the Issuer's lodging agent (the "**CMU Lodging Agent**") will provide to the CMU Service (with a copy to the Issuer) together with the relevant CD(s) a lodging agent's undertaking substantially in the form of Schedule 10 (*CMU Service - Lodging Agent's Undertaking*) or such other form as is applicable from time to time.

8.8.2 Where it is Agreed that the Global CD will be held by the Issuer or a Nominated Custodian, the Issuer shall exercise reasonable care in arranging for the Global CD to be held in safe custody.

- 8.9 **Credits with Clearing Systems:** Any Dealer which is not a member of or an accountholder with a relevant Clearing System and which has requested that interests in a Global CD be lodged with that Clearing System on the relevant Deposit Date will give irrevocable instructions to the Issuer or any relevant Issuing Agent or Dealer, as the case may be, not later than 3:00 p.m. on the second Business Day before the relevant Deposit Date confirming the details of the account(s) maintained by member(s) or accountholder(s) of that Clearing System to which the relevant Definitive CD(s) or interest(s) in a Global CD should be credited.
- 8.10 **Lodging Costs:** Unless specifically agreed between the Issuer and any relevant Issuing Agent or Dealer in respect of lodging any CD with a Clearing System on the Deposit Date relating to that CD, the Issuer shall bear and pay all costs payable to that Clearing System in respect of the initial lodging of that CD on or before the Deposit Date.
- 8.11 **Reversal of CMU Credits:** If the Issuer, or the relevant Issuing Agent on its behalf, does not receive all the funds required to be paid to the Issuer on the issue of a Series lodged into the CMU Service under Clause 6 (*Solicited Issues*), Clause 7 (*Unsolicited Offers*) or Clause 5 (*Syndication*), and the Dealers and Syndicate Dealers who have not provided all funds to be paid by them agree severally to use all endeavours to procure that:
- 8.11.1 the CMU Service returns the Global CD(s) comprising that Series to the Issuer (or to the lodging agent on the Issuer's behalf) (if no funds are received in respect of that Series); or
  - 8.11.2 the aggregate principal amount of the Global CD(s) is reduced, to reflect any shortfall and so that the Issuer (or its lodging agent, if one has been appointed) may reverse the credit of any interest in the Global CD(s) (or Definitive CD(s)) which has been made in favour of a Dealer or other purchaser which the Issuer or, if applicable, the Issuing Agent confirms has not made payment in accordance with the terms of this Agreement.
- Any costs incurred in regard to Clause 8.11.1 or 8.11.2 will be borne by the relevant Dealer.
- 8.12 **DvP Settlement:**
- 8.12.1 Dealers who are CMU Members and who subscribe to DvP in respect of the allotment and settlement of interests in new issues may, by prior agreement with the Issuer and the Issuing Agent or the CMU Lodging Agent arrange for the interests of those Dealers in those CDs to be allotted and paid for on a DvP basis in accordance with the CMU Rules. Those arrangements are subject to:
    - (a) prior agreement between those Dealers and the Issuer as to who will bear the cost of using DvP; and
    - (b) the CMU Service being notified by the Issuer, the Issuing Agent or the CMU Lodging Agent prior to the last time possible for the arrangement of such settlement under the CMU Rules.

- 8.12.2 CDs will be lodged with Euroclear and Clearstream on a delivery-against-payment basis unless other arrangements have been agreed in respect of a particular Series in the Issue Terms Confirmation.
- 8.13 **Acknowledgement of CMU exonerations:** The Issuer acknowledges that the CMU Rules will apply to any CDs lodged with the CMU and to all transactions and operations effected through the CMU Service in relation to the CDs including transactions relating to the lodgement, withdrawal or redemption of the CDs and in particular (but without limitation):
- (a) the CMU Service and its servants and agents are, with the limited exceptions expressly provided in any relevant CMU membership agreement, exempt from liability caused directly or indirectly by the operation of the CMU Service and the CMU Service is entitled without liability to act without further enquiry on instructions or information or purported instructions or information received through the CMU Service or otherwise in accordance with the CMU Manual (as defined in a CMU membership agreement); and
  - (b) the CMU Service is under no liability to any person (whether or not a member of the CMU Service) as a result of any actual or alleged defect or irregularity with respect to any CD lodged with or held in the CMU Service, any signature or purported signature appearing on any such CD, any disposition or purported disposition of any such CD or any inconsistency of any such CD with the details specified in respect of that CD in the CMU Service.
- 8.14 **CMU Lodging Agent's authority:** The Issuer authorises the CMU Lodging Agent to do all such acts and things and execute all such documents as may be required to enable the CMU Lodging Agent fully to observe and perform its obligations under its CMU membership agreement and the CMU Rules and to enter into any arrangement which it considers proper in connection with the lodgement with the CMU Service of any CDs, the holding of those CDs in the CMU Service and (unless the Issuer or another CMU Member is for the time being appointed to act as paying agent of the CDs on the Issuer's behalf) the redemption of the CDs, including (but without limitation):
- (a) authenticating the CDs (including authentication on withdrawal from the CMU Service); and
  - (b) making payments in respect of the CDs in the manner prescribed by the CMU Rules.
- 8.15 **Waiver of presentment:** It is acknowledged that no further or other demand or presentment for payment of any CDs lodged with the CMU Service shall be required except for the credit of the CDs to the relevant accounts of CMU Members with the CMU Service (whether acting on their own behalf or as paying agent) in accordance with the CMU Rules and the Issuer and each applicable Agent waives the requirement for any further or other demand or presentment for payment.
- 8.16 **CMU Lodgement:** If a Dealer has agreed to lodge a CD with the CMU Service as agent of the Issuer, that Dealer is deemed to represent that it is a member of the CMU Service

- 8.17 The CMU Lodging Agent shall notify the Issuer, the CMU Service and the Agent forthwith if the Issuer, or the relevant Issuing Agent on its behalf, does not receive all the funds required to be paid to the Issuer on the issue of a Series lodged into the CMU Service under Clause 6 (*Solicited Issues*), Clause 7 (*Unsolicited Offers*) or Clause 5 (*Syndication*).

## SECTION 6 REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

### 9. REPRESENTATIONS AND WARRANTIES OF THE ISSUER

9.1 ***Representations and Warranties:*** The Issuer represents and warrants to and agrees with the Dealers and Agents as follows:

9.1.1 ***Status:*** Banco Santander S.A. is a company duly incorporated with limited liability under the laws of Spain, is validly existing under the laws of Spain with no express limit on the duration of its existence, and has the power and authority and is lawfully qualified to manage its property and conduct its business as presently conducted and as described in the Information Memorandum.

9.1.2 ***Licensing:***

(i) The Issuer holds a banking licence under Section 16(3)(a) of the Banking Ordinance (Chapter 155 of the Laws of Hong Kong) and the Issuer has not received any notice suspending or revoking, or proposing to suspend or revoke, such licence.

(ii) Banco Santander S.A. is a financial institution and is registered with the Bank of Spain in the Special Register of Banks and Bankers under code number 0049.

9.1.3 ***Power and authority:*** The Issuer has full power and authority to:

(i) enter into, execute and deliver the Programme Documents and to accept the Deposits and to execute, issue, offer and deliver the CDs in the manner provided in the Programme Documents and the CDs; and

(ii) perform all of its obligations under the Programme Documents and the CDs.

9.1.4 ***Corporate and other actions:*** All necessary corporate, shareholder and other action has been taken to authorise:

(i) the execution and delivery of, and the performance of the Issuer's obligations under, the Programme Documents and the CDs;

(ii) the acceptance of the Deposits; and

(iii) the offering and issue of the CDs.

9.1.5 ***Obligations of the Issuer:*** The Issuer and Banco Santander S.A. are a single legal entity and accordingly the liabilities and obligations of the Issuer under this Agreement are also those of Banco Santander S.A..

9.1.6 ***No breach of powers:*** The transactions contemplated by the Programme Documents and the CDs will not result in (i) any limitation on the powers of the Issuer being exceeded, (ii) any violation of or default under the articles of

association of the Issuer, or (iii) any violation of any other applicable law, judgment, order or decree of any governmental authority having jurisdiction over the Issuer in Hong Kong or Spain.

- 9.1.7 **No winding-up:** No receiver, administrator, liquidator, trustee in bankruptcy or anything similar has been appointed to, or in respect of, the Issuer or any material part of its assets.
- 9.1.8 **Obligations binding:** The Programme Documents and the CDs, when executed and delivered as provided in this Agreement, constitute or evidence or, as the case may be, will when undertaken constitute or evidence, valid, binding and enforceable obligations of the Issuer in accordance with their respective terms
- 9.1.9 **No contractual breach:** The Issuer is not in breach of or in default in, and the acceptance of the Deposits, the execution and delivery of the Programme Documents, the execution, issue, offering and delivery of the CDs and the performance of the terms of the CDs and the Programme Documents by the Issuer, will not conflict with or result in any breach of or constitute a default under, any terms or provisions of its business licence(s) or, to the best of the Issuer's knowledge, any of the terms of or under any mortgage, deed, contract or other agreement to which it is a party or which is binding on it or any of its assets or revenues and which breach or default is or may be material in the context of any Deposit, any CD and the Programme Documents.
- 9.1.10 **Accounts:** The most recently available audited consolidated accounts of Banco Santander S.A.:
- (a) are accurate in all material respects;
  - (b) give a true and fair view of the financial condition of Banco Santander S.A. and its subsidiaries as at the date to which they were prepared and of the results of its operations for the period then ended;
  - (c) have been prepared in conformity with Spanish law and with International Financial Reporting Standards (IFRS) and consistently applied; and
  - (d) do not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading,

and, unless otherwise disclosed, there has been no material adverse change in the financial conditions of Banco Santander S.A. since the date which those accounts are prepared.

- 9.1.11 **Consents:** The Issuer has obtained all necessary consents and approvals required under the laws of Hong Kong and Spain for or in connection with
- (a) the acceptance of the Deposits;
  - (b) the execution and delivery of the Programme Documents;

- (c) the execution, issue, offering and delivery of the CDs; and
- (d) the performance by the Issuer of the terms and conditions of the Programme Documents and the CDs,

and those consents and approvals are not subject to any terms and conditions required to be fulfilled or complied with and which have not been duly fulfilled and complied with before the date of this Agreement

9.1.12 ***Ranking of Obligations:***

- (a) The Deposits to be evidenced by the CDs constitute the direct, unconditional, unsubordinated and unsecured obligations of the Issuer and upon the insolvency of the Issuer (and unless they qualify by law as subordinated debts under article 92 of Law 22/2003 (*Ley Concursal*) dated 9 July 2003 (the "**Insolvency Law**") or equivalent legal provision which replaces it in the future), will rank equally and rateably without preference or priority among themselves and the payment obligations of the Issuer under the CDs rank at least equally with all other present and future unsecured and unsubordinated obligations of the Issuer except for obligations preferred by law on a liquidation or insolvency of the Issuer.
- (b) Under Hong Kong laws, priority is given to depositors with an authorised institution in Hong Kong in respect of deposits in aggregate of up to HK\$500,000 under Section 265 of the Companies (Winding up and Miscellaneous Provisions) Ordinance (Cap. 32) or equivalent legal provision which replaces it in the future.

9.1.13 ***Private and Commercial Acts:*** The execution, issue and delivery of the Programme Documents and the CDs by the Issuer constitute, and its exercise of its rights and performance of its obligations under the Programme Documents and the CDs will constitute, private and commercial acts done and performed for private and commercial purposes.

9.1.14 ***Immunity:*** The Issuer will not be entitled to claim immunity from suit, execution, attachment or other legal process in any proceedings taken in Hong Kong or Spain in relation to the Programme Documents and/or the CDs and, in the event of it becoming entitled to claim any immunity, it will not claim and irrevocably waives any immunity.

9.1.15 ***Litigation:*** Except as disclosed in its most recently available annual or semi-annual report and except for proceedings which have been started or threatened in connection with matters which have already been the subject of public disclosure or proceedings resulting from public disclosure, the Issuer is not involved in any litigation or arbitration proceedings to restrain the entry into, the exercise of its rights under, or the performance or enforcement of or compliance with its obligations under, any of the Programme Documents and the CDs, nor to the best of its knowledge are any such litigation or arbitration proceedings pending or threatened.

- 9.1.16 **Information Memorandum:** The information contained in the Information Memorandum is true and correct in all material respects and is not misleading in any material respect and it is not aware of any facts or circumstances that have not been disclosed in the Information Memorandum which would, if disclosed, materially and adversely affect the decision of the Arranger or a Dealer considering whether or not to make deposits with the Issuer.
- 9.1.17 **No Default:** No event or circumstances is outstanding which constitutes a default under any other agreement or instrument which is binding on the Issuer or to which its assets are subject which is or may be material in the context of any Deposit, any CD and the Programme Documents.
- 9.1.18 **OFAC:** None of the Issuer or, to the knowledge of the Issuer, any director, officer, agent, employee or affiliate of the Issuer is currently subject to any sanctions administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury ("**OFAC**") (including but not limited to U.S. Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 and the implementing regulations), Her Majesty's Treasury, the European Union, the United Nations or any other relevant sanctions authority (together "**Sanctions**") and the Issuer will not directly or indirectly use the proceeds of the offering of the CDs hereunder, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person currently subject to any Sanctions.
- 9.1.19 **FCPA and UK Bribery Act:** None of the Issuer or, to the knowledge of the Issuer, any director, officer, agent, employee or affiliate of the Issuer is aware of or has taken any action, directly or indirectly, that would result in a violation by such persons of the U.S. Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the "**FCPA**") and the UK Bribery Act 2010 (the "**UK Bribery Act**") and all applicable anti-corruption and anti-bribery laws and the Issuer have conducted its businesses in compliance with the FCPA and the UK Bribery Act and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith and all applicable anti-corruption and anti-bribery law.
- 9.1.20 **Anti-Money Laundering Laws:** The operations of the Issuer are and have been conducted at all times in compliance with all applicable financial recordkeeping and reporting requirements and the applicable anti-money laundering statutes of jurisdictions where the Issuer conducts business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the "**Anti-Money Laundering Laws**") and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Issuer with respect to the Anti-Money Laundering Laws is pending or, to the best knowledge of the Issuer, threatened.



- 9.1.21 **Non-violation of laws and powers:** On the assumption that the CDs will not be offered or sold, directly or indirectly, within the United States or to a U.S. person or in violation of any other selling restrictions of any relevant jurisdiction and that the Dealers each have in effect, in connection with the offer and sale of the CDs procedures reasonably designed to ensure that its employees or agents who are directly engaged in selling the CDs are aware that the CDs cannot be offered or sold in violation of any selling restrictions of any relevant jurisdiction, the acceptance of the Deposits by the Issuer, the execution and delivery of the Programme Documents by the Issuer and execution, issue, offering and delivery of the CDs and the performance by the Issuer of the terms and conditions of the Programme Documents and the CDs do not and will not:
- (i) infringe, and are not contrary to, any laws, instruments or regulations of any governmental or regulatory body of Hong Kong or Spain or, to the best of the Issuer's knowledge, of any other relevant jurisdiction which affect or are binding on the Issuer and are not contrary to the provisions of the Issuer's constitutional documents; or
  - (ii) cause any limit on the borrowing or other powers of the Issuer (whether imposed by the documents under which the Issuer is constituted or otherwise) to be exceeded.
- 9.1.22 **Foreign Issuer:** The Issuer is a "foreign issuer" (as that term is defined in Rule 902(e) of Regulation S).
- 9.1.23 **General Solicitation:** Neither the Issuer, nor any of its affiliates (as defined in Rule 501(b) of Regulation D under the Securities Act), nor any person acting on its or their behalf has made or will, directly or indirectly, make offers or sales of any security, or has solicited or will solicit offers to buy, or otherwise negotiate in respect of, any security, under circumstances that would require the registration of the CDs under the Securities Act
- 9.1.24 **Directed Selling Efforts:** Neither the Issuer, nor any of its affiliates (as defined in Rule 405 under the Securities Act), nor any person acting on its or their behalf has engaged in any "directed selling efforts" (as defined in Rule 902(c) of Regulation S) with respect to the CDs.
- 9.1.25 **CMU Membership:** The Issuer is a member of the CMU Service pursuant to a CMU membership agreement entered into between it and the CMU Service and dated 28 January 2008.
- 9.2 **Qualification:** The representations and warranties in Clause 9.1 (*Representations and Warranties*) shall be subject, as to matters of law only, to the qualifications, reservations and observations in any legal opinion made available for inspection in accordance with Clause 3.1 (*Documents to be available before first issue*) and subject to applicable insolvency, reorganisation, moratorium and other similar laws relating to or affecting creditors rights generally and general principles of equity.

9.3 **Repetition:** The Issuer represents and warrants to and for the benefit of the Dealers and the Agents that each of the warranties contained in Clause 9.1 (*Representations and Warranties*) shall be deemed repeated on each Deposit Date and each time a Written Request for Bids or Telephone Request for Bids is given or an Unsolicited Offer is accepted by the Issuer and on each date on which a Syndication Agreement is entered into by reference to the circumstances existing at that time, except:

- (a) to the extent of the qualification in Clause 9.2 (*Qualification*); and
- (b) that the Issuer represents and warrants in the terms set out in Clause 9.1.16 (*Information Memorandum*) only as on the date of this Agreement.

9.4 The representations, warranties and covenants contained in this Clause 9 shall continue in full force and effect notwithstanding the actual or constructive knowledge of any Dealer with respect to any of the matters referred to in the representations, warranties and covenants set out above, any investigation by or on behalf of the Dealers or completion of the subscription or issue of any CD.

## 10. UNDERTAKINGS OF THE ISSUER

10.1 The Issuer undertakes (and so that those undertakings shall survive until the later of the Programme Termination Date or the date on which no CD remains Outstanding) to and for the benefit of the Dealers and Agents as follows:

10.1.1 **Payments and other obligations:** It shall make each payment due from it under the Programme Documents and the CDs on its due date and perform each of its other undertakings, obligations and agreements under the Programme Documents and the CDs.

10.1.2 **Notification of Breach:** After:

- (a) the Issuer accepts an offer of a Dealer pursuant to Clause 6.3 (*Procedure on Acceptance/Non-Acceptance*) or Clause 7.2 (*Procedure on Acceptance/Non-Acceptance of Unsolicited Offers*); or
- (b) the Issuer, any relevant Dealer and any applicable Issuing Agent, Paying Agent or Calculation Agent agrees to the issue of a series of CDs pursuant to Clause 5.1 (*Syndication*),

the Issuer shall as soon as practicable notify the Dealers and any relevant Agents of the occurrence of:

- (i) the breach of any representation and warranty under Clause 9 (*Representations and Warranties of the Issuer*); or
- (ii) the breach of any undertaking made by it under this Clause 10,

in each case immediately upon becoming aware of that breach, and it will from time to time on reasonable request from any Agent or Dealer deliver to the Dealers and any relevant Agents a certificate:

- (i) confirming that, to the best of its knowledge, no such breach has occurred; or
  - (ii) where appropriate, setting out details of that breach and the action taken or proposed to be taken to remedy it.
- 10.1.3 ***Compliance with Laws and Consents:*** The Issuer will obtain, comply with the terms of and do everything necessary to maintain in full force and effect all consents, approvals, authorisations and licences required in or by the laws and regulations of Hong Kong and Spain to:
  - (a) enable it lawfully to enter into and perform its obligations under the Programme Documents and/or the CDs; and
  - (b) ensure the legality, validity, enforceability or admissibility in evidence in Hong Kong and Spain of the Programme Documents and/or the CDs.
- 10.1.4 ***Compliance with the Securities and Futures Ordinance:*** The Issuer shall submit to the SFC within ten (10) working days after the issue of any future advertisement, invitation or document in respect of the Deposits permitted to be issued under section 103(3)(e) of the Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong) (or any similar statutory provision which replaces this) a certificate containing such information and records as the SFC may from time to time specify under Section 110 of the Securities and Futures Ordinance.
- 10.1.5 ***Delivery of Accounts:*** The Issuer will deliver to the Dealers and any Syndicate Dealers who are not also Dealers, on request after they become available, the audited accounts of Banco Santander S.A. as at the end of and for that financial year.
- 10.1.6 ***Stamp Duty:*** The Issuer will pay in full any stamp duties or other similar duties and taxes payable on the issue of or otherwise in respect of the CDs and the Programme Documents, imposed by or in Hong Kong or Spain (or any political sub-division or authority of or in Hong Kong or Spain having power to tax) but that there are no such Hong Kong or Spanish duties or taxes payable as at the date of this Agreement.
- 10.1.7 ***Directed Selling Efforts:*** Neither the Issuer, nor any of its affiliates (as defined in Rule 405 under the Securities Act), nor any person acting on its or their behalf will engage in any directed selling efforts (as defined in rule 902(c) of Regulation S) with respect to the CDs.
- 10.1.8 ***Selling Restrictions:*** The Issuer will be bound by and shall comply with the restrictions on offers and sales of CDs and the undertakings which are contained in Schedule 9 (*Selling Restrictions*) as the same may be amended from time to time by the Issuer and notified to the Dealers.
- 10.1.9 ***Compliance with CMU Rules:*** The Issuer will comply with the CMU Rules and will notify the Dealers immediately if its membership of the CMU Service is

terminated or suspended or if it gives notice to the Hong Kong Monetary Authority of its intention to withdraw its membership of the CMU Service.

**11. REPRESENTATIONS, WARRANTIES, UNDERTAKINGS AND AGREEMENTS OF THE DEALERS**

Each of the Dealers hereby represents and warrants to and agrees with the Issuer as follows:

11.1 ***Selling Restrictions***: It has complied and will comply with the terms set out in Schedule 9 (*Selling Restrictions*) (as these may be amended from time to time).

11.2 ***Distribution of Information***:

11.2.1 It will not issue any circular or make any public announcement or representations in connection with the making of the Deposits or the placing of the CDs (other than those made by the terms endorsed on the CDs or set out in this Agreement) without the consent of the Issuer.

11.2.2 Until withdrawn, the Issuer generally consents to each Dealer providing or despatching to a potential purchaser of a CD the Information Memorandum and copies of the most recently published audited accounts or interim financial statements (if any) of the Issuer, and the forms of the CDs.

11.3 ***Clearing System Details***: If a Dealer has requested that a CD to be issued to it should be lodged with a particular Clearing System either:

11.3.1 it is a member of, or an accountholder with, that Clearing System and will, when appropriate, nominate its account with that Clearing System to which its interest in the relevant CDs should be credited; or

11.3.2 it is not a member of, or an accountholder with, that Clearing System and it shall give irrevocable instructions to the Issuer, the Issuing Agent or any relevant Dealer, as the case may be, not later than 3:00 p.m. on the second Business Day before any relevant Deposit Date confirming the account(s) maintained by another person with that Clearing System to which that Dealer's interest in the relevant CD(s) should be credited.

11.4 ***CMU Rules***: Each Dealer acknowledges that it is aware of the CMU Rules and agrees to comply with those rules if a CD is lodged with the CMU Service pursuant to a request by that Dealer.

**SECTION 7**  
**INDEMNITIES, TAXES, PAYMENTS AND EXPENSES**

**12. INDEMNITIES**

**12.1 *General Indemnity from the Issuer:***

- 12.1.1 The Issuer undertakes to indemnify and hold harmless the Arranger, the Dealers and the Agents and each of their respective affiliates, directors, officers and employees (the "**Indemnified Parties**" and each an "**Indemnified Party**") against any losses, liabilities, expenses (including, without limitation, legal fees and expenses) or costs which they may properly incur and against any claims, actions or demand which may be asserted against them directly arising from any misrepresentation in, breach of, or failure to perform, the representations, warranties and agreements by the Issuer contained in this Agreement save as may arise in consequence of fraud, gross negligence or wilful misconduct of such Indemnified Party.
- 12.1.2 This indemnity will be in addition to any liability which the Issuer may otherwise have.
- 12.1.3 Termination or cancellation under Clause 2.1 (*Term of Programme*) or Clause 2.3 (*Cancellation of Programme*) or the resignation or removal of an Agent shall not affect the obligations of the Issuer under this Clause 12.
- 12.1.4 In the event that any claim, action or demand is brought against an Indemnified Party in respect of which an indemnity may be sought from the Issuer, that Indemnified Party shall promptly notify the Issuer in writing of this with details and shall employ such legal advisers to advise on the same as may be agreed without delay between the Issuer and the Indemnified Party and the Issuer shall not unreasonably withhold or delay its consent. Subject to the consent of the Indemnified Party, the Issuer may participate at its own expense in the defence of any such action.

**12.2 *General Indemnity to the Issuer:***

- 12.2.1 Each Indemnified Party severally but not jointly undertakes to indemnify and hold harmless the Issuer against any losses, liabilities or expenses (including, without limitation, legal fees and expenses) which the Issuer may properly incur and against any claims, actions or demand which may be asserted against the Issuer directly arising out of any breach of the selling restrictions set out in Clause 11.1 (*Selling Restrictions*) and Schedule 9 (*Selling Restrictions*) of this Agreement by such Indemnified Party save as may arise in consequence of fraud, gross negligence or wilful misconduct of the Issuer.
- 12.2.2 This Indemnity will be in addition to any liability which the Dealers may otherwise have.

12.2.3 Termination or cancellation under Clause 2.1 (*Term of Programme*) or Clause 2.3 (*Cancellation of Programme*) of this Agreement shall not affect the obligations of each Dealer under this Clause 12.

12.2.4 In the event that any claim, action or demand is brought against the Issuer in respect of which an indemnity may be sought from an Indemnified Party, the Issuer shall promptly notify the relevant Dealer in writing of this with details and shall employ such legal advisers to advise on the same as may be agreed without delay between the Issuer and the relevant Indemnified Party, and the relevant Indemnified Party shall not unreasonably withhold or delay its consent. Subject to the consent of the Issuer, the Dealer may participate at its own expense in the defence of any such action.

12.3 ***Continuing Obligations:***

These indemnities constitute a separate and independent obligation from the other obligations in this Agreement, shall give rise to a separate and independent cause of action, shall apply irrespective of any indulgence granted by any Indemnified Party and shall continue in full force and effect despite any judgment, order, claim or proof for a liquidated amount in respect of any sum due under this Agreement or any judgment or order to the extent permitted by the laws of Spain and Hong Kong.

12.4 ***Mitigation:***

12.4.1 The Issuer and each Indemnified Party shall take all steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to Clause 12.

12.4.2 If any of the circumstances referred to in Clause 12 occur, the Issuer and each relevant Dealer shall, for a period of up to ten (10) Business Days (or, in the case of any event giving rise to any illegality, for such shorter period as may be allowed under applicable law), consult and negotiate in good faith with a view to concluding arrangements whereby the effects of such circumstances can be mitigated or any continued increased payment or cost can be avoided or reduced.

**13. PAYMENTS**

13.1 ***By the Issuer:***

Unless otherwise provided by this Agreement or any Agency Appointment Agreement, all payments to be made by the Issuer to the Agents (if applicable) and/or the Dealers under this Agreement shall be made in funds either:

13.1.1 for same day value, to be received by not later than 11:00 a.m. (in Hong Kong) on the due date, by payment through "Hong Kong RTGS" (for HK\$ CDs or RMB CDs held in the CMU Service);

- 13.1.2 for same day value, to be received by not later than 11:00 a.m. (in Hong Kong) on the due date (for CDs (other than HK\$ CDs and RMB CDs) held in the CMU Service);
- 13.1.3 for same day value, to be received by not later than 12 noon (in London) on the due date, by payment through the relevant Clearing System (for CDs (other than HK\$ CDs) held in Euroclear or Clearstream);
- 13.1.4 for same day value, to be received by not later than 12 noon (in Hong Kong) on the Business Day immediately preceding the due date, by payment through the relevant Clearing System (for HK\$ CDs held in Euroclear or Clearstream); or
- 13.1.5 as otherwise agreed between the parties.

13.2 ***By Dealers and Issuing Agent (if applicable):***

- 13.2.1 Unless otherwise provided by this Agreement or any Agency Appointment Agreement, all payments of any amounts due from the Dealers and/or the Issuing Agent (if applicable) to the Issuer under this Agreement shall be made in funds either:
  - (a) for same day value, to be received by not later than 11:00 a.m. (in Hong Kong) on the due date, by payment through "Hong Kong RTGS" (for HK\$ CDs or RMB CDs held in the CMU Service);
  - (b) for same day value, to be received by not later than 11:00 a.m. (in Hong Kong) on the due date (for CDs (other than HK\$ CDs and RMB CDs) held in the CMU Service);
  - (c) for same day value, to be received by not later than 12 noon (in London) on the due date, by payment through the relevant Clearing System (for CDs (other than HK\$ CDs) held in Euroclear or Clearstream);
  - (d) for same day value, to be received by not later than 12 noon (in Hong Kong) on the Business Day immediately preceding the due date, by payment through the relevant Clearing System (for HK\$ CDs held in Euroclear or Clearstream); or
  - (e) as otherwise agreed between the parties.
- 13.2.2 If any such payment in sub-clause 13.2.1(a) above is made to the Issuing Agent, the Issuing Agent shall, as soon as practicable and in any event by no later than 4:00 p.m. (in Hong Kong) forward such payment in funds for same day value to the Issuer through "Hong Kong RTGS".

13.3 ***Non-Business Days:***

Whenever any payment under this Agreement would but for this Clause 13.3 fall due on a day which is not a Business Day, then the due date for payment of such sum shall be postponed to the next succeeding day which is a Business Day.

#### 14. BAIL-IN POWER

- 14.1 Notwithstanding any other term of this Agreement, the CDs or any other agreements, arrangements, or understandings between the Issuer and any Dealer (which for the avoidance of doubt, includes any dealer who subsequently becomes a Dealer hereto), the Issuer and each Dealer, acknowledges, accepts, consents and agrees to be bound by: (i) the effect of the exercise of the relevant Bail-in Power (as defined below) by the Relevant Resolution Authority (as defined below), that may include and result in any of the following, or some combination thereof: (1) the reduction of all, or a portion, of the BRRD Liability (as defined below) or outstanding amounts due thereon; (2) the conversion of all, or a portion, of the BRRD Liability into shares, other securities or other obligations of such BRRD Party or another person (and the issue to or conferral on such holder of any such shares, securities or obligations), including by means of an amendment, modification or variation of the terms of any CD issued pursuant to the Programme; (3) the cancellation of any BRRD Liability; (4) the amendment or alteration of the maturity of, or amendment of the amount of interest payable on, any BRRD Liability, or the date on which interest becomes payable, including by suspending payment for a temporary period; (5) the cancellation of the BRRD Liability; and (ii) the variation of the terms of any BRRD Liability or the terms and conditions stated herein, if necessary, to give effect to the exercise of the relevant Bail-in Power by the Relevant Resolution Authority.
- 14.2 By its acquisition or acceptance of a CD, each Dealer acknowledges and agrees that neither (i) a reduction or cancellation, in part or in full, of the BRRD Liability on any CD, or the conversion thereof into another security or obligation of the Issuer or another person, in each case as a result of the exercise of the Spanish Bail-in Power by the Relevant Resolution Authority with respect to the Issuer, nor (ii) the exercise of the Spanish Bail-in Power by the Relevant Spanish Resolution Authority with respect to any CD, nor (iii) the Issuer's inability to fulfil its obligations under the terms of any CD as a result of the exercise of the Spanish Bail-in Power by the Relevant Resolution Authority will give rise to a Default with respect to any CD pursuant to the terms and conditions herein.

For this purpose:

**"Bail-in Power"** means (i) in relation to a Spanish BRRD Party, the Spanish Bail-in Power, and (ii) in relation to an Other BRRD Party, an Other Bail-in Power.

**"BRRD"** means Directive 2014/59/EU of the European Parliament and the Council of the European Union of May 15, 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms, as amended from time to time.

**"BRRD Party"** means a Spanish BRRD Party or an Other BRRD Party.

**"BRRD Liability"** means (i) in relation to a Spanish BRRD Party, a Spanish BRRD Liability and (ii) in relation to an Other BRRD Party, an Other BRRD Liability.

**"EU Bail-in Legislation Schedule"** means the document described as such, then in effect, and published by the Loan Market Association (or any successor person) from time to time at <http://www.lma.eu.com/pages.aspx?p=499>.



"**Law 11/2015**" means Spanish Law 11/2015 of 18 June, on the recovery and resolution of credit institutions and investment firms (*Ley 11/2015, de 18 de junio, de recuperación y resolución de entidades de crédito y empresas de servicios de inversión*).

"**Other Bail-in Legislation**" means in relation to a member state of the European Economic Area which has implemented, or which at any time implements, the BRRD, other than the Kingdom of Spain, the relevant implementing law, regulation, rule or requirement as described in the EU Bail-in Legislation Schedule from time to time.

"**Other Bail-in Power**" means any Write-down and Conversion Powers as defined in the EU Bail-in Legislation Schedule, in relation to the relevant Other Bail-in Legislation.

"**Other BRRD Party**" means an entity that is subject to the Other Bail-in Legislation.

"**Other BRRD Liability**" means a liability in respect of which the relevant Write Down and Conversion Powers in the applicable Bail-in Legislation may be exercised.

"**RD 1012/2015**" means Royal Decree 1012/2015, of 6 November, implementing Law 11/2015;

"**Relevant Spanish Resolution Authority**" means the Spanish Fund for the Orderly Restructuring of Banks (*Fondo de Reestructuración Ordenada Bancaria*) (the "**FROB**"), the European Single Resolution Mechanism and, as the case may be, according to Law 11/2015, the Bank of Spain and the Spanish Securities Market Commission and any other entity with the authority to exercise the Spanish Bail-in Power from time to time.

"**Relevant Other Resolution Authority**" means the resolution authority with the ability to exercise any Bail-in Powers in relation to an Other BRRD Party.

"**Relevant Resolution Authority**" means (i) in relation to a Spanish BRRD Party, a Relevant Spanish Resolution Authority, and (ii) in relation to an Other BRRD Party, a Relevant Other Resolution Authority.

"**Spanish Bail-in Legislation**" means (i) Law 11/2015 as amended from time to time, (ii) RD 1012-2015 as amended from time to time, (iii) the SM Regulation as amended from time to time (iv) any other instruments, rules or standards made in connection with either (i), (ii) or (iii), pursuant to which any obligation of an institution can be reduced, cancelled, modified, or converted into shares, other securities, or other obligations of such institution or any other person (or suspended for a temporary period).

"**Spanish Bail-in Power**" means any write-down, conversion, transfer, modification, or suspension power existing from time to time under, and exercised in compliance with any laws, regulations, rules or requirements in effect in Spain, relating to the transposition of the BRRD, as amended from time to time, including, but not limited to Spanish Bail-in Legislation and any other instruments, rules or standards created thereunder, pursuant to which (a) any obligation of an institution can be reduced, cancelled, modified, or converted into shares, other securities, or other obligations of such institution or any other person (or suspended for a temporary period); and (b) any right in a contract governing an obligation of a bank or investment firm or affiliate of a bank or investment firm may be deemed to have been exercised.

"**Spanish BRRD Party**" means an entity that is subject to Spanish Bail-in Legislation.

"**Spanish BRRD Liability**" has the same meaning as in such laws, regulations, rules or requirements implementing the BRRD including the Spanish Bail-in Legislation.

"**SRM Regulation**" means Regulation (EU) No. 806/2014 of the European Parliament and the Council of the European Union.

## 15. TAXES

### 15.1 *Taxes on CDs:*

Nothing in this Clause 14 shall affect the scope of, or apply to, the Issuer's obligations to make payments in respect of Taxes under the CDs.

15.2 *Payments to be free and clear:* All payments by the Issuer under this Agreement, a Syndication Agreement or any Agency Appointment Agreement shall be made:

15.2.1 free of any restriction or condition not otherwise specified in this Agreement;

15.2.2 free and clear of and (except to the extent required by any law) without any deduction or withholding on account of any Hong Kong or Spanish Taxes; and

15.2.3 without deduction or withholding (except to the extent required by any law) on account of any other amount imposed or levied by or on behalf of Hong Kong, Spain or any political subdivision or authority thereof or therein, whether by way of set-off or otherwise.

In the event of any deduction or withholding being required by law under Clause 15.2.2 or 15.2.3, the Issuer shall pay such additional amounts as will result in the receipt by the relevant party of such amounts as would have been received by it if no such withholding or deduction had been required.

## 16. EXPENSES AND STAMP DUTY

### 16.1 *Establishment Costs:*

The Issuer shall pay on demand, all reasonable costs and expenses (including legal fees and expenses) properly incurred and documented by the Arranger in establishing the Programme. Such costs and expenses will be agreed in advance between the Issuer and the Arranger.

### 16.2 *Enforcement Expenses:*

The Issuer shall pay on demand, all costs and expenses (including legal fees) properly incurred by a Dealer or an Agent in protecting or enforcing any rights under the Programme Documents and/or the CDs.

### 16.3 *Stamp Duty:*

Unless agreed otherwise, the Issuer shall, promptly, and in any event before any penalty becomes payable, pay any stamp, documentary, registration or similar duty or tax payable in Hong Kong or Spain in connection with the entry into, performance, enforcement or admissibility in evidence of the Programme Documents, the making of

the Deposits, the issue or initial purchase of the CDs and/or any amendment of or waiver in respect of the Programme Documents and/or the CDs, and shall indemnify the Dealers and the Agents against any liability with respect to or resulting from any delay of the Issuer in paying or omission to pay any such duty or tax.

**SECTION 8  
COMMUNICATIONS AND DETERMINATIONS**

**17. COMMUNICATIONS**

**17.1 *Communications in writing:***

Any communication or request to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made by fax or letter. Any telephone communication shall be subsequently confirmed in writing within 24 hours of the communication.

**17.2 *Addresses:***

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each party for any communication or document to be made or delivered under or in connection with this Agreement is set out in the execution clauses of this Agreement and in each applicable Dealer Appointment Agreement and Agency Appointment Agreement or such substitute address, fax number or department or officer as a party may from time to time notify to the Issuer (or the Issuer may notify to the other parties by not less than five Business Days' notice).

**17.3 *Delivery:***

Any communication or document made or delivered by one party to another under or in connection with this Agreement will only be effective:

17.3.1 if by way of fax, where there is an error free transmission report recording the transmission;

17.3.2 if by way of letter:

(a) when it has been left at the relevant address; or

(b) two Business Days after it has been sent by certified or registered mail (if the city specified in the address for notice provided by the recipient is the same as the city from which it was sent); or

(c) five Business Days after it has been sent by certified or registered mail (if the city specified in the address for notice provided by the recipient is different from the city from which it was sent); or

17.3.3 if by way of electronic transmission if it complies with Clause 17.4 (*Electronic communication*),

and, if a particular department or officer is specified as part of its address details provided under Clause 17.2 (*Addresses*), if addressed to that department or officer.

**17.4 *Electronic communication:***

17.4.1 Any communication to be made between the Issuer and another party under or in connection with this Agreement may be made by electronic mail or other electronic means, if the Issuer and the relevant party:

- (i) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
- (ii) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
- (iii) notify each other of any change to their electronic mail address or any other such information supplied by them.

Any party which sets out an email address beneath its name in the execution clauses of this Agreement or in a Dealer Appointment Agreement or Agency Appointment Agreement is deemed to agree to receiving communications from the Issuer by electronic mail.

17.4.2 Any electronic communication made by one party to another will be effective when it is sent by the sender unless the sender receives a message indicating failed delivery.

17.4.3 The Issuer or any party shall notify any affected parties promptly upon becoming aware that its electronic mail system or other electronic means of communication cannot be used due to technical failure (and that failure is continuing for more than 24 hours). Until the Issuer or that party has notified the other affected parties that the failure has been remedied, all notices between those parties shall be sent by fax or letter in accordance with this Clause 17.

17.5 ***Reliance:***

Any notice sent under this Clause 16 can be relied on by the recipient if the recipient reasonably believes the notice to be genuine and if it bears what appears to be the signature (original or facsimile) of an authorised signatory of the sender (without the need for further enquiry or confirmation).

17.6 ***English language:***

17.7 All communications and documents given under or in connection with this Agreement must be:

- (a) in English; or
- (b) if not in English, accompanied by a certified English translation by a translator acceptable to the Issuer. If there is a conflict, the English translation will prevail over the original language version unless the document is a constitutional, statutory or other official document.

**SECTION 9**  
**AMENDMENTS, REMEDIES AND WAIVERS**

**18. AMENDMENTS**

**18.1 *Amendments to be in writing***

The Issuer may amend any term of this Agreement (including the Schedules to this Agreement) will only be effective if in writing and executed by each of the other parties to this Agreement.

**18.2 *Individual amendments***

An amendment to this Agreement may become effective immediately as between the Issuer and any Dealer or Agent if the Issuer and that Dealer or Agent agree.

**18.3 *Amendments do not affect existing rights and obligations***

No amendment made under this Clause 18 shall affect the rights and obligations:

- (a) of any party existing up to the date on which that amendment becomes binding on that party;
- (b) of any Programme Dealer or Programme Agent which issues a notice electing to cancel its obligations under the Programme Documents under Clause 2.3 (*Cancellation of Programme*) before the amendment would otherwise become effective **provided that** such a Dealer or Agent does not participate as a Dealer or Agent, respectively, in any Series issued or requested to be issued after it has issued that cancellation notice; or
- (c) in respect of any Series already agreed to be issued before the amendment takes effect unless otherwise Agreed.

**19. REMEDIES AND WAIVERS**

Except as otherwise provided in this Agreement, time shall be of the essence of this Agreement but no failure on the part of any party to this Agreement to exercise, and no delay by any such party in exercising, any right or remedy under this Agreement will operate as a waiver of such right or remedy, nor will any single or partial exercise of any right or remedy preclude any other or further exercise of such right or remedy or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

**20. ASSIGNMENT**

This Agreement shall benefit and be binding on the parties and their respective successors. No party to this Agreement may assign or transfer all or part of its right or obligations under this Agreement without the prior consent of each of the other parties to this Agreement.

**21. PARTIAL INVALIDITY**

The illegality, invalidity or unenforceability of any provision of this Agreement under the law of any jurisdiction shall not affect its legality, validity or enforceability under the law of any other jurisdiction nor the legality, validity or enforceability of any other provision.

**22. COUNTERPARTS**

This Agreement may be signed in any number of counterparts, all of which taken together and when delivered to the Issuer shall constitute one and the same instrument. Any party may enter into this Agreement by signing any such counterpart.

**23. GOVERNING LAW AND JURISDICTION**

23.1 This Agreement, as to which time shall be of the essence, shall be governed by, and construed in accordance with, the laws of Hong Kong.

23.2 The courts of Hong Kong are to have jurisdiction to settle any disputes which may arise out of or in connection with this Agreement and accordingly any legal action or proceedings arising out of or in connection with this Agreement ("**Proceedings**") may be brought in those courts.

23.3 The Issuer, each Dealer and the relevant Agents irrevocably submits to the non-exclusive jurisdiction of those courts and waives any objection to Proceedings in those courts whether on the ground of venue or on the ground that the Proceedings have been brought in an inconvenient forum.

23.4 This submission is made for the benefit of the Dealers and any relevant Agents and shall not limit their rights to take Proceedings in any other court of competent jurisdiction nor shall the taking of Proceedings in one or more jurisdictions preclude the taking of Proceedings in any other jurisdiction (whether concurrently or not).

**24. RIGHTS OF THIRD PARTIES**

A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Ordinance (Cap. 623) of Hong Kong to enforce any term of this Agreement.





*Specify in Issue Terms attached to Issue Terms Confirmation and CDs*

**7. Currency:**

[Hong Kong Dollars / United States Dollars / \*Renminbi / state Alternative Currency]

*Specify in all Issue Terms*

*\*Purchasers of the CDs should note that the Renminbi is not a freely convertible currency. All payments in respect of the CDs will be made solely by transfer to a Renminbi bank account maintained in Hong Kong in accordance with prevailing rules and regulations. The Issuer cannot be required to make payment by any other means (including in currency or by transfer to a bank account in the PRC). In addition, there can be no assurance that access to Renminbi funds for the purposes of making payments on the CDs or generally may not remain or become restricted.*

**8. Deposit Date:**

[ ]

*Specify as a date or range of dates on Issue Terms attached to Written Request for Bids, Response to Request for Bids or Unsolicited Offer*

*Specify in Issue Terms attached to Issue Terms Confirmation and CDs*

**9. Maturity Date:**

[[state number of Months/Years] from the Deposit Date] or [state Maturity Date]

*Specify like this in Issue Terms attached to Written Request for Bids, Response to Request for Bids or Unsolicited Offer*

[Interest Payment Date falling in [state month and year of maturity]]\* or [state Maturity Date]\*\* [or such earlier date on which the

*Specify like this in Issue Terms attached to Issue Terms Confirmation and CDs*

Deposit becomes repayable in accordance with the Conditions] *\*For Floating Rate CDs*  
*\*\*For Fixed Rate CDs or Discounted CDs*

***Type of CD and Yield***

10. **Interest Rate Basis:** [Fixed Rate / Floating Rate / Discounted] *Specify like this in Issue Terms*
11. **Interest Rate (Fixed Rate):** [ $\bullet$  per cent. per annum] [Not Applicable] *The Issuer has option to specify in a Written Request for Bids*  
*Specify in Issue Terms attached to Response to Request for Bid, Unsolicited Offer, Issue Terms Confirmation and CDs*
12. **Floating Rate Determination (Floating Rate):** [Screen Rate Determination / ISDA Determination / Other] [Not Applicable] *Specify in all Issue Terms for Floating Rate CDs*
13. **Floating Rate Benchmark (Floating Rate – Screen Rate Determination):** [HIBOR/LIBOR/SHIBOR/ other] [Reuters/other] [Not applicable] *Specify in Issue Terms where Floating Rate Determination is Screen Determination*
14. **Floating Rate Benchmark (Floating Rate – ISDA Determination):** [Applicable / Not Applicable]
- **Floating Rate Option** [state *Floating Rate Option*] *Specify in Issue Terms where Floating Rate Determination is ISDA Determination*  
 [Not Applicable]
- **Designated Maturity** [state *Designated Maturity*] *Specify in Issue Terms where Floating Rate Determination is ISDA Determination*  
 [Not Applicable]
- **Reset Date** [state *Reset Date*] *Specify in Issue Terms where Floating Rate Determination is ISDA Determination*  
 [Not Applicable]
15. **Margin (Floating Rate):** [+/-] [ $\bullet$ ] [Not Applicable] *The Issuer has option to specify in a Written Request for Bids.*  
*Specify in Issue Terms attached to Response to Request for Bid, Unsolicited Offer, Issue Terms*

*Confirmation and CDs.*

16. **Interest Payment Date** [• Monthly] *Specify like this in Issue Terms attached to Written Request for Bids, Response to Request for Bids or Unsolicited Offer*
- [State Dates and Months] *Specify in Issue Terms attached to Issue Terms Confirmation and CDs*
- [Not Applicable]
17. **Discounted Bid Rate (Discounted):** [• per cent. per annum] *The Issuer has option to specify in Issue Terms attached to Written Request for Bids.*
- [Not Applicable] *Specify in Issue Terms attached to Response to Request for Bids, Unsolicited Offer, Issue Terms Confirmation and CDs.*
18. **Initial Purchase Price:** [HK\$/US\$/RMB\$/other] *Specify in Issue Terms attached to Issue Terms Confirmation and CDs*

*Put and Call Features*

19. **Put Option:** [Applicable] *Specify in all Issue Terms*  
[Not Applicable]
20. **Put Option Exercise Date(s):** [Interest Payment Date falling in •] *Specify in all Issue Terms*  
[Not Applicable]
21. **Call Option:** [Applicable] *Specify in all Issue Terms*  
[Not Applicable]
22. **Call Option Exercise Date(s):** [Interest Payment Date falling in •] *Specify in all Issue Terms*  
[Not Applicable]

*Calculation Methods*

23. **Day Count Fractions:** [Actual/Actual] *Specify in all Issue Terms*  
[Actual/365 (Fixed)]\*  
[Actual/360]\*\* [30/360] *\*Actual/365 (Fixed)" should be specified for RMB CDs*  
[30E/360] [Other] *\*\*Actual/360 should be specified for all Fixed Rate CDs and Floating Rate CDs (other than CDs issued in RMB and USD)*

24. **Business Day Convention:** [Floating Rate] [Following] *Specify in all Issue Terms*  
 [Modified Following]\* *\*"Modified Following" shall be*  
 [Preceding] [and No *specified for "Business Day*  
 Adjustment]\*\* *Convention" in respect of RMB*  
 [Not Applicable] *CDs*  
 \*\* *"No Adjustment" shall be*  
*specified for Fixed Rate CDs*

*Terms for Definitive CDs*

25. **Nominal Definitive Principal Amount:** [State amount in figures *Specify in all Issue Terms*  
 (and words)]
26. **Number of Definitive CDs initially represented by Global CD in a Series:** [State number in figures *The Issuer has option to specify*  
 (and words)] *in Issue Terms attached to*  
*Written Request for Bids.*
- Specify in Issue Terms attached*  
*to Response to Request for Bids,*  
*Unsolicited Offer, Issue Terms*  
*Confirmation and CDs.*

*Agents*

27. **Issuing Agent:** [Citicorp International *Specify in all Issue Terms*  
 Limited  
 10/F, Citi Tower  
 One Bay East,  
 83 Hoi Bun Road  
 Kwun Tong  
 Kowloon  
 Hong Kong  
 Fax: +852-2306-3183  
 Attention: Regional  
 A&T OPS
- \* For CDs held in the CMU*  
*Service*  
 \*\* *For CDs held in Euroclear or*  
*Clearstream*

With a copy to:

39th Floor, Citibank Tower  
 Citibank Plaza  
 3 Garden Road, Central  
 Hong Kong  
 Fax: +852 2323 0279  
 Attention: Agency  
 and Trust

[Citibank N.A., London Branch

C/O Citibank, N.A., Ground Floor, DUB-01-11, 1 North Wall Quay, Dublin 1, Ireland]\*\*/

[State name and address of alternative Issuing Agent]

28. **Paying Agent:**

[Citicorp International Limited *Specify in all Issue Terms*

10/F, Citi Tower One Bay East, 83 Hoi Bun Road Kwun Tong Kowloon Hong Kong Fax: +852-2306-3183 Attention: Regional A&T OPS

*\* For CDs held in the CMU Service*

*\*\* For CDs held in Euroclear or Clearstream*

With a copy to:

39th Floor, Citibank Tower Citibank Plaza 3 Garden Road, Central Hong Kong Fax: +852 2323 0279 Attention: Agency and Trust]

[Citibank N.A., London Branch

C/O Citibank, N.A., Ground Floor, DUB-01-11, 1 North Wall Quay, Dublin 1, Ireland]\*\*/

[State name and address of alternative Paying Agent]

29. **Calculation Agent:**

[Citicorp International *Specify in all Issue Terms*

Limited  
10/F, Citi Tower  
One Bay East,  
83 Hoi Bun Road  
Kwun Tong  
Kowloon  
Hong Kong  
Fax: +852-2306-3183  
Attention: Regional  
A&T OPS

*\* For CDs held in the CMU Service*

*\*\* For CDs held in Euroclear or Clearstream*

With a copy to:

39th Floor, Citibank Tower  
Citibank Plaza  
3 Garden Road, Central  
Hong Kong  
Fax: +852 2323 0279  
Attention: Agency and  
Trust]

[Citibank N.A., London  
Branch

C/O Citibank, N.A.,  
Ground Floor, DUB-01-11,  
1 North Wall Quay, Dublin  
1, Ireland]\*\*/

*[State name and address of  
alternative Calculation  
Agent]*

30. **CMU Lodging Agent:** [Citicorp International Limited *Specify in all Issue Terms*

Limited  
10/F, Citi Tower  
One Bay East,  
83 Hoi Bun Road  
Kwun Tong  
Kowloon  
Hong Kong  
Fax: +852-2306-3183  
Attention: Regional  
A&T OPS

With a copy to:

39th Floor, Citibank Tower  
Citibank Plaza  
3 Garden Road, Central  
Hong Kong  
Fax: +852 2323 0279  
Attention: Agency  
and Trust]

*[State name and address of  
alternative CMU Lodging  
Agent] / [Not Applicable]*

***Special Features***

31. **[Applicable]**  
**[Not Applicable]**

*[State name any special terms and conditions]* *State whether applicable or not and, if applicable set out the terms particular to the series.*

**SCHEDULE 2  
FORM OF GLOBAL CD**

**ISSUE TERMS**

*relating to an issue of certificates of deposit under the EUR5,000,000,000 Banco Santander, S.A., Hong Kong Branch Certificate of Deposit Programme*

*[INSERT ISSUE TERMS: TO BE COMPLETED IN ACCORDANCE WITH TERMS OF THE PROGRAMME AGREEMENT AND BASED ON THE FORM SET OUT IN SCHEDULE 1 TO THE PROGRAMME AGREEMENT]*

*CDs issued pursuant to these Issue Terms may be subject to the exercise of any Spanish Bail-in Power by the Relevant Spanish Resolution Authority in relation to any BRRD Liability pursuant to the EU Bank Recovery and Resolution Directive (2014/59/EU) and any transposing legislation in the Kingdom of Spain as described in the Information Memorandum.*

For and on behalf of  
**BANCO SANTANDER, S.A., HONG  
KONG BRANCH**

[These Issue Terms are authenticated by or on  
behalf of the Issuing Agent specified above  
without recourse or warranty

By: .....  
Authorised Signatory

By: .....  
Authorised Signatory]



THIS GLOBAL CD HAS NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933 (AS AMENDED). ANY OFFER OR SALE OF THIS GLOBAL CD IN THE UNITED STATES OR TO U.S. PERSONS (EACH AS DEFINED IN REGULATION S PROMULGATED UNDER THE SAID ACT) MAY CONSTITUTE A VIOLATION OF UNITED STATES LAWS UNLESS SUCH OFFER OR SALE IS EITHER REGISTERED PURSUANT TO, OR IS EXEMPT FROM REGISTRATION UNDER, SUCH ACT.

THIS GLOBAL CD IS NOT A PROTECTED DEPOSIT UNDER, AND IS NOT PROTECTED BY, THE DEPOSIT PROTECTION SCHEME ESTABLISHED BY THE HONG KONG DEPOSIT PROTECTION BOARD PURSUANT TO THE DEPOSIT PROTECTION SCHEME ORDINANCE (CAP. 581).

~~REPAYMENT OF THIS GLOBAL CD IS NOT GUARANTEED BY THE HONG KONG SAR GOVERNMENT'S EXCHANGE FUND.~~

[PURCHASERS OF THE CDS SHOULD NOTE THAT THE RENMINBI IS NOT A FREELY CONVERTIBLE CURRENCY. ALL PAYMENTS IN RESPECT OF THE CDS WILL BE MADE SOLELY BY TRANSFER TO A RENMINBI BANK ACCOUNT MAINTAINED IN HONG KONG IN ACCORDANCE WITH PREVAILING RULES AND REGULATIONS. THE ISSUER CANNOT BE REQUIRED TO MAKE PAYMENT BY ANY OTHER MEANS (INCLUDING IN CURRENCY OR BY TRANSFER TO A BANK ACCOUNT IN THE PRC). IN ADDITION, THERE CAN BE NO ASSURANCE THAT ACCESS TO RENMINBI FUNDS FOR THE PURPOSES OF MAKING PAYMENTS ON THE CDS OR GENERALLY MAY NOT REMAIN OR BECOME RESTRICTED.]<sup>1</sup>

## NEGOTIABLE GLOBAL CERTIFICATE OF DEPOSIT

**BANCO SANTANDER, S.A., HONG KONG BRANCH (the "Issuer")**

at ~~Room 1501, One Exchange Square, 8 Connaught Place~~Room 1001, 10th Floor, Two International Finance Center, 8 Finance Street, Central, Hong Kong

### 1. CONDITIONS AND DEFINITIONS

- 1.1 General terms and conditions ("**Conditions**") applicable to this Negotiable Global Certificate of Deposit ("**Global CD**") are set out in Schedule 1.
- 1.2 Specific terms and conditions applicable to this Global CD are attached to the front of this Global CD ("**Issue Terms**") and are signed by the Issuer and, if one is specified in the Issue Terms, the Issuing Agent.
- 1.3 This Global CD is subject to all the Conditions expressed to be applicable to any Global CD except where the Conditions are supplemented or modified by the Issue Terms.
- 1.4 Terms defined in the Conditions and terms defined in the Issue Terms have the same meaning in this Global CD. Terms defined in the Issue Terms prevail in the case of any conflict with terms defined in the Conditions.

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<sup>1</sup> Applicable to CDs denominated in Renminbi only.

2. **CERTIFICATE AND PROMISE TO PAY**

This Global CD certifies the following:

- 2.1 The Deposit has been deposited with Banco Santander, S.A., Hong Kong Branch at the address set out above, as issuer.
- 2.2 The Deposit is repayable only on or after the Maturity Date or any earlier date on which the Deposit may become repayable in accordance with the Conditions or the Issue Terms.
- 2.3 Principal is repayable and interest is payable on this Global CD in each case to the persons and in the manner set out in the Conditions.

3. **GLOBAL CD**

- 3.1 This is a Global CD in respect of an issue of the number of Definitive CDs specified in the Issue Terms as being initially represented by this Global CD which each has a nominal principal amount equivalent to the Nominal Definitive Principal Amount stated in the Issue Terms and which are in the form set out in the Appendix to this Global CD.
- 3.2 The nominal principal amount from time to time of this Global CD will be the Initial Global Principal Amount stated in the Issue Terms or whatever lesser amount is shown by the latest entry in the appropriate column of Schedule 2 (*Principal Amount of this Global CD*) to this Global CD. That Schedule will be amended by or on behalf of the Issuer (or, if one is specified in the Issue Terms, the Paying Agent instead of the Issuer) if at any time:
  - (a) CDs represented by this Global CD are purchased and cancelled;
  - (b) this Global CD is exchanged for Definitive CDs;
  - (c) interests in this Global CD are exchanged for Direct Rights; or
  - (d) interests in this Global CD are repaid early in accordance with the Conditions.

4. **CALCULATION AND PAYMENT OF INTEREST**

Interest (if applicable) on the Deposit will accrue from and including the Deposit Date to but excluding the Maturity Date in accordance with the Conditions and will be calculated and payable in accordance with the Conditions.

5. **EXCHANGE FOR DEFINITIVE CDS**

This Global CD can be exchanged in whole but not in part (free of charge to the holder) for Definitive CDs:

- (a) if this Global CD is held by a Clearing System, when that Clearing System:
  - (i) has been closed for business for a continuous period of 14 days (other than by reason of holidays, statutory or otherwise); or

- (ii) announces an intention permanently to cease business or does in fact do so;
- (b) if this Global CD is held by the Issuer or a Nominated Custodian when:
  - (i) the holder of the Global CD has been closed for a continuous period of 7 days (other than by reason of holidays, statutory or otherwise);
  - (ii) the holder of the Global CD announces an intention permanently to cease business or does in fact do so; or
  - (iii) the Issuer is, or declares that it is, unable to maintain records of the Entries for the Accountholders;
- (c) Subject to Condition 13, if the Issuer does not pay in the manner provided in the Conditions any sum payable under this Global CD when due and the payment is not made within 7 days after the due date; or
- (d) if:
  - (i) subject to Condition 13, the Issuer would suffer a material disadvantage in respect of this Global CD as a result of a change in the laws or regulations (taxation or otherwise) of Hong Kong or Spain which would not be suffered if this Global CD was exchanged for Definitive CDs; and
  - (ii) notwithstanding Condition 13, the Issuer issues to the holder of this Global CD a certificate, signed by an authorised signatory of the Issuer, confirming that material disadvantage.

In the case of (a) or (c) above, the holder of this Global CD may give notice to the Paying Agent of its intention to exchange this Global CD for Definitive CDs on or after the Exchange Date specified in the notice. In the case of (d) above, the Issuer may give notice to the Paying Agent or the holder of this Global CD. In the case of (b) above, any Accountholder may require the Issuer to deliver Definitive CDs representing that Accountholder's interest in this Global CD within 30 days of the date of a request.

- 5.1 "**Exchange Date**" means a day falling not less than 30 days or, in the case of exchange following non-payment, 14 days after the date on which the notice requiring exchange is given and on which banks in Hong Kong and, except in the case of an exchange under (a) above, the relevant Clearing Systems are open for business.
- 5.2 On or after any Exchange Date, the holder of this Global CD may surrender this Global CD, to or to the order of, the Issuer (or, if one is specified in the Issue Terms, the Paying Agent).
- 5.3 In exchange for this Global CD (or an interest in this Global CD), the Issuer will deliver, or procure the delivery of, an equal aggregate nominal principal amount of duly executed Definitive CDs which are security printed and substantially in the form set out in the Appendix to this Global CD.

On exchange in full of this Global CD, the Issuer will, if the holder so requests, procure that this Global CD is cancelled and returned to the holder together with the relevant Definitive CDs. In these circumstances, the Issuer will bear the cost of preparing those Definitive CDs and any costs associated with the withdrawal of this Global CD from the relevant Clearing System(s).

6. **EXCHANGE FOR DIRECT RIGHTS**

6.1 Subject to Condition 13, an Accountholder may from time to time elect for Direct Rights to come into effect under the provisions of Schedule 3 (*Direct Enforcement Rights*) to this Global CD and the Deed of Covenant if:

- (a) the Issuer does not pay in the manner provided in the Conditions any sum payable under this Global CD when due and the payment is not made within 7 days after the due date and no Definitive CDs have been requested to be produced; or
- (b) if Definitive CDs have been requested to be produced in accordance with paragraph 5 above titled "Exchange for Definitive CDs" and they have not been produced in a manner and by the time required by that paragraph.

6.2 Subject to Condition 13, to the extent that the aggregate face amount of the Definitive CDs so produced or delivered is less than the aggregate principal amount due under the Global CD, any Accountholder in respect of this Global CD may from time to time elect for Direct Rights to come into effect under the provisions of Schedule 3 (*Direct Enforcement Rights*) to this Global CD and the Deed of Covenant in respect of the amount outstanding under the Global CD and not represented by those Definitive CDs.

6.3 The election will be made by:

- (a) sending a notice to the Paying Agent; and
- (b) presenting this Global CD to or to the order of the Paying Agent. When the Paying Agent receives the notice and this Global CD, it will reduce the principal amount of Definitive CDs represented by this Global CD to zero (or to such other figure as is specified in the notice) by endorsing Schedule 2 (*Principal Amount of this Global CD*) and Schedule 3 (*Direct Enforcement Rights*) to reflect the principal amount of Definitive CDs in respect of which Direct Rights have arisen under the Deed of Covenant. On that endorsement, the appropriate Direct Rights will take effect.

6.4 If an Exchange Date has been fixed in accordance with this Global CD an election cannot be made for the Definitive CDs to which that Exchange Date relates unless the holder states in the notice issued under the previous paragraph that the exchange in question will no longer take place or that the Definitive CDs exchanged do not total in aggregate the nominal principal amount due under this Global CD.

6.5 Subject to Condition 13, if the Issuer does not perform or comply with any one or more of its obligations under the Conditions for any actual or alleged reason which would not have applied had there been no exchange of this Global CD or in any other

circumstances whatsoever, then any right or remedy relating in any way to the obligation(s) in question may be exercised or pursued on the basis of this Global CD, despite its stated cancellation after its exchange in full, as an alternative, or in addition, to the Definitive CDs **provided that**:

- (a) the Issuer will not under any circumstance be obliged to repay more than the principal amount of this Global CD in the aggregate nominal amount together with interest and other amounts calculated in respect of this Global CD in accordance with the Conditions; and
- (b) the Issuer will be entitled to require the surrender of any relevant Definitive CDs which have been issued and delivered in exchange for this Global CD before the Issuer will make any related payment in accordance with this paragraph.

Subject to these exceptions, upon exchange in full of this Global CD for Definitive CDs, this Global CD will become void.

6.6 Until it is exchanged for Definitive CDs, the holder of this Global CD will in all respects be entitled to the same benefits as if it were the holder of the Definitive CDs for which it may be exchanged and as if those Definitive CDs had been issued on the date of this Global CD.

6.7 No person will be entitled to receive any payment on this Global CD (or such part of this Global CD which is required to be exchanged) falling due after any Exchange Date unless exchange of this Global CD for Definitive CDs is improperly withheld or refused by or on behalf of the Issuer or the Issuer does not perform or comply with any one or more of what are expressed to be its obligations under any Definitive CDs.

## 7. **DEED OF COVENANT**

The Issuer has entered into the Deed of Covenant for the benefit of the Relevant Accountholders. Copies of the Deed of Covenant will be available for inspection by the Relevant Accountholders during normal business hours at the offices of the Issuer (or, if one is specified in the Issue Terms, the Paying Agent instead of the Issuer).

## 8. **NEGOTIABILITY**

This Global CD is a bearer document and negotiable and accordingly:

- (a) This Global CD is freely transferable by delivery and the transfer will operate to confer on the transferee all rights and benefits appertaining to it and to bind the transferee with all obligations relating to it under the Conditions.
- (b) The holder of this Global CD is and will be absolutely entitled as against all previous holders to receive all amounts payable in respect of this Global CD and the Issuer has waived against that holder and any previous holder of this Global CD all rights of set-off or counterclaim which would or might otherwise be available to it in respect of the obligations evidenced by this Global CD.

- (c) Payment in accordance with the CMU Rules or the rules and regulations governing any other relevant Clearing System or upon due presentation of this Global CD as provided herein will operate as a good discharge against that holder and all previous holders of this Global CD.

9. **AUTHENTICATION**

If an Issuing Agent is specified in the Issue Terms, this Global CD will not be valid or become obligatory for any purpose until authenticated by or on behalf of that Issuing Agent.

10. **GOVERNING LAW AND JURISDICTION**

- 10.1 This Global CD will be governed by, and construed in accordance with, the laws of Hong Kong.
- 10.2 The courts of Hong Kong are to have jurisdiction to settle any disputes which may arise out of or in connection with this Global CD and accordingly any legal action or proceedings arising out of or in connection with this Global CD ("**Proceedings**") may be brought in those courts.
- 10.3 The Issuer irrevocably submits to the non-exclusive jurisdiction of those courts and waives any objection to Proceedings in those courts whether on the ground of venue or on the ground that the Proceedings have been brought in an inconvenient forum.
- 10.4 This submission is made for the benefit of each of the Accountholders and the bearer of this Global CD and will not limit the right of any of them to take Proceedings in any other court of competent jurisdiction nor will the taking of Proceedings in one or more jurisdictions preclude the taking of Proceedings in any other jurisdiction (whether concurrently or not).

In witness whereof the Issuer has caused this Global CD to be signed manually or in facsimile on its behalf.

For and on behalf of  
**BANCO SANTANDER, S.A., HONG KONG BRANCH**

By: .....  
Authorised Signatory

[This Global CD is authenticated by or on behalf of  
any Issuing Agent specified in the Issue Terms  
without recourse or warranty

By: .....  
Authorised Signatory]

**Schedule 1 to Global CD  
General Terms and Conditions**



## TERMS AND CONDITIONS

*These are the Conditions applicable to CDs issued under the EUR 5,000,000,000 Certificate of Deposit Programme for Banco Santander, S.A., Hong Kong Branch.*

### 1. PAYMENTS

- 1.1 Principal is repayable and interest is payable on each Global CD and Definitive CD to (or to the order of) the relevant CD Holder.
- 1.2 If a CD is held by the CMU Service, payment of interest or principal by the Paying Agent to the CMU Accountholder at the relevant time as notified to the Paying Agent by a relevant Position Report will discharge the obligations of the Issuer in respect of that payment. For these purposes, a notification from the CMU Service will be conclusive evidence of the records of the CMU Service unless there is manifest error.
- 1.3 If a CD is held by a Clearing System (other than the CMU Service), payment to the person who has been recorded by that Clearing System as being credited with an Entry or Entries in that CD will discharge the obligations of the Issuer in respect of that payment.
- 1.4 If a CD is held by the Issuer or a Nominated Custodian, payment to the person who has been recorded by the Issuer or the Nominated Custodian as being credited with an Entry or Entries in that CD in accordance with the terms and conditions governing the relationship between the Issuer and that person will discharge the obligations of the Issuer in respect of that payment.
- 1.5 Payment of interest or principal by the Paying Agent to the bearer of a Definitive CD who has presented or surrendered, as the case may be, that Definitive CD to the office of the Paying Agent will discharge the obligations of the Issuer in respect of that payment.
- 1.6 All payments of principal and interest in respect of a RMB CD will be made solely by credit to a Renminbi bank account maintained in accordance with applicable laws and regulations at a bank in Hong Kong.

### 2. INTEREST PAYMENT DATES AND INTEREST PERIODS

- 2.1 If this CD is expressed to be Fixed Rate or Floating Rate, the Deposit bears interest from the Deposit Date and (subject to Condition 2.2) the interest will be payable on each Interest Payment Date.
- 2.2 If any Interest Payment Date, including the Maturity Date, would otherwise fall on a day which is not a Business Day it shall be adjusted in accordance with the Business Day Convention specified in the Issue Terms.
- 2.3 "**Interest Period**" means each period from (and including) one Period End Date to (but excluding) the following applicable Period End Date, except that the initial Interest

Period will commence on (and include) the Deposit Date and the final Interest Period will end on (but exclude) the Maturity Date.

- 2.4 Interest or amortisation for any period of time (whether or not constituting an Interest Period, the "**Calculation Period**") will be calculated by reference to the applicable Day Count Fraction specified in the Issue Terms.

**3. RATES OF INTEREST (FOR FIXED RATE CDS AND FLOATING RATE CDS)**

- 3.1 For a Fixed Rate CD, interest will accrue at the Fixed Rate.

- 3.2 For a Floating Rate CD, the rate of interest per annum (the "**Interest Rate**") payable on the Deposit in respect of each Interest Period will be calculated by the Calculation Agent as:

3.2.1 if the Floating Rate Determination is Screen Rate Determination, the aggregate of the Margin and the Floating Rate Benchmark, calculated in accordance with Condition 3.3, 3.4 or 3.5, in effect on the Interest Determination Date for a period equivalent to that Interest Period; and

3.2.2 if the Floating Rate Determination is ISDA Rate Determination, the aggregate of the Margin and the ISDA Rate, calculated in accordance with Condition 3.6, in effect on the Interest Determination Date for a period equivalent to that Interest Period.

- 3.3 If the Floating Rate Determination is Screen Rate Determination and the Floating Rate Benchmark is HIBOR, "**HIBOR**" will be the rate determined by the Calculation Agent on the following basis:

3.3.1 If, at or about 11:00 a.m. (Hong Kong time) on the Interest Determination Date, an averaged offered rate for Hong Kong dollar deposits for the period comparable to the relevant Interest Period (or, if the periods are not the same, such period, if any, as the Calculation Agent determines to be substantially the same) is quoted on the fixing line of the page "HKABHIBOR" of the Reuters Money 3000 Service, if the Floating Rate Benchmark is "HIBOR/Reuters" (or such other page or service as may replace the appropriate page or service for the purpose of displaying Hong Kong inter-bank offered rates of leading banks for Hong Kong dollars), then HIBOR for the relevant Interest Period will, except as provided below, be that rate.

3.3.2 If, on any Interest Determination Date, the average offered rate so appearing is replaced by the corresponding rates of more than one bank or financial institution the rate will be the arithmetic mean of the respective rates so appearing (rounded, if necessary, to five decimal places).

3.3.3 If, on any Interest Determination Date, the rates described in Condition 3.3.1 or 3.3.2 do not appear, the Calculation Agent will request each of the Reference Banks to provide the Calculation Agent with its offered quotation to leading banks for Hong Kong dollar deposits in Hong Kong for a period equivalent or

approximately equivalent to the relevant Interest Period in the amount equal or approximately equal to the Nominal Definitive Principal Amount as at or about 11:00 a.m. (Hong Kong time) on the Interest Determination Date in question and HIBOR for the relevant Interest Period will, subject as provided below, be the arithmetic mean (rounded, if necessary, to five decimal places) of those offered quotations, as determined by the Calculation Agent.

- 3.3.4 If, on any Interest Determination Date, one or two only of the Reference Banks, when requested to do so, provide(s) the Calculation Agent with such offered quotation, then HIBOR for the Interest Period concerned will, subject as provided below, be determined as in Condition 3.3.3 on the basis of the offered quotations of those Reference Banks providing those quotation.
- 3.3.5 If, on any Interest Determination Date, none of the Reference Banks when requested to do so provides the Calculation Agent with the offered quotations, then HIBOR will, subject as provided below, be HIBOR in effect for the last preceding Interest Period to which Conditions 3.3.1 to 3.3.4 applied; **provided that** if at any time during the relevant Interest Period, the Calculation Agent determines that a rate can once again be determined in accordance with any of Conditions 3.3.1 to 3.3.4 above the Calculation Agent will determine the rate and references to an Interest Period will be construed as being references to the period from such date of determination until the next succeeding Interest Payment Date.
- 3.4 If the Floating Rate Determination is Screen Rate Determination and the Floating Rate Benchmark is LIBOR, "**LIBOR**" will be the rate determined by the Calculation Agent on the following basis:
- 3.4.1 LIBOR for the relevant Interest Period will be the the offered rate for US dollar deposits which are quoted at or about 11:00 a.m. (London time) on the Interest Determination Date on the "**LIBOR01**" page on the Reuters Money 3000 Service (or such other page or service as may replace it for the purpose of displaying London inter-bank offered rates of leading banks for US dollars) as being the interest rate(s) offered in the London inter-bank market for US dollar deposits for the period comparable to the relevant Interest Period (or, if the periods are not the same, such period, if any, as the Calculation Agent determines to be substantially the same) but if such rate does not appear on the relevant page, then the relevant rate will be determined on the basis of the respective rates (as quoted to the Calculation Agent) at which each of the Reference Banks is offering US dollar deposits for the relevant Interest Period in an amount equal or approximately equal to the Nominal Definitive Principal Amount to leading banks in the London inter-bank market at or about 11 a.m. (London time) on the Interest Determination Date and LIBOR for the relevant Interest Period will, subject as provided below, be the arithmetic mean (rounded, if necessary, to five decimal places) of those offered quotations, as determined by the Calculation Agent.

- 3.4.2 If, on any Interest Determination Date, one or two only of the Reference Banks, when requested to do so, provide(s) the Calculation Agent with such offered quotations, then LIBOR for the Interest Period concerned will, subject as provided below, be determined on the preceding paragraph on the basis of the offered quotations of those Reference Banks providing those quotations.
- 3.4.3 If no Reference Bank provides such a quotation, LIBOR will be the rate of interest in effect for the last preceding Interest Period in which interest could be determined in any of the methods set out in Conditions 3.4.1 and 3.4.2, until such date that the Calculation Agent determines that a rate can once again be determined in accordance with any of the provisions in Conditions 3.4.1 and 3.4.2, in which case the Calculation Agent will determine such a rate and references to an Interest Period will be construed as being references to the period from such date of determination until the next succeeding Interest Payment Date.
- 3.5 If the Floating Rate Determination is Screen Rate Determination and the Floating Rate Benchmark is SHIBOR, "**SHIBOR**" will be the rate determined by the Calculation Agent on the following basis:
- 3.5.1 If, at or around 11:30 a.m. (Beijing time) on the Interest Determination Date, the Shanghai Interbank Offered Rate for the critical term comparable to the relevant Interest Period (or, if the periods are not the same, such period, if any, as the Calculation Agent determines to be substantially the same) is quoted on the fixing line of the page "SHIBOR" of the Reuters Money 3000 Service, then the relevant SHIBOR will, except as provided below, be that rate.
- 3.5.2 If, on any Interest Determination Date, the rates described in Condition 3.5.1 do not appear, the relevant SHIBOR will, except as provided below, be the Shanghai Interbank Offered Rate as published on <http://www.shibor.org> by the China Foreign Exchange Trade System & National Interbank Funding Centre under the authorisation of the People's Bank of China for the critical term comparable to the relevant Interest Period (or, if the periods are not the same, such period, if any, as the Calculation Agent determines to be substantially the same).
- 3.5.3 If for any reason the relevant SHIBOR is not published on <http://www.shibor.org> in respect of a certain Interest Determination Date, the relevant SHIBOR in respect of the Business Day immediately preceding that Interest Determination Date shall be applied in place thereof.
- 3.5.4 If on any Interest Determination Date for any reason such offered rate described in Condition 3.5.1, 3.5.2 or 3.5.3 is not published or is unavailable, then the rate to be applied in place shall be the offered rate that the Calculation Agent obtains from quotations provided by four leading dealers in the relevant inter-bank market (selected in good faith by the Calculation Agent) for such rate at, or as soon as practicable following, such time. If four such quotations are received by the close of business on such day, the applicable offered rate shall be the arithmetic mean of the quotations received (ignoring the highest and lowest

quotations). If two or three such quotations are received by such time, the applicable offered rate shall be, subject as provided below, the arithmetic mean of such quotations.

- 3.5.5 If, on any Interest Determination Date, only one or none of the Reference Banks when requested to do so provides the Calculation Agent with the offered quotations, then SHIBOR will be the SHIBOR in effect for the last preceding Interest Period to which Conditions 3.5.1 to 3.5.4 applied.
- 3.6 Where the Floating Rate Determination is ISDA Determination, ISDA Rate will be the rate equal to the Floating Rate under an interest rate swap transaction if the Calculation Agent were acting as "Calculation Agent" (as defined in the ISDA Definitions (as defined below)) for that swap transaction under the terms of an agreement incorporating the 2006 ISDA Definitions as published by the International Swaps and Derivatives Association, Inc. (the "**ISDA Definitions**") and as amended and updated as at the relevant Issue Date and under which:
- 3.6.1 the Floating Rate Option is specified in the Issue Terms;
- 3.6.2 the Designated Maturity is a period specified in the Issue Terms;
- 3.6.3 the relevant Reset Date is, (I) if the applicable Floating Rate Option is based on HIBOR, the first day of that Interest Period, or (II) if the applicable Floating Rate Option is based on LIBOR, the first day of that Interest Period, or (III) in any other case, as specified in the Issue Terms.

For the purpose of this Condition 3.6, Floating Rate, Floating Rate Option, Designated Maturity and Reset Date have the meanings given to those terms in the ISDA Definitions.

- 3.7 The Calculation Agent will, as soon as practicable after 11:00 a.m. on each Interest Determination Date calculate the amount of interest payable in respect of each CD for the relevant Interest Period (the "**Interest Amount**").
- 3.8 A statement from the Calculation Agent as to the amount on which and the rate at which interest accrues during any Interest Period and as to the amount of interest accrued in respect of any Interest Period or part of an Interest Period will be conclusive and binding on the holder of a CD and each Accountholder.
- 3.9 The Calculation Agent will, as soon as practicable after the receipt of a request (in accordance with the rules of the relevant Clearing System or the terms and conditions governing the relationship between the Issuer and that holder of a CD or that Accountholder) from a holder of a CD or Accountholder, certify to that holder or Accountholder the Interest Rate in respect of any Interest Period and the Interest Amount payable in respect of that Interest Period.
- 3.10 If full repayment is improperly withheld or refused on any due date, interest will continue to accrue on the Deposits at a rate calculated by reference to the Margin and the Interest Rate determined by the Calculation Agent, on the basis of interest periods having approximately the same length as the Interest Periods.

#### 4. RMB DISRUPTION

If a Series of CDs is denominated in RMB, notwithstanding the foregoing, if by reason of Inconvertibility, Non-transferability or Illiquidity (each, a "**RMB Disruption**"), the Issuer is not able to satisfy payments of principal or interest (in whole or in part) in respect of the Notes when due in Renminbi, the Issuer shall, by sending an irrevocable notice not less than five or more than 30 calendar days prior to the due date for payment to the Holders, settle any such payment (in whole or in part) in U.S. Dollars on the due date at the U.S. Dollar Equivalent of any such Renminbi denominated amount. In case the Issuer needs to satisfy payments of principal or interest in part in Renminbi and in part in U.S. Dollars, it shall to the extent possible make payment to each Holder in the same pro rata amount of Renminbi and U.S. Dollar in accordance with the rules of the Clearing System from time to time.

For the purposes of this Condition 4,

**"Determination Business Day"** means a day (other than a Saturday or Sunday) on which commercial banks are open for general business (including dealings in foreign exchange) in Hong Kong, Beijing, London, TARGET and in New York City;

**"Determination Date"** means the day which is three Determination Business Days before the due date for any payment of the relevant amount under these Conditions;

**"Governmental Authority"** means any de facto or de jure government (or any agency or instrumentality thereof), court, tribunal, administrative or other governmental authority or any other entity (private or public) charged with the regulation of the financial markets (including the central bank) of the PRC and Hong Kong;

**"Illiquidity"** means where the general Renminbi exchange market in Hong Kong becomes illiquid as a result of which the Issuer cannot obtain sufficient Renminbi in order to satisfy its obligation to pay interest or principal (in whole or in part) in respect of the Notes as determined by the Issuer in good faith and in a commercially reasonable manner following consultation with two Renminbi Dealers;

**"Inconvertibility"** means the occurrence of any event that makes it impossible for the Issuer to convert any amount due in respect of the Notes in the general Renminbi exchange market in Hong Kong, other than where such impossibility is due solely to the failure of the Issuer to comply with any law, rule or regulation enacted by any Governmental Authority (unless such law, rule or regulation is enacted after [Issue Date] and it is impossible for the Issuer, due to an event beyond its control or any other laws applicable to the Issuer, to comply with such law, rule or regulation);

**"Non-transferability"** means the occurrence of any event that makes it impossible for the Issuer to transfer Renminbi between accounts inside Hong Kong or from an account inside Hong Kong to an account outside Hong Kong and outside the PRC or from an account outside Hong Kong and outside the PRC to an account inside Hong Kong, other than where such impossibility is due solely to the failure of the Issuer to comply with any law, rule or regulation enacted by any Governmental Authority (unless such law, rule or regulation is enacted after [Issue Date] and it is impossible for the Issuer, due to

an event beyond its control or any other laws applicable to the Issuer, to comply with such law, rule or regulation);

**"Renminbi Dealer"** means an independent foreign exchange dealer of international repute active in the Renminbi exchange market in Hong Kong;

**"Spot Rate"** means the spot CNY/U.S. dollar exchange rate for the purchase of U.S. dollars with Renminbi in the over-the-counter Renminbi exchange market in Hong Kong for settlement in two Determination Business Days, as determined by the Calculation Agent at or around 11 a.m. (Hong Kong time) on the Determination Date, on a deliverable basis by reference to Reuters Screen Page TRADCNY3, or if no such rate is available, on a non-deliverable basis by reference to Reuters Screen Page TRADNDF. If neither rate is available, the Calculation Agent will determine the Spot Rate at or around 11 a.m. (Hong Kong time) on the Determination Date as the most recently available CNY/U.S. dollar official fixing rate for settlement in two Determination Business Days reported by The State Administration of Foreign Exchange of the PRC, which is reported on the Reuters Screen Page CNY=SAEC. Reference to a page on the Reuters Screen means the display page so designated on the Reuters Monitor Money Rates Service (or any successor service) or such other page as may replace that page for the purpose of displaying a comparable currency exchange rate.

**"U.S. Dollar Equivalent"** means the Renminbi amount converted into U.S. Dollars using the Spot Rate for the relevant Determination Date.

## 5. TAXES

All payments of principal and interest (if any) under a CD will be made free and clear of and without deduction or withholding for or on account of any present or future taxes, duties or other governmental charges of whatsoever nature imposed or levied by or on behalf of Hong Kong or Spain or any political subdivision or any authority in Hong Kong or Spain having power to tax unless the Issuer is required by law to deduct or withhold any such taxes, duties or other charges, in which event the Issuer will pay in like manner and at the same time such additional amounts as will be necessary in order to ensure that the net amounts received by a CD Holder after that deduction or withholding will equal the respective amounts of principal and interest which would have been receivable by that CD Holder if no such deduction or withholding had been required to be made except that no such additional amounts will be payable in respect of any payment to be made:

- (i) to the extent that a CD Holder (or any person for whom a CD Holder holds an interest in that CD (an "**Owner**")) is liable to those taxes, duties, or governmental charges in respect of its interest in that CD by reason of its having some connection with Hong Kong or Spain other than the mere holding of, or of an interest in, that CD;
- (ii) where withholding or deduction could be avoided by the CD Holder or the Owner making a declaration of non-residence or other similar claim for

exemption to the appropriate authority or by providing other reasonable information regarding the CD Holder 's or the Owner's identity; or

- (iii) more than 30 days after the Relevant Date except to the extent that the Issuer would have been required to pay such additional amounts on the last day of the period of 30 days.

In these Conditions, "Relevant Date" means whichever is the later of (a) the date on which the payment in question first becomes due and (b) if the full amount payable has not been received by the Owner on or prior to such due date, the date on which the full amount is so received by the Owner.

## 6. TAX CALL

6.1 The Issuer may at its option redeem all Deposits comprising a Series at any time in whole, but not in part on giving not less than 14 days' irrevocable notice to all CD Holders and the Paying Agent (**provided that** the notice must expire on an Interest Payment Date if this is a Fixed Rate CD or a Floating Rate CD), at its principal amount, if:

- (i) the Issuer has or will become obliged to pay additional amounts under the Condition titled "Taxes" as a result of any change in, or amendment to, the laws or regulations of Hong Kong or Spain or any authority in Hong Kong or Spain having power to tax, or any change in the application or official interpretation of such laws or regulations, which change or amendment becomes effective on or after the Deposit Date; and
- (ii) that obligation cannot be avoided by the Issuer taking reasonable measures available to it,

**provided that** no notice of redemption will be given earlier than 14 days before the earliest date on which the Issuer would be obliged to pay such additional amounts were a payment in respect of the CDs then due.

6.2 After issuing a notice under Condition 6.1, the Issuer will be obliged to repay all the Deposits in the Series

6.2.1 for each Fixed Rate CD and Floating Rate CD in a Series, together with any unpaid interest accrued on the CD in accordance with these Conditions; or

6.2.2 for each Discounted CD in a Series, subject to a deduction from the Global Principal Amount (for a Global CD) or Nominal Definitive Principal Amount (for a Definitive CD) to represent the unamortised amount of the Deposit calculated by reference to the Discounted Bid Rate and on the basis of the actual number of days remaining from the date fixed for redemption to the Maturity Date and in accordance with the relevant Day Count Fraction,

on the date provided in the relevant notice on surrender of that CD (if that CD is not held by the CMU Service, or by transfer of the interest in that CD to the Paying Agent (if that CD is held by the CMU Service).



Notice will be deemed to have been given to a CD Holder when published in accordance with the Condition titled "Notices" below.

## **7. PUT OPTION**

7.1 If the Issue Terms specify that a Put Option is applicable for a CD the Issuer will redeem the CD on any Put Option Exercise Date specified in the Issue Terms on the following basis:

7.1.1 If the CD is held by the CMU Service, a CD Holder wishing to exercise the Put Option must:

- (i) deliver to the Paying Agent a duly completed Redemption Notice not earlier than 45 days before and not later than 30 days before the relevant Put Option Exercise Date; and
- (ii) transfer the relevant part of its interest in the CD to the Paying Agent's account with the CMU Service as specified in the form of Redemption Notice provided by the Paying Agent.

7.1.2 If the Put Option is being exercised for a Global CD which is held by or on behalf of a Clearing System other than the CMU Service:

- (i) the CD Holder must (in accordance with the rules of that Clearing System) instruct the Clearing System through which they hold their interests in the Global CD and, on receiving those instructions, the holder of the Global CD must deliver to the Paying Agent one or more Redemption Notices not earlier than 45 days before and not later than 30 days before the relevant Put Option Exercise Date (as stated in the Issue Terms), specifying in each case the aggregate Nominal Definitive Principal Amount(s) (as stated in the Issue Terms) for which the Put Option is being exercised; and
- (ii) the holder of the Global CD must present the Global CD to the Paying Agent at the same time as delivering a Redemption Notice so that the Global CD may be annotated on the Put Option Exercise Date to record that the relevant interests have been repaid.

7.1.3 If the Put Option is being exercised for a Global CD which is held by the Issuer or a Nominated Custodian:

- (i) the CD Holder must (in accordance with the terms and conditions governing the relationship between the Issuer and the CD Holder) deliver to the Issuer a Redemption Notice not earlier than 45 days before and not later than 30 days before the relevant Put Option Exercise Date, specifying the aggregate Nominal Definitive Principal Amount(s) for which the Put Option is being exercised; and

- (ii) the Issuer is entitled to prohibit any transfers by the CD Holder of an interest in a Global CD for which a Redemption Notice has been received until the relevant Put Option Exercise Date.

7.1.4 If the Put Option is being exercised in respect of a Definitive CD which is not held by or on behalf of a Clearing System:

- (i) the CD Holder must deliver to the Paying Agent a duly completed Redemption Notice not earlier than 45 days before and not later than 30 days before the relevant Put Option Exercise Date; and
- (ii) the CD Holder must deposit that Definitive CD with the Paying Agent at the same time as delivering the Redemption Notice.

7.2 To the extent that the procedures in Conditions 7.1.1, 7.1.2, 7.1.3 or 7.1.4 are followed, the Issuer will repay each relevant Deposit on the relevant Put Option Exercise Date in accordance with the directions given to the Paying Agent in the relevant Redemption Notice and the relevant CD(s), or interest in the relevant CD(s), will be surrendered.

7.3 Any Redemption Notice received by the Paying Agent will be irrevocable and will bind both the Issuer and each relevant CD Holder.

7.4 Any CD so deposited may not be withdrawn and any transfer so made may not be reversed without the prior consent of the Issuer.

7.5 On the relevant Put Option Exercise Date, the CD (or interest in a CD) for a Fixed Rate CD and a Floating Rate CD for which the Redemption Notice has been received will become immediately due and payable at its principal amount together with accrued interest (except as otherwise provided in the Issue Terms).

7.6 The Put Option under this Condition 7 shall not be applicable to a Discounted CD.

## **8. CALL OPTION**

8.1 If the Issue Terms specify that a Call Option is applicable for a CD, the Issuer may at its option repay all the Deposits comprising a Series in whole but not in part on any Call Option Exercise Date (specified in the Issue Terms) on giving not more than 45 nor less than 30 days' prior written notice to each CD Holder and the Paying Agent of its intention to exercise the option, which notice will be irrevocable and will be binding on both the Issuer and each CD Holder.

8.2 After issuing a notice under Condition 8.1, the Issuer will be obliged to repay all the Deposits comprising a Series on the relevant Call Option Exercise Date (specified in the Issue Terms) on surrender of the relevant CDs (in respect of the CDs not held by the CMU Service), or by transfer of the interest in that CD to the Paying Agent (if that CD is held by the CMU Service).

8.3 Notice will be deemed to have been given to each CD Holder when published in accordance with the Condition titled "Notices" below.

- 8.4 On the relevant Call Option Exercise Date (specified in the Issue Terms and the notice from the Issuer), the Deposits in the Series for Fixed Rate CDs and Floating Rate CDs will become immediately due and payable at their principal amount together with accrued interest (except as otherwise provided in the Issue Terms).
- 8.5 The Call Option under this Condition 8 shall not be applicable to a Discounted CD.

**9. DEFAULT**

If, in respect of the interest bearing CDs, the Issuer fails to pay interest on the CD when due and that failure continues for a period of seven Business Days, then a holder of a Definitive CD or an Accountholder of a Global CD can declare, by notice in writing given to the Paying Agent at its specified office, that a Definitive CD or any interest in a Definitive CD represented by a Global CD is immediately due and payable and at that time it will become immediately due and payable:

- (a) for a Fixed Rate CD and a Floating Rate CD, at its principal amount together with accrued interest; or
- (b) for a Discounted CD, subject to a deduction from the Global Principal Amount (for a Global CD) or Nominal Definitive Principal Amount (for each Definitive CD) to represent the unamortised amount of the Deposit calculated by reference to the Discounted Bid Rate and on the basis of the actual number of days remaining from the date fixed for redemption to the Maturity Date and in accordance with the relevant Day Count Fraction,

without further formality unless that repayment event is remedied before the Paying Agent receives the notice.

**10. NOTICES**

- 10.1 Subject to Conditions 10.2 and 10.3 below, notices may be published in the South China Morning Post or any other leading daily newspaper published in the English language in Hong Kong:

10.1.1 specifying any appointment or change of Paying Agent or Calculation Agent;

10.1.2 giving notice under the Conditions titled "Tax Call" and "Call Option" above;  
or

10.1.3 giving notice in respect of any other matters for which a notice is to be given under the Conditions as soon as is practicable.

Any notice will be deemed duly given on the date it is published or, if published more than once, the first date of that publication.

- 10.2 If a CD is held by the CMU Service notices may be made to CMU Accountholders in accordance with the CMU Rules.

- 10.3 If a CD is held on behalf of Euroclear or Clearstream, notices may be given by their being delivered to Euroclear or Clearstream, as the case may be, or otherwise to the Accountholders.
- 10.4 If the Issuer or a Nominated Custodian holds an interest in a CD on behalf of a person, notice may be given to that person in accordance with any arrangements that apply between the Issuer and that person (which, for a customer of the Issuer, may include any arrangements for giving notice in accordance with terms and conditions applying to that customer).

## **11. PURCHASES**

- 11.1 The Issuer or its subsidiaries may at any time purchase CDs in the open market or otherwise and at any price.
- 11.2 Any CDs purchased by the Issuer in the ordinary course of business of dealings in securities or as a nominee may be resold by it in the open market or otherwise and at any price.
- 11.3 Any CDs purchased by the Issuer otherwise than in the ordinary course of business of dealings in securities or as a nominee shall be cancelled and shall not be reissued or resold.
- 11.4 All CDs so purchased by a subsidiary of the Issuer may be cancelled, held by such subsidiary or resold.

## **12. FURTHER ISSUES**

The Issuer may from time to time without the consent of any holder or Accountholder take deposits evidenced by further CDs having the same terms and conditions as this CD in all respects and so that such further issue will be consolidated and form a single series with the outstanding CDs of this Series. References in a CD to any such deposits or Series include (unless the context requires otherwise) any other deposits evidenced by other certificates of deposit issued under this Condition and forming a single series with that CD.

## **13. SPANISH BAIL-IN POWER**

- 13.1 Notwithstanding any other term of the CDs or any other agreements, arrangements, or understandings between the Issuer and any holder of a CD, by its acquisition or acceptance of a CD, each holder of a CD (which includes each holder of a beneficial interest in a CD) acknowledges, accepts, consents and agrees to be bound by: (i) the effect of the exercise of the Spanish Bail-in Power (as defined below) by the Relevant Spanish Resolution Authority (as defined below), that may include and result in any of the following, or some combination thereof: (1) the reduction of all, or a portion, of the BRRD Liability (as defined below) or outstanding amounts due thereon on any CD; (2) the conversion of all, or a portion, of the BRRD Liability on any CD into shares, other securities or other obligations of the Issuer or another person (and the issue to or conferral on such holder of any such shares, securities or obligations), including by means of an amendment, modification or variation of the terms of any CD issued

pursuant to the Programme; (3) the cancellation of any CD; (4) the amendment or alteration of the maturity of, or amendment of the amount of interest payable on, any CD, or the date on which interest becomes payable, including by suspending payment for a temporary period; (5) the cancellation of the BRRD Liability; and (6) the variation of the terms of any CD or the terms and conditions stated herein, if necessary, to give effect to the exercise of the Spanish Bail-in Power by the Relevant Spanish Resolution Authority.

- 13.2 By its acquisition or acceptance of a CD, each holder acknowledges and agrees that neither (i) a reduction or cancellation, in part or in full, of the BRRD Liability on any CD, or the conversion thereof into another security or obligation of the Issuer or another person, in each case as a result of the exercise of the Spanish Bail-in Power by the Relevant Spanish Resolution Authority with respect to the Issuer, nor (ii) the exercise of the Spanish Bail-in Power by the Relevant Spanish Resolution Authority with respect to any CD, nor (iii) the Issuer's inability to fulfil its obligations under the terms of any CD as a result of the exercise of the Spanish Bail-in Power by the Relevant Spanish Resolution Authority will give rise to a Default with respect to any CD pursuant to the terms and conditions herein.
- 13.3 By its acquisition or acceptance of a CD, each holder further acknowledges and agrees that no repayment or payment of the BRRD Liability or amounts due thereon on any CD will become due and payable or be paid after the exercise of the Spanish Bail-in Power by the Relevant Spanish Resolution Authority if and to the extent such amounts have been reduced, converted, cancelled, amended or altered as a result of such exercise.
- 13.4 By its acquisition or acceptance of a CD, each holder will waive any and all claims, in law and/or in equity, against the applicable Paying Agent for, agree not to initiate a suit against the applicable Paying Agent in respect of, and agree that the applicable Paying Agent will not be liable for, any action that the applicable Paying Agent takes, or abstains from taking, in either case in accordance with the exercise of the Spanish Bail-in Power by the Relevant Spanish Resolution Authority with respect to any CD. Additionally, by its acquisition or acceptance of a CD, each holder will acknowledge and agree that, upon the exercise of the Spanish Bail-in Power by the Relevant Spanish Resolution Authority with respect to any CD, the Form of Agency Appointment Agreement in schedule 8 of the Programme Agreement (the "**Agency Appointment Agreement**") pursuant to which any Paying Agent is appointed, will not impose any duties upon the applicable Paying Agent whatsoever with respect to the exercise of the Spanish Bail-in Power by the Relevant Spanish Resolution Authority.
- 13.5 By its acquisition or acceptance of a CD, each holder shall be deemed to have authorized, directed and requested the Clearing Systems (as defined herein) and any direct participants of the Clearing Systems or other intermediary through which it holds such CDs to take any and all necessary action, if required, to implement the exercise of the Spanish Bail-in Power with respect to any CD as it may be imposed, without any further action or direction on the part of such holder.

- 13.6 Upon the exercise of the Spanish Bail-in Power by the Relevant Spanish Resolution Authority with respect to any CD, the Issuer or the Relevant Spanish Resolution Authority (as the case may be) will provide a written notice to the relevant Clearing System(s) (as applicable) as soon as practicable regarding such exercise of the Spanish Bail-in Power for purposes of notifying the holders of such securities. The Issuer will also deliver a copy of such notice to the Paying Agent for information purposes.
- 13.7 Each holder that acquires a CD in the secondary market or otherwise shall be deemed to acknowledge and agree to be bound by and consent to the above and to the provisions specified in the Agency Appointment Agreement, to the same extent as the holders that acquire CDs upon their initial issuance.

For this purpose:

"**BRRD Liability**" has the same meaning as in such laws, regulations, rules or requirements implementing the BRRD including, but not limited to, Law 11/2015, RD 1012/2015 and the SRM Regulation;

"**Law 11/2015**" means Spanish Law 11/2015 of June 18, on the recovery and resolution of credit institutions and investment firms (*Ley 11/2015, de 18 de junio, de recuperación y resolución de entidades de crédito y empresas de servicios de inversión*).

"**RD 1012/2015**" means Royal Decree 1012/2015, of 6 November, implementing Law 11/2015;

"**Relevant Spanish Resolution Authority**" means the Spanish Fund for the Orderly Restructuring of Banks (*Fondo de Reestructuración Ordenada Bancaria*) (the "**FROB**"), the European Single Resolution Mechanism and, as the case may be, according to Law 11/2015, the Bank of Spain and the Spanish Securities Market Commission and any other entity with the authority to exercise the Spanish Bail-in Power from time to time;

"**Spanish Bail-in Power**" means any write-down, conversion, transfer, modification, or suspension power existing from time to time under, and exercised in compliance with any laws, regulations, rules or requirements in effect in Spain, relating to the transposition of the BRRD, as amended from time to time, including, but not limited to (i) Law 11/2015, as amended from time to time, (ii) RD 1012/2015, as amended from time to time, (iii) the SRM Regulation, as amended from time to time, and (iv) any other instruments, rules or standards made in connection with either (i), (ii) or (iii), pursuant to which any obligation of an institution can be reduced, cancelled, modified, or converted into shares, other securities, or other obligations of such institution or any other person (or suspended for a temporary period); and

"**SRM Regulation**" means Regulation (EU) No. 806/2014 of the European Parliament and the Council of the European Union.

#### 14. GOVERNING LAW AND JURISDICTION

- 14.1 *Governing law*: The CDs and any non-contractual obligations arising out of or in connection with the CDs are governed by Hong Kong law.

- 14.2 **Jurisdiction:** The courts of Hong Kong shall have exclusive jurisdiction to settle any dispute (a "**Dispute**") arising out of or in connection with the CDs (including a dispute regarding any non-contractual obligation arising out of or in connection with the Notes).
- 14.3 **Appropriate forum:** The Issuer agrees that the courts of Hong Kong are the most appropriate and convenient courts to settle any Dispute and, accordingly, that it will not argue to the contrary.

## 15. **RIGHTS OF THIRD PARTIES**

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

## 16. **DEFINITIONS IN A CD:**

"**Accountholder**" means, in respect of a Global CD at any time:

- (i) each CMU Accountholder credited with an interest in that Global CD except for a CMU Accountholder which is credited with that interest in its capacity as a Clearing System;
- (ii) each holder of one or more accounts with a Clearing System (other than the CMU Service) credited with an Entry or Entries in that Global CD except for any Clearing System which holds that account in its capacity as a Clearing System; or
- (iii) where a Global CD is held by the Issuer or a Nominated Custodian and has not been lodged with a Clearing System, each person who has been recorded by the Issuer or the Nominated Custodian as being credited with an Entry or Entries in that Global CD except for any Clearing System which is credited with that interest in its capacity as a Clearing System.

"**Alternative Currency**" means any freely transferable and available currencies other than Hong Kong dollars, US dollars or Renminbi that may be specified in the Issue Terms for a CD.

"**Alternative Currency CDs**" means CDs denominated or to be denominated in an Alternative Currency.

"**Alternative Floating Rate Benchmark**" means, for any Series, any method for calculating floating rate interest (other than HIBOR or LIBOR or SHIBOR) in respect of that Series which may be agreed in writing for a particular Series between the Issuer and any Dealer(s) and Agent(s) participating in that Series before the issue of such Series.

"**Business Day**" means a day (other than a Saturday, a Sunday or a public holiday) on which commercial banks and foreign exchange markets are open for business in Hong Kong; and

- (i) for a US\$ CD, on which banks and foreign exchange markets are open for business in London and New York City;

- (ii) for an Alternative Currency CD, in the principal financial centre on which dealings in the Alternative Currency are carried out and on which, if the Alternative Currency CD is a Floating Rate CD, the relevant Floating Rate Benchmark or ISDA Rate can be determined; and
- (iii) if the CD is held by a Clearing System, on which that Clearing System is operating.

**"Business Day Convention"** means:

- (i) if **"Floating Rate"** is specified in the Issue Terms, the relevant date shall be postponed to the next day that is a Business Day unless it would thereby fall into the next calendar month, in which event:
  - (a) such date shall be brought forward to the immediately preceding Business Day; and
  - (b) each subsequent such date shall be the last Business Day of the month in which such date would have fallen had it not been subject to adjustment;
- (ii) if **"Following"** is specified in the Issue Terms, the relevant date shall be postponed to the next day that is a Business Day;
- (iii) if **"Modified Following"** is specified in the Issue Terms, the relevant date shall be postponed to the next day that is a Business Day unless it would then fall into the next calendar month, in which event such date shall be brought forward to the immediately preceding Business Day; or
- (iv) if **"Preceding"** is specified in the Issue Terms, the relevant date shall be brought forward to the immediately preceding Business Day.

**"CD"** means any Global CD or Definitive CD.

**"CD Holder"** means, in respect of a CD at any time:

- (i) for a Global CD held by the CMU Service, each CMU Accountholder credited with an interest in that Global CD;
- (ii) for a Global CD held by a Clearing System (other than the CMU Service), each holder of one or more accounts with a Clearing System credited with an Entry or Entries in that Global CD;
- (iii) for a Global CD held by the Issuer or a Nominated Custodian, each person who has been recorded by the Issuer or the Nominated Custodian as being credit with an Entry or Entries in that Global CD; or
- (iv) for a Definitive CD, each holder of that Definitive CD.

**"Clearing System(s)"** means any of Clearstream, the CMU Service and Euroclear.

**"Clearstream"** means Clearstream Banking, société anonyme.



"**CMU Accountholder**" means, for any CD held by the CMU Service, any person or persons for whose account(s) interests in that CD are credited in accordance with the CMU Rules.

"**CMU Rules**" means the agreements, rules and regulations from time to time governing the operation of the CMU Service.

"**CMU Service**" means the Hong Kong Monetary Authority acting as operator of the Central Moneymarkets Unit Service.

"**Day Count Fraction**" is the method for calculating interest or unamortised amounts payable by the Issuer in certain circumstances for any period of time and will be calculated by reference to:

- (i) if "**Actual/Actual**" is specified in the Issue Terms, the actual number of days in the Calculation Period divided by 365 (or, if any portion of that Calculation Period falls in a leap year, the sum of (a) the actual number of days in that portion of the Calculation Period falling in a leap year divided by 366 and (b) the actual number of days in that portion of the Calculation Period falling in a non-leap year divided by 365);
- (ii) if "**Actual/365 (Fixed)**" is specified in the Issue Terms, the actual number of days in the Calculation Period divided by 365;
- (iii) if "**Actual/360**" is specified in the Issue Terms, the actual number of days in the Calculation Period divided by 360;
- (iv) if "**30/360**" is specified in the Issue Terms, the number of days in the Calculation Period divided by 360, calculated on a formula basis as follows:

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

360

where:

"Y1" is the year, expressed as a number, in which the first day of the Calculation Period falls;

"Y2" is the year, expressed as a number, in which the day immediately following the last day included in the Calculation Period falls;

"M1" is the calendar month, expressed as a number, in which the first day of the Calculation Period falls;

"M2" is the calendar month, expressed as a number, in which the day immediately following the last day included in the Calculation Period falls;

"D1" is the first calendar day, expressed as a number, of the Calculation Period, unless such number would be 31, in which case D1 will be 30; and

"D2" is the calendar day, expressed as a number, immediately following the last day included in the Calculation Period, unless such number would be 31 and D1 is greater than 29, in which case D2 will be 30; and

- (v) if "**30E/360**" is specified in the Issue Terms, the number of days in the Calculation Period divided by 360, calculated on a formula basis as follows:

$$\text{Day Count Fraction} = [360 \times (Y2 - Y1)] + [30 \times (M2 - M1)] + (D2 - D1)$$

---

360

where:

"Y1" is the year, expressed as a number, in which the first day of the Calculation Period falls;

"Y2" is the year, expressed as a number, in which the day immediately following the last day included in the Calculation Period falls;

"M1" is the calendar month, expressed as a number, in which the first day of the Calculation Period falls;

"M2" is the calendar month, expressed as a number, in which the day immediately following the last day included in the Calculation Period falls;

"D1" is the first calendar day, expressed as a number, of the Calculation Period, unless such number would be 31, in which case D1 will be 30; and

"D2" is the calendar day, expressed as a number, immediately following the last day included in the Calculation Period, unless such number would be 31, in which case D2 will be 30,

**"Deed of Covenant"** means the deed of covenant dated on or about the date of the Programme Agreement (as defined below) and executed by the Issuer in relation to the Relevant Accountholders.

**"Definitive CDs"** means any definitive certificate of deposit issued or required to be issued under the terms of a Global CD, substantially in the form attached to that Global CD, subject to any necessary changes.

**"Deposit"** means:

- (i) for a CD specified to be Fixed Rate or Floating Rate, the Initial Global Principal Amount of a Global CD or the Nominal Definitive Principal Amount of a Definitive CD; and
- (ii) for a CD specified to be Discounted, a principal amount which, together with interest accrued thereon, will amount on the Maturity Date to the Global Principal Amount of any relevant Global CD or Nominal Definitive Principal Amount of a Definitive CD and to which a discount would be applied in respect of any repayment before the Maturity Date in accordance with the Conditions to reflect the unamortised amount of that interest at the relevant time.

**"Direct Rights"** has the meaning given to it in the Deed of Covenant.

**"Entry"** means any entry relating to any Global CD (or to the relevant part of it) or the Definitive CDs represented by the Global CD which is or has been made in an account of any account holder with a Clearing System, the Issuer or a Nominated Custodian and **"Entries"** shall have a corresponding meaning.

**"Euroclear"** means Euroclear Bank SA/NV.

**"Exchange Date"** has the meaning given to it in the Condition in a Global CD titled "Exchange for Definitive CDs".

**"Floating Rate Benchmark"** means:

- (i) for Hong Kong dollars, HIBOR;
- (ii) for US dollars, LIBOR;
- (iii) for RMB, SHIBOR; or
- (iv) any applicable Alternative Floating Rate Benchmark.

**"Global CD"** means a permanent global certificate of deposit issued under the Programme which is specified as a "Global CD".

**"Global Principal Amount"** means the Initial Global Principal Amount (as specified in the Issue Terms) as reduced by reason of purchase and cancellation, exchanges for Definitive CDs, the creation of Direct Rights or early redemptions in accordance with the terms and conditions of a Global CD.

**"Hong Kong"** means the Hong Kong Special Administrative Region of the People's Republic of China.

**"HK\$" and "Hong Kong dollars"** means the lawful currency of Hong Kong.

**"HK\$ CD"** means a CD denominated in Hong Kong dollars.

**"Interest Determination Date"** means:

- (i) for a HK\$ CD, the first day of an Interest Period;
- (ii) for a US\$ CD, the second London Business Day before the first day of an Interest Period;
- (iii) for a RMB CD, the business day (which, for the purposes hereof, shall be a day on which banks are open for business in Shanghai) before the first day of an Interest Period; and
- (iv) for an Alternative Currency CD, the day agreed between the Issuer and the relevant Agent(s) and Dealer(s) on which Interest Rate quotations are obtained, for the purposes of Condition 3.2, in respect of that Alternative Currency CD.

**"Interest Payment Date"** means, with respect to each Series of CDs, each such date specified in the relevant Issue Terms of such Series.

**"Issue Terms"** means, a document substantially in the form of Schedule 1 (*Issue Terms*) to the Programme Agreement completed to specify all the information relating to an actual or proposed CD or Series which is required to be specified for the particular purpose of that document in accordance with the completion instructions in Schedule 1 (*Issue Terms*) to the Programme Agreement (together with any Alternative Floating Rate Benchmark (if applicable)) and which may be used (subject to the information which is specified on it and the basis on which it has been completed) as:

the basis of the information to be delivered in a Telephone Request for Bids;

- (i) an attachment to (and forming part of) a Written Request for Bids;
- (ii) an attachment to (and forming part of) a Response to Request for Bids;
- (iii) an attachment to (and forming part of) an Unsolicited Offer;
- (iv) an attachment to (and forming part of) an Issue Terms Confirmation; or
- (v) an attachment to (and forming part of) a Global CD or a Definitive CD.

**"Issuing Agent", "Paying Agent" or "Calculation Agent"** means any person specified as any of these in the Issue Terms of any relevant CD.

**"London Business Day"** means a day (other than a Saturday, a Sunday or a public holiday) on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) in London.

**"Nominal Definitive Principal Amount"** means such amount specified in the Issue Terms.

**"Nominated Custodian"** means any person appointed by the Issuer to act as custodian of a Global CD which is not held by or on behalf of a Clearing System.

**"Period End Date"** means each Interest Payment Date, except that in the case "No Adjustment" is specified in the Issue Terms, each such Interest Payment Date will not be subject to adjustment in accordance with the Business Day Convention for the purposes of this definition, notwithstanding that such date occurs on a day that is not a Business Day.

**"Position Report"** means a position report issued by the CMU Service or such other notification issued from time to time by the CMU Service, in accordance with the CMU Rules, to confirm the interests of CMU Accountholders in a CD.

**"PRC"** means the People's Republic of China, which for the purpose of this Agreement, shall exclude the Hong Kong Special Administrative Region, the Macau Special Administrative Region of the People's Republic of China and Taiwan.

**"Programme"** means the certificate of deposit programme established by the Issuer on 20 July 2011, initially for an aggregate amount of EUR5,000,000,000 or its equivalent.

**"Programme Agreement"** means the amended and restated programme agreement (as amended from time to time) relating to the Programme dated 5 July 2016 entered into by the Issuer, the Arranger, the Dealers and the Agents named therein.

**"Redemption Notice"** means a notice based on the form set out in the Deed of Covenant.

**"Reference Banks"** means the principal offices of three major banks active in the relevant inter-bank market for the relevant currency in:

- (i) Hong Kong (if the currency is HK\$);
- (ii) London (if the currency is US\$);
- (iii) Shanghai (if the currency is RMB); or
- (iv) the principal financial centre of any currency which is an Alternative Currency, as selected by the Issuer or, if one is specified in the Issue Terms, the Calculation Agent, acting reasonably.

**"Relevant Accountholder"** has the meaning given to it in the Deed of Covenant.

**"Relevant Time"** means the time when Direct Rights take effect as contemplated by the Condition in a Global CD titled "Exchange for Direct Rights" and by the Deed of Covenant.

**"RMB"** and **"Renminbi"** means the lawful currency of the People's Republic of China.

**"RMB CD"** means a CD denominated in Renminbi.

**"Series"** means each series of CDs which are all issued on the same terms and conditions (except, in some circumstances, only for Deposit Date) and which are all expressed to form part of the same Series.

**"Spain"** means the Kingdom of Spain.

"**United States**" or "**U.S.**" means the United States of America, including the states and the District of Columbia and its "possessions" include Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Wake Island and the Northern Mariana Islands.

"**US\$**" and "**US dollars**" means the lawful currency of the United States.

"**US\$ CD**" means a CD denominated in US dollars.

References to a **time of the day** are, except where the context requires otherwise, to Hong Kong time.

**Schedule 2 to Global CD  
Principal Amount of this Global CD**

The aggregate principal amount of this Global CD is as shown by the latest entry made by or on behalf of the Issuer or, if one is specified in the Issue Terms, the Paying Agent in the fourth column below. Change in the principal amount of this Global CD following:

- (1) purchase and cancellation;
- (2) exchanges for Definitive CDs;
- (3) the creation of Direct Rights; or
- (4) early redemption,

are entered in the second and third columns below.

| Date         | Reason for change in the principal amount of this Global CD (any of (1) to (5) above) | Amount of such change | Initial nominal principal amount and remaining nominal principal amount of this Global CD following such change | Notation by or on behalf of the Issuer/Paying Agent |
|--------------|---|-----------------------|---|---|
| Deposit Date | New Issue   | Not applicable        | [Deposit Amounts]   | Not applicable                                      |
|              |   |                       |   |   |
|              |   |                       |   |   |
|              |   |                       |   |   |
|              |   |                       |   |   |
|              |   |                       |   |   |
|              |   |                       |   |   |







**Appendix to Global CD  
Form of Definitive CD**

[on face]

**ISSUE TERMS**

**relating to an issue of certificates of deposit under the  
EUR5,000,000,000 Banco Santander, S.A., Hong Kong Branch Certificate of Deposit  
Programme**

*[WHEN A DEFINITIVE CD IS ISSUED, THE ISSUE TERMS SET OUT AT THE FRONT OF  
THE GLOBAL CD WILL BE INCORPORATED INTO THE FORM OF THAT DEFINITIVE  
CD, SUBJECT ONLY TO ANY NECESSARY CHANGES]*

*CDs issued pursuant to these Issue Terms may be subject to the exercise of any Spanish Bail-in  
Power by the Relevant Spanish Resolution Authority in relation to any BRRD Liability pursuant  
to the EU Bank Recovery and Resolution Directive (2014/59/EU) and any transposing  
legislation in the Kingdom of Spain as described in the Information Memorandum.*

For and on behalf of  
**BANCO SANTANDER, S.A., HONG  
KONG BRANCH**

[These Issue Terms are authenticated by or on  
behalf of the Issuing Agent specified above  
without recourse or warranty

By: .....  
Authorised Signatory

By: .....  
Authorised Signatory]

THIS DEFINITIVE CD HAS NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933 (AS AMENDED). ANY OFFER OR SALE OF THIS DEFINITIVE CD IN THE UNITED STATES OR TO U.S. PERSONS (EACH AS DEFINED IN REGULATIONS PROMULGATED UNDER THE SAID ACT) MAY CONSTITUTE A VIOLATION OF UNITED STATES LAWS UNLESS SUCH OFFER OR SALE IS EITHER REGISTERED PURSUANT TO, OR IS EXEMPT FROM REGISTRATION UNDER, SUCH ACT.

THIS DEFINITIVE CD IS NOT A PROTECTED DEPOSIT UNDER, AND IS NOT PROTECTED BY, THE DEPOSIT PROTECTION SCHEME ESTABLISHED BY THE HONG KONG DEPOSIT PROTECTION BOARD PURSUANT TO THE DEPOSIT PROTECTION SCHEME ORDINANCE (CAP. 581).

~~REPAYMENT OF THIS DEFINITIVE CD IS NOT GUARANTEED BY THE HONG KONG SAR GOVERNMENT'S EXCHANGE FUND.~~

[PURCHASERS OF THE CDS SHOULD NOTE THAT THE RENMINBI IS NOT A FREELY CONVERTIBLE CURRENCY. ALL PAYMENTS IN RESPECT OF THE CDS WILL BE MADE SOLELY BY TRANSFER TO A RENMINBI BANK ACCOUNT MAINTAINED IN HONG KONG IN ACCORDANCE WITH PREVAILING RULES AND REGULATIONS. THE ISSUER CANNOT BE REQUIRED TO MAKE PAYMENT BY ANY OTHER MEANS (INCLUDING IN CURRENCY OR BY TRANSFER TO A BANK ACCOUNT IN THE PRC). IN ADDITION, THERE CAN BE NO ASSURANCE THAT ACCESS TO RENMINBI FUNDS FOR THE PURPOSES OF MAKING PAYMENTS ON THE CDS OR GENERALLY MAY NOT REMAIN OR BECOME RESTRICTED.]<sup>2</sup>

## NEGOTIABLE DEFINITIVE CERTIFICATE OF DEPOSIT

**Banco Santander, S.A., Hong Kong Branch (the "Issuer")**

at ~~Room 1001, 10th Floor, Two International Finance Center, 8 Finance Street~~  
~~Room 1501, One Exchange Square, 8 Connaught Place~~, Central, Hong Kong

1. **CONDITIONS AND DEFINITIONS**
  - 1.1 General terms and conditions ("**Conditions**") applicable to this Negotiable Definitive Certificate of Deposit ("**Definitive CD**") are set out in Schedule 1.
  - 1.2 Specific terms and conditions applicable to this Definitive CD are set out above on this Definitive CD ("**Issue Terms**").
  - 1.3 This Definitive CD is subject to all the Conditions expressed to be applicable to any Definitive CD except where the Conditions are supplemented or modified by the Issue Terms.

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<sup>2</sup> Applicable to CDs denominated in Renminbi only.

- 1.4 Terms defined in the Conditions and terms defined in the Issue Terms have the same meaning in this Definitive CD. Terms defined in the Issue Terms prevail in the case of any conflict with terms defined in the Conditions.

## 2. **CERTIFICATE AND PROMISE TO PAY**

This Definitive CD certifies the following:

- 2.1 The Deposit has been deposited with Banco Santander, S.A., Hong Kong Branch at the address set out above, as issuer.
- 2.2 The Deposit is only repayable on or after the Maturity Date or any earlier date on which the Deposit may become repayable in accordance with the Conditions or the Issue Terms.
- 2.3 Principal is repayable and interest is payable on this Definitive CD in each case to the person and in the manner set out in the Conditions.

## 3. **CALCULATION AND PAYMENT OF INTEREST**

Interest on the Deposit (if applicable) will accrue from and including the Deposit Date to but excluding the Maturity Date in accordance with the Conditions and will be calculated and payable in accordance with the Conditions.

## 4. **AUTHENTICATION**

If an Issuing Agent is specified in the Issue Terms this Definitive CD will not be valid or become obligatory for any purpose until authenticated by or on behalf of that Issuing Agent.

## 5. **GOVERNING LAW AND JURISDICTION**

- 5.1 This Definitive CD will be governed by and construed in accordance with the laws of Hong Kong.
- 5.2 The courts of Hong Kong are to have jurisdiction to settle any disputes which may arise out of or in connection with this Definitive CD, and accordingly, any legal action or proceedings arising out of or in connection with this Definitive CD ("**Proceedings**") may be brought in those courts.
- 5.3 The Issuer irrevocably submits to the non-exclusive jurisdiction of those courts and waives any objection to Proceedings in those courts whether on the ground of venue or on the ground that the Proceedings have been brought in an inconvenient forum.
- 5.4 This submission is made for the benefit of the holder of this Definitive CD and will not limit the holder's right to take Proceedings in any other court of competent jurisdiction nor will the taking of Proceedings in one or more jurisdictions preclude the taking of Proceedings in any other jurisdiction (whether concurrently or not).

For and on behalf of  
**BANCO SANTANDER, S.A., HONG KONG BRANCH**

By: .....  
Authorised Signatory

[This Definitive CD is authenticated by or on behalf of  
any Issuing Agent specified in the Issue Terms  
without recourse or warranty

By: .....  
Authorised Signatory]

**Schedule 1 to Definitive CD  
General Terms and Conditions**

*[WHEN A DEFINITIVE CD IS ISSUED, THE CONDITIONS SET OUT AS SCHEDULE 1 TO THE FORM OF GLOBAL CD WILL BE INCORPORATED INTO THE FORM OF THAT DEFINITIVE CD SUBJECT ONLY TO NECESSARY CHANGES]*



**SCHEDULE 3**  
**CONDITIONS PRECEDENT AND CHECKLIST**

| <b>Condition</b>  | <b>Status</b> |
|---|---------------|
| 1. Each of the documents set out in Clause 3.1 ( <i>Documents to be available before first issue</i> ) of the Programme Agreement must be available for inspection by any Agent or Dealer participating in the relevant Series.   |               |
| 2. All of the matters represented, warranted and agreed by the Issuer set out in Clause 9 ( <i>Representations and Warranties of the Issuer</i> ) of the Programme Agreement must be true and accurate in all material respects and there must be no event which has occurred and is continuing or would occur as a result of the issue of the relevant Series which will or is reasonably likely to (with the giving of notice, the lapse of time or any other conditions) result in any of those representations ceasing to be accurate in all material respects. |               |
| 3. If applicable, an Agency Appointment Agreement must have been executed and available for inspection at the offices of that Agent for any Agent required to act as an Agent for the relevant Series.  |               |
| 4. If applicable, the Issuer must have received confirmation from any Issuing Agent and Paying Agent appointed for a Series that it has sufficient executed (but uncompleted and unauthenticated) CDs available in respect of that Series.  |               |
| 5. Whichever party has agreed to lodge the Global CD into a Clearing System on issue must have received or prepared all the lodging documents required to lodge the relevant CD(s) into the relevant Clearing System. These may include the following:  |               |
| 5.1 CMU Service:  |               |
| (a) lodgement slip;   |               |
| (b) lodging agent's undertaking; and  |               |
| (c) lodging authority from the Issuer.  |               |
| 5.2 Euroclear/Clearstream:  |               |
| All documents required by the common depositary for the   |               |



relevant Clearing System.

6. The Equivalent Value of all outstanding CDs when added to the Equivalent Value of the relevant CDs to be issued must not exceed the Programme Limit on the Deposit Date of the CDs to be issued.

**SCHEDULE 4  
ISSUE FORMS**

**Part 1  
Written Request for Bids**

From: Banco Santander, S.A., Hong Kong Branch (the "**Issuer**")

To: [Programme Dealer(s)/Issuing Agent]

[Date]

**[Description of Issue]**

We refer to amended and restated Programme Agreement in respect of the Issuer's EUR 5,000,000,000 Certificate of Deposit Programme dated [•] 2016 and entered into between the Issuer, the Arranger, the Dealers and Agents named therein (the "**Agreement**"). Terms defined in the Agreement have the same meaning in this Written Request for Bids.

This is a Written Request for Bids made under Clause 6 (*Solicited Issues*) of the Agreement.

We invite you to make offers to purchase CDs under the Agreement having the terms set out in the attached Issue Terms.

[We request you to/Please communicate this request to the Programme Dealers and ask them to] reply with offers that relate to the following terms and on the basis (and by the time) set out below.

Terms applying to offers:

- (1) **Offers must be received not later than:** [•]
- (2) **Requested Amount:** Programme Dealers must respond with offers for a Principal Amount of at least [HK\$•] [US\$•] [RMB•] [OTHER]
- (3) **Clearing System(s):** The Global CD will be lodged with [the CMU Service]/[Citibank Europe plc, UK Branch as common depository for Euroclear/ Clearstream.]
- (4) **Clearing System Lodging Arrangements (if any):** [[The Issuer]/[Issuing Agent] shall arrange for the CD(s) to be lodged with the Clearing System.]

Terms to be offered:

Each offer must address the following:

- (1) **Principal Amount of CDs offered to be bought (maximum and, if applicable, minimum):** [State amount or range]
- (2) **Deposit Date:** [State date or range of dates]
- (3) **Interest Rate:** [State offer if Fixed Rate CD] [Not applicable]  
**Margin:** [State offer if Floating Rate CD] [Not applicable]  
**Discounted Bid Rate:** [State offer if Discounted CD] [Not applicable]
- (4) **Clearing System Lodging Arrangements:** [ ]
- (5) **CMU DvP arrangements (if applicable):** [ ]

We confirm that, at the date of this Written Request for Bids, the representations and warranties set out in Clause 9 (*Representations and Warranties of the Issuer*) of the Agreement are and shall be true and accurate in all material respects.

Yours faithfully,

For and on behalf of  
**BANCO SANTANDER, S.A., HONG KONG BRANCH**

By: .....  
Authorised Signatory

**Part 2**  
**Response to Request for Bids**

From: [Programme Dealer]

To: Banco Santander, S.A., Hong Kong Branch (the "Issuer")

[Date]

**[Description of Issue]**

We refer to amended and restated Programme Agreement in respect of the Issuer's EUR 5,000,000,000 Certificate of Deposit Programme dated [•] 2016 and entered into between the Issuer, the Arranger, the Dealers and Agents named therein (the "**Agreement**"). Terms defined in the Agreement have the same meaning in this Response to Request for Bids.

This is a Response to Request for Bids issued under Clause 6 (*Solicited Issues*) of the Agreement in response to the Written Request for Bids from [you/[•] as Issuing Agent] dated [•].

We attach a copy of the Issue Terms and, in respect of the terms which we were requested to address, we make the following offer:

1. **Principal Amount of CDs we offer to purchase (and corresponding Deposits we offer to make):**

**Maximum:** [ ]

**Minimum (if any):** [ ]

2. **Deposit Date:** [ ]

3. **Interest Rate:** [State offer if Fixed Rate CD]  
[Not applicable]

**Margin:** [State offer if Floating Rate CD]  
[Not applicable]

**Discounted Bid Rate:** [State offer if Discounted CD]  
[Not applicable]

4. **Clearing System lodging arrangements/ account details:** [The CDs should be credited on our behalf to the following account with [the CMU Service]/[Euroclear/Clearstream]

5. **CMU DvP settlement required:** [Yes/No]

*NB. This can only be requested if the Programme Dealer and the relevant lodging agent arrange DvP settlement before 3 p.m. two Business Days before the Deposit Date.*

**THIS OFFER WILL REMAIN OPEN UNTIL\*:**

For and on behalf of  
[Programme Dealer]

By: .....  
Authorised Signatory

---

\* NB. If no time is specified, this offer will remain open until [4 p.m./5 p.m.] on the day on which it is deemed to be received by the Bank.

**Part 3  
Unsolicited Offer**

From: [Programme Dealer]

To: Banco Santander, S.A., Hong Kong Branch (the "Issuer")

[Date]

**[Description of Issue]**

We refer to amended and restated Programme Agreement in respect of the Issuer's EUR 5,000,000,000 Certificate of Deposit Programme dated [•] 2016 and entered into between the Issuer, the Arranger, the Dealers and Agents named therein (the "**Agreement**"). Terms defined in the Agreement have the same meaning in this Unsolicited Offer.

This is an Unsolicited Offer under Clause 7 (*Unsolicited Offers*) of the Agreement.

We offer to purchase a Series issued by you under the Agreement having the terms set out in the attached Issue Terms and subject to the following additional arrangements:

- 1. **Clearing System lodging arrangements:**
- 2. **CMU DvP settlement required:** [Yes/No]

**THIS OFFER WILL REMAIN OPEN UNTIL\*:**

For and on behalf of  
[Programme Dealer]

By: .....  
Authorised Signatory

**Part 4  
Issue Terms Confirmation**

---

\* NB. If no time is specified, this offer will remain open until [4 p.m./5 p.m.] on the day on which it is deemed to be received by the Bank.

To: [Issuer/Programme Dealer/Issuing Agent]

From: [Programme Dealer or Issuer or Programme Dealer and Issuer]

[Date]

**[Description of Issue]**

We refer to amended and restated Programme Agreement in respect of the Issuer's EUR 5,000,000,000 Certificate of Deposit Programme dated [•] 2016 and entered into between the Issuer, the Arranger, the Dealers and Agents named therein (the "**Agreement**"). Terms defined in the Agreement have the same meaning in this Issue Terms Confirmation.

This is an Issue Terms Confirmation delivered under Clause [6.3.1 (for Solicited Bids)] [7.2.1 (for Unsolicited Offers)] of the Agreement and confirms the agreement of the Programme Dealer specified below to make the Deposits and purchase the Series, and the agreement of the Issuer to issue the Series, on the terms and conditions set out in the attached Issue Terms.

The following arrangements have also been agreed:

- 1. **Clearing system lodging arrangements:**
- 2. **CMU DvP settlement required:**
- 3. **Programme Dealer**

**Name:**

**Address:**

We authorise the Issuing Agent to prepare an Issue Terms to be attached to the Global CD for the relevant Series reflecting these agreements.

For and on behalf of  
**BANCO SANTANDER, S.A., HONG KONG BRANCH**

For and on behalf of  
Programme Dealer

By: .....  
Authorised Signatory

By: .....  
Authorised Signatory

**SCHEDULE 5**  
**DEALER APPOINTMENT, TERMINATION FORMS AND DEALER REPRESENTATION**  
**LETTER**

**Part 1**  
**DEALER APPOINTMENT AGREEMENT**

**BANCO SANTANDER, S.A., HONG KONG BRANCH**

EUR 5,000,000,000 certificate of deposit amended and restated programme agreement  
dated [•] 2016 (the "**Agreement**")

[Series [•] HK\$/US\$/RMB/[•] Fixed Rate/Floating Rate/Discounted CDs due [•]]\*

Dated [•]

1. Terms defined in the Agreement have the same meaning in this Agreement.
2. [Name of new Dealer] is appointed as an additional Dealer in respect of the Agreement [solely for the purposes of making the Deposits and purchasing CDs under the Series set out above]\* [as a Programme Dealer] on and with effect from [•] acting initially through its office or offices set out below.
3. [Name of new Dealer] confirms that it has received copies of the requested Programme Documents, it finds them satisfactory and it undertakes to the other parties to the Agreement to be bound by their terms.
4. This Agreement is governed by, and shall be construed in accordance with, Hong Kong law.

**BANCO SANTANDER, S.A., HONG KONG BRANCH**

By:

[NEW PROGRAMME DEALER]

Address:

Telephone:

Fax No.:

Attention:

By:

c.c. The Agents, if any, [for the Series set out above] \*and (where a Programme Dealer is appointed) the other Dealers

\* This wording is only applicable to Dealers appointed for a particular Series ("**Dealer-for-a-day**").



**Part 2**  
**DEALER TERMINATION LETTER**

**BANCO SANTANDER, S.A., HONG KONG BRANCH**  
EUR 5,000,000,000 certificate of deposit amended and restated programme agreement  
dated [•] 2016 (the "**Agreement**")

[Date]

To: Programme Dealer

We refer to the Agreement and notify you that your appointment as a Programme Dealer under the Agreement is terminated with effect from [*state date*] [the earliest date possible under the Agreement].

**BANCO SANTANDER, S.A., HONG KONG BRANCH**

By:

**SCHEDULE 6**  
**FORM OF SYNDICATION AGREEMENT**

Dated [•]

**BANCO SANTANDER, S.A., HONG KONG BRANCH**  
as Issuer

and

[•]  
as Lead Dealer[./and] [Issuing Agent][./and]  
[Paying Agent] [and Calculation Agent]

and

[•]  
[•]  
as Syndicate Dealers

---

**SYNDICATION AGREEMENT**

relating to a [HK\$/US\$/RMB/[•]][•]] issue of  
[Fixed Rate/Floating Rate/Discounted] Certificates  
of Deposit due [*Insert Maturity Date*] pursuant to  
a EUR5,000,000,000 Certificate of Deposit amended and restated  
Programme Agreement

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**THIS AGREEMENT** is made on [•]

**BETWEEN:**

- (1) **Banco Santander, S.A., Hong Kong Branch** (the "Issuer")
- (2) [•] (in its capacity as "Lead Dealer");
- (3) [•] (in its capacity as Issuing Agent[,/and] Paying Agent [and Calculation Agent]); and
- (4) [•], [•]  
(the "Syndicate Dealers").

**Background:**

An amended and restated programme agreement, dated 5 July 2016, was entered into in respect of the Issuer's EUR 5,000,000,000 Certificate of Deposit Programme between the Issuer, the Arranger, the Dealers and Agents named therein (the "**Programme Agreement**").

## 1. **INTERPRETATION**

- 1.1 **Definitions:** Terms defined and references construed in the Programme Agreement shall, unless the context requires otherwise, have the same meanings and construction in this Agreement.
- 1.2 **Syndication Agreement:** This is a Syndication Agreement for the purposes of Clause 5.2 (*Syndication Agreement*) of the Programme Agreement, evidencing the agreement of the Syndicate Dealers to purchase CDs.

## 2. **TERMS OF ISSUE**

The Series constituting the Syndication agreed under this Agreement will be issued on the terms set out in the Global CD attached as Schedule 1 and the following additional terms will apply:

- 2.1 *Clearing System(s):* The Global CD will be lodged with [the CMU Service]/[Citibank Europe plc, UK Branch as common depository for Euroclear and Clearstream].
- 2.2 *Clearing System Lodging Arrangements (if any):* [[The Issuer/the Issuing Agent/[•]] shall arrange for the CD(s) to be lodged with the Clearing System.]
- 2.3 *CMU DvP arrangements:* [ ].

## 3. **SYNDICATION**

- 3.1 **Acknowledgement of Obligations:** Each of the Syndicate Dealers which is not already a Programme Dealer confirms that it has received a copy of the Programme Documents, has carefully reviewed their contents and undertakes to be bound by the terms of the Programme Agreement for the purposes of the Syndication referred to below.
- 3.2 **Deposit Amounts:** Each of the Syndicate Dealers severally agrees, on the terms set out in this Agreement and the Programme Agreement, to make Deposits with the Issuer on

the Deposit Date in the aggregate principal amount set out against its name at the end of this Agreement.

- 3.3 **Appointment as Dealers:** Each Syndicate Dealer which is not an existing Dealer under the Programme Agreement is appointed as an additional Dealer in respect of the Programme Agreement for the purposes of the relevant Syndication the subject of this Agreement. Accordingly, such appointment shall cease to be effective from the date falling after the relevant Deposit Date except that the representations, warranties, undertakings and indemnities of the Issuer and the Dealers (including the Syndicate Dealers) in the Programme Agreement and in this Agreement shall continue in full force and effect in accordance with their terms in respect of the Syndication the subject of this Agreement.
- 3.4 **Obligations Several:** The obligations of the Syndicate Dealers under this Agreement and the Programme Agreement are several. The failure of any Syndicate Dealer to perform its obligations under this Agreement and under the Programme Agreement shall not affect the obligations of the other Syndicate Dealers towards the Issuer or the other Syndicate Dealers nor shall any Syndicate Dealer be liable for the failure of another Syndicate Dealer to perform its obligations under this Agreement.

#### 4. **FORCE MAJEURE**

The Lead Dealer, on behalf of the Syndicate Dealers, may by notice to the Issuer terminate this Agreement at any time before the time on the Deposit Date when payment would otherwise be due to the Issuer under this Agreement in respect of the CDs if, in the reasonable opinion of the Lead Dealer, following consultation with the Issuer if reasonably practicable in the circumstances, there has occurred any change in national or international monetary, financial, political or economic conditions or currency exchange rates or exchange controls as would in its view be likely to prejudice materially the success of the offering and distribution of the CDs in the primary markets or dealings in the CDs in the secondary market and, upon notice being given, the parties to this Agreement shall (except for the liability of the Issuer in relation to expenses as provided in Clause 8.10 (*Lodging Costs*) of the Programme Agreement and except for any liability arising before or in relation to such termination) be released and discharged from their respective obligations under this Agreement.

#### 5. **CONDITIONS PRECEDENT**

The Deposits to be made pursuant to this Agreement shall not be made unless the Lead Dealer has received, and has confirmed to the Issuer and to the Syndicate Dealers that it has received, in form and substance satisfactory to it in all respects, the documents (if applicable) set out below.

*[Specify conditions precedent]* [Not applicable]

#### 6. **REPRESENTATIONS AND WARRANTIES**

- 6.1 The Issuer confirms that, at the date of this Agreement, the representations and warranties set out in Clause 9 (*Representations and Warranties of the Issuer*) of the Programme Agreement are true and accurate in all material respects.

7. **FEES AND EXPENSES**

[Specify fees and expenses arrangement]

8. **INCORPORATION OF TERMS OF PROGRAMME AGREEMENT**

The terms of Clauses 12 (*Indemnities*), 20 (*Assignment*), 21 (*Partial Invalidity*), 22 (*Counterparts*), 23 (*Governing Law and Jurisdiction*) and 24 (*Rights of Third Parties*) of the Programme Agreement shall also apply, with any necessary consequential amendments, to this Agreement.

**IN WITNESS WHEREOF** the parties hereto have caused this Agreement to be duly executed the day and year first above written.

*The Issuer*

**BANCO SANTANDER, S.A., HONG KONG BRANCH**

By:

By:

As Lead Dealer [./and] [Issuing Agent [./and] Paying Agent [and Calculation Agent]

By:

**The Syndicate Dealers**

**Deposit Amounts**

**Schedule 1 to Syndication Agreement**

**Form of Global CD**

*[Attach Issue Terms and Global CD]*

**SCHEDULE 7**  
**FORM OF DEED OF COVENANT**

Dated [•] 2016

**BANCO SANTANDER, S.A., HONG KONG BRANCH**  
**as Issuer**

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**EUR5,000,000,000**  
**CERTIFICATE OF DEPOSIT PROGRAMME**  
**DEED OF COVENANT**

---



**THIS DEED OF COVENANT** is made on [•] 2016 by

**BANCO SANTANDER, S.A., HONG KONG BRANCH** at Room 1501, One Exchange Square, 8 Connaught Place, Central, Hong Kong (the "**Issuer**") in favour of the Relevant Accountholders of the Clearing Systems (as defined below).

**Background:**

The Issuer proposes from time to time to issue certificates of deposit denominated in Hong Kong dollars, US dollars, Renminbi or other currencies and represented by Global CDs (as defined below) pursuant to a EUR 5,000,000,000 certificate of deposit amended and restated programme agreement, dated 5 July 2016, entered into between the Issuer, the Arranger, the Dealers, and the Agents named therein (the "**Programme Agreement**").

In certain circumstances, Global CDs will become void in whole or in part and/or Relevant Accountholders (as defined below) may elect that direct enforcement rights come into effect in respect of interests in Global CDs.

The Issuer wishes to make arrangements for the protection of the interests of Relevant Accountholders under this Deed.

1. **INTERPRETATION**

1.1 **Terms in Programme Agreement:** Terms defined and expressions construed in or for the purposes of the Programme Agreement and the CDs shall, except where the context requires otherwise or where a different meaning is attributed to the relevant term in this Deed, have the same meaning in this Deed.

1.2 **Defined Terms:** In this Deed and the recitals to this Deed, unless the context requires otherwise:

"**Attributable Amount**" means, in respect of any Entry, the amount which would be due to the holder of the account in which such Entry is credited were the aggregate principal amount of the Global CD or the Definitive CDs represented by it in respect of which such Entry was made to be paid in full at its maturity.

"**Direct Rights**" means the rights referred to in Clause 2.1 (*Acquisition of Direct Rights*).

"**Relevant Accountholder**" means any accountholder or participant with a Clearing System which at the Relevant Time has credited to its securities account with such Clearing System one or more Entries in respect of a CD, except for any Clearing System in its capacity as an accountholder of another Clearing System.

"**Relevant Time**" means the time when Direct Rights take effect as contemplated by the Condition in a Global CD titled "Exchange for Direct Rights" and by this Deed.

"**Termination Date**" means the first date on which no further Global CDs may be issued under the Programme Agreement and complete performance of the obligations contained in this Deed and in all Global CDs outstanding from time to time occurs.

2. **DIRECT RIGHTS**

- 2.1 **Acquisition of Direct Rights:** Each Relevant Accountholder shall at the Relevant Time acquire against the Issuer all rights which the Relevant Accountholder in question would have had if, immediately before the Relevant Time, it had been the holder of Definitive CDs issued on the Deposit Date for the relevant Global CD in an aggregate amount equal to the Attributable Amount of the relevant Entry including, without limitation, the right to receive all payments due at any time in respect of such Definitive CDs, other than payments corresponding to any already made under the relevant Global CD.
- 2.2 **No Further Action Required:** No further action shall be required on the part of any person in order for such Direct Rights to be acquired and for each Relevant Accountholder to have the benefit of, and to enforce, rights corresponding to all the provisions of the relevant Definitive CDs as if they had been issued and as if such provisions had been specifically incorporated in this Deed, other than the right to receive payments corresponding to any already made under the relevant Global CD.

3. **EVIDENCE**

- 3.1 **Records Conclusive:** The records of each Clearing System and the Issuer shall, in the absence of manifest error, be conclusive evidence of the identity of the Relevant Accountholders, the number of Entries credited to the relevant account of each Relevant Accountholder with such Clearing System or the Issuer at the Relevant Time and the Attributable Amount of an Entry. For the purposes of this Clause, a statement issued by a Clearing System or the Issuer stating:

- 3.1.1 the name of the Relevant Accountholder to or in respect of which it is issued;
- 3.1.2 the number of Entries credited to the relevant account of such Relevant Accountholder with such Clearing System or the Issuer as at the opening of business on the first day on which the Clearing System or the Issuer is open for business following the Relevant Time; and
- 3.1.3 the Attributable Amount of any Entry in the accounts of such Clearing System or the Issuer,

shall be conclusive evidence of the records of such Clearing System or the Issuer at the Relevant Time (but without prejudice to any other means of producing such records in evidence).

- 3.2 **Relevant Time:** In the event of a dispute, in the absence of manifest error, the determination of the Relevant Time by a Clearing System or the Issuer shall be final and conclusive for all purposes in connection with the Entries in such Clearing System or the Issuer of the Relevant Accountholders with accounts with such Clearing System or the Issuer.
- 3.3 **Enforcement:** Any Relevant Accountholder may, in any proceedings relating to a Global CD or this Deed, protect and enforce its rights arising out of this Deed in respect of any Entry to which it is entitled upon the basis of a statement by a Clearing System or the Issuer as provided in this Clause and a copy of the relevant Global CD certified as being a true copy by a duly authorised officer of any Clearing System or the Issuer without the need for production in such proceedings or in any court of the actual records

or the Global CD. Any such certification shall be binding, except in the case of manifest error or as may be ordered by any court of competent jurisdiction, upon the Issuer and all Relevant Accountholders. This Clause shall not limit any right of any Relevant Accountholder to the production of the originals of such records or documents in evidence.

4. **TITLE TO ENTRIES**

4.1 **Right to Use Name:** Any Relevant Accountholder may protect and enforce its rights arising out of any Global CD in respect of any Entry to which it is entitled in its own name without the necessity of using the name of or obtaining any authority from any predecessor in title.

4.2 **Right to Payments:** Any Relevant Accountholder is entitled to receive payment of the Attributable Amount of its Entry and of all other sums referable to its Direct Rights to the exclusion of any other person and payment in full by the Issuer to such Relevant Accountholder shall discharge the Issuer from all obligations in respect of such Entry and such Direct Rights.

5. **REDEMPTION NOTICE**

Where there is no relevant Paying Agent, the Issuer undertakes to provide a copy of the form of Redemption Notice, substantially in the form set out in Appendix I to this Deed, to any holder of a CD or any Relevant Accountholder on request.

6. **COUNTERPARTS OF THIS DEED**

Where a Global CD is held by or on behalf of a Clearing System, executed originals of this Deed will, to the extent possible, be delivered to and held by the relevant Clearing System and shall be held to the exclusion of the Issuer and a copy shall be held by the Issuer and, if one is specified in the Issue Terms, the Paying Agent until the Termination Date. Where a Global CD is held by the Issuer or a Nominated Custodian, executed originals of this Deed will be delivered to and held by the Issuer or the Nominated Custodian and a copy shall be held by the Paying Agent, if one is specified in the Issue Terms, until the Termination Date. The Issuer covenants with each Relevant Accountholder to produce or procure the production of an executed original of this Deed on demand at any reasonable time.

7. **AMENDMENT**

The Issuer shall not amend, vary, terminate or suspend this Deed or its obligations under this Deed until after the Termination Date.

8. **SPANISH BAIL-IN**

As described in the Information Memorandum and the Programme Agreement, CDs issued pursuant to the Programme may be subject to the exercise of any Spanish Bail-in Power by the Relevant Spanish Resolution Authority in relation to any BRRD Liability pursuant to the EU Bank Recovery and Resolution Directive (2014/59/EU) and any transposing legislation in the Kingdom of Spain.

9. **GOVERNING LAW AND JURISDICTION**

- 9.1 The Deed, as to which time shall be of the essence, shall be governed by, and construed in accordance, with the laws of Hong Kong.
- 9.2 The courts of Hong Kong are to have jurisdiction to settle any disputes which may arise out of or in connection with this Deed and accordingly any legal action or proceedings arising out of or in connection with this Deed ("**Proceedings**") may be brought in such courts.
- 9.3 The Issuer irrevocably submits to the non-exclusive jurisdiction of such courts and waives any objection to Proceedings in such courts whether on the ground of venue or on the ground that the Proceedings have been brought in an inconvenient forum.
- 9.4 This submission is made for the benefit of each of the Relevant Accountholders and shall not limit the right of any of them to take Proceedings in any other court of competent jurisdiction nor shall the taking of Proceedings in one or more jurisdictions preclude the taking of Proceedings in any other jurisdiction (whether concurrently or not).

**IN WITNESS** whereof the Issuer has caused this Deed to be duly executed and delivered as a deed the day and year first before mentioned.

**SIGNED, SEALED and DELIVERED** )  
as a **DEED** by )  
as attorney )  
for and on behalf of )  
**BANCO SANTANDER, S.A.,** )  
**HONG KONG BRANCH** )  
in the presence of: )

L.S.

Witness:

*[name, address and occupation of witness]*

**Appendix I**

**(Form of Redemption Notice)**

**BANCO SANTANDER, S.A., HONG KONG BRANCH**

[HK\$] [US\$] [RMB] [Other] [Floating/Fixed Rate] [Discounted] Certificates  
of Deposit due [ ] [ ] (the "CDs")

**In respect of CDs or interest in a Global CD held by Clearing Systems:**

This Notice relates to CDs, or an interest in a Global CD, having an aggregate nominal principal amount of [HK\$•] [US\$•] [RMB•] [Other] and the following [CMU Number(s)/ ISIN/Common Code]:

[ ]

[ ]

[This duly completed Notice is being deposited with [Banco Santander, S.A., Hong Kong Branch (the "Issuer")] [[ ] as Paying Agent] for the above CDs, or interest in a Global CD together with all duly completed documentation necessary to transfer the relevant CDs, or interests in a Global CD, to the following account maintained by [the Issuer/the Paying Agent] with the CMU Service:

[ ]

[This duly completed Notice is being deposited with [Banco Santander, S.A., Hong Kong Branch (the "Issuer")] [[ ] as Paying Agent] for the above CDs, or interest in a Global CD together with the Global CD so that it may be annotated on [ ] to record that the relevant interests have been repaid.]

By making such deposit and transfer, the undersigned hereby irrevocably exercises its option to have the CDs redeemed on [ ] under the Condition titled ["Put Option"] of the CDs.

**In respect of Definitive CDs held by Clearing Systems:**

This Notice relates to CDs in the aggregate principal amount of [HK\$•] [US\$•] [RMB•] [Other] bearing the following [CMU Number(s)/serial numbers]:

[ ]

[ ]

By depositing this duly completed Notice with [Banco Santander, S.A., Hong Kong Branch (the "Issuer")] [[•] as Paying Agent], the undersigned holder of such of the CDs as are surrendered with this Notice and referred to above hereby irrevocably exercises its option to have the CDs redeemed on [ ] under the Condition titled ["Put Option"] of the CDs.

**For CDs held by the Issuer**

This notice relates to the CDs (represented by an interest on a Global CD) having an aggregate nominal principal amount of [HK\$[\_\_\_\_\_]] [US\$[\_\_\_\_\_]] [RMB [\_\_\_\_\_]] and currently credited to my [\_\_\_\_\_] account with you, Account No. [\_\_\_\_\_]. I hereby exercise my option to have those CDs redeemed on [\_\_\_\_\_] under the Condition titled "[Put Option]" of the CDs.

I understand that I may not be entitled to transfer my interest in this CDs until the Put Option Exercise Date.

**Payment Instructions**

Please make payment in respect of the above-mentioned CDs as follows:

\*(a) by cheque mailed to the following address

[ \_\_\_\_\_ ]

\*(b) by transfer to the following account in [Hong Kong/New York City/Other]

Correspondence Bank:

Beneficiary Bank:

Bank Address:

Bank Code:

Certificateholder's Account name:

Account No.:

\*(c) by making a banker's draft or cashier's order available for collection on the relevant date at the Hong Kong address of the Issuer

\*(d) by credit to my [current/savings] account in the relevant currency (Account No. [\_\_\_\_\_])

Signature of holder:

Name of holder:

[To be completed by [Issuer/Paying Agent]]

Received by: .....

[Signature and stamp of [Issuer/Paying Agent]]

At its office at: .....

On: .....

**Notes**

- 1. This Redemption Notice is not valid unless all of the paragraphs requiring completion are duly completed.

2. The [Issuer/Paying Agent] with whom CDs are deposited will not in any circumstances be liable to the depositing/transferring CD holder or any other person for any loss or damage arising from any act, default or omission of the [Issuer/Paying Agent] in relation to the said CDs or any of them unless such loss or damage was caused by the fraud or gross negligence of the [Issuer/Paying Agent] or its officers or employees.
3. As described in the Information Memorandum and the Programme Agreement, CDs issued pursuant to the Programme may be subject to the exercise of any Spanish Bail-in Power by the Relevant Spanish Resolution Authority in relation to any BRRD Liability pursuant to the EU Bank Recovery and Resolution Directive (2014/59/EU) and any transposing legislation in the Kingdom of Spain.



**SCHEDULE 8**  
**FORM OF AGENCY APPOINTMENT AGREEMENT**

Dated [*State date of Agreement*]

**BANCO SANTANDER, S.A., HONG KONG BRANCH**  
as Issuer

**[•]**  
as [Issuing] [Paying] [and Calculation Agent]

---

**AGENCY APPOINTMENT AGREEMENT**  
pursuant to a EUR5,000,000,000  
Certificate of Deposit Amended and Restated Programme Agreement  
[Series [•] HK\$/US\$/RMB/[Other] Fixed Rate/Floating Rate/  
Discounted CDs due [•]]

---

**THIS AGREEMENT** is made on [*State date of Agreement*]

**Between:**

- (1) **BANCO SANTANDER, S.A., HONG KONG BRANCH** (the "**Issuer**") at Room 1501, One Exchange Square, 8 Connaught Place, Central, Hong Kong; and
- (2) [*STATE NAME OF AGENT*] (the "[**Issuing/Paying/Calculation**] **Agent**").

**Background**

Pursuant to a certificate of deposit amended and restated programme agreement, dated [•] 2016 (the "**Programme Agreement**"), the Issuer has established a certificate of deposit issuance programme for the making of deposits to be evidenced by certificates of deposit ("**CDs**") issued from time to time by the Issuer on the terms and subject to the conditions set out in the Programme Agreement.

The Issuer may appoint any persons to act in any of the capacities of the Agents for the purposes of a particular Series or in respect of the Programme generally under this Agreement entered into separately between the Issuer and that person, subject to the standard terms and conditions set out in the Appendix to this Agreement (the "**Terms and Conditions**").

**NOW IT IS HEREBY AGREED** as follows:

1. **DEFINITIONS**

- 1.1 **Terms in Programme Agreement:** Terms and expressions defined in the Programme Agreement shall have the same meanings in this Agreement and in the Terms and Conditions except where the context otherwise requires.
- 1.2 **Interpretation:** References to a Condition are, unless stated otherwise or unless the context requires otherwise, to a Condition of the Terms and Conditions.

2. **APPOINTMENT OF AGENT(S)**

- 2.1 The Issuer and the [*Issuing*] [*Paying*] [*and Calculation*] Agent agree to be bound by the Terms and Conditions set out in the Appendix hereto and the terms and conditions of the Programme Agreement as if the [*Issuing*] [*Paying*] [*and Calculation*] Agent(s) was/were named as, respectively, [*Issuing*] [*Paying*] [*and Calculation*] Agent under the Programme Agreement [as a Programme Agent/solely for the purposes of making the Deposits and purchasing CDs under the Series set out on the cover of this Agreement\*].
- 2.2 The [*Issuing*] [*Paying*] [*and Calculation*] Agent(s) confirms that it has received a copy of the Programme Agreement (including Schedule 7 (*Form of Deed of Covenant*) to the Programme Agreement) and the Terms and Conditions.

3. **COUNTERPARTS**

This Agreement may be signed in any number of counterparts, all of which taken together and when delivered to the Issuer shall constitute one and the same instrument. Any party may enter into this Agreement by signing any such counterpart.

4. **GOVERNING LAW AND JURISDICTION**

4.1 This Agreement, as to which time shall be of the essence, shall be governed by and construed in accordance with the laws of Hong Kong.

4.2 The courts of Hong Kong are to have jurisdiction to settle any disputes which may arise out of or in connection with this Agreement and accordingly any legal action or proceedings arising out of or in connection with this Agreement ("**Proceedings**") may be brought in such courts.

4.3 Each of the Issuer and the Agent(s) irrevocably submits to the non-exclusive jurisdiction of such courts and waives any objection to Proceedings in such courts whether on the ground of venue or on the ground that the Proceedings have been brought in an inconvenient forum.

4.4 This submission is made for the benefit of the Agents and shall not limit the right of any of them to take Proceedings in any other court of competent jurisdiction nor shall the taking of Proceedings in one or more jurisdictions preclude the taking of Proceedings in any other jurisdiction (whether concurrently or not).

5. **RIGHTS OF THIRD PARTIES**

A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Ordinance (Cap. 623) of Hong Kong to enforce any term of this Agreement.

**IN WITNESS** whereof the parties hereto have caused this Agreement to be duly executed the day and year first above written.

**BANCO SANTANDER, S.A., HONG KONG BRANCH**

By:

**[STATE NAME OF NEW AGENT]**

By:

Address:

Fax No.:

Attention:

c.c. Any other Agents and the Dealers

## Appendix

### TERMS AND CONDITIONS

#### 1. APPOINTMENT OF ISSUING AGENT

The Issuer hereby appoints each person which is party to an Agency Appointment Agreement as an "Issuing Agent" at its office specified in the relevant Agency Appointment Agreement as its issuing agent (the "**Issuing Agent**") either as a Programme Agent in respect of the Programme generally or in respect of a particular Series and the Issuing Agent agrees to act as its issuing agent in respect of the CDs under the Agency Appointment Agreement. The Issuing Agent shall have the powers and authority granted to and conferred upon it by these Conditions and such further powers and authority, acceptable to it, to act on behalf of the Issuer as the Issuer may grant to, or confer upon, the Issuing Agent.

#### 2. CUSTODIAN

The Issuing Agent shall act as custodian for the Issuer in respect of unauthenticated CDs and for each of the Dealers on the following terms:

2.1 **Sufficient supply:** The Issuing Agent shall, without payment of further consideration by the Issuer, hold in safe custody the physical stock of any unauthenticated CDs maintained by the Issuer generally or, as the case may be, in respect of a particular Series pursuant to Clause 8.4 (*Sufficient Supply*) of the Programme Agreement and the Issuing Agent shall notify the Issuer immediately if:

- (i) at any time the number of Discounted CDs, Fixed Rate CDs or Floating Rate CDs held by it in global form in each appropriate form in any case falls below 10; or
- (ii) if it does not have sufficient supply of duly executed CDs for the purpose of any Series.

2.2 **Safekeeping:** The Issuing Agent shall keep all CDs issued pursuant to the Programme Agreement in safekeeping in a manner appropriate for negotiable CDs until they are lodged with a Clearing System.

2.3 **Limit of Custodial Obligations:** The Issuing Agent shall not be required pursuant to the Agency Appointment Agreement to hold any CDs as custodian for or on account of any person whatsoever other than the Dealers and shall be completely discharged by the delivery of any CD to the Dealer on whose behalf that CD was held by it or to any Clearing System or common depository.

#### 3. ISSUING OF CDS

3.1 **Execution of CDs:** Each CD issued under the Programme shall be executed manually or in facsimile on behalf of the Issuer by duly authorised persons. If an authorised signatory of the Issuer whose signature appears on a CD ceases to have authority before that CD is duly issued, the obligations of the Issuer under the Agency Appointment Agreement and under the CDs shall be valid for all purposes as if that authority had

remained in force at all relevant times. The Issuer may change the name of the person whose signature is to be used on the CDs to bind the Issuer, by delivering to the Issuing Agent no later than five Business Days before the first Written Request for Bids in respect of which the signature is to be used, a copy certified by an officer of the Issuer of the authorisation by the Issuer of such person as a signatory.

3.2 **Sufficient Stocks:** The Issuer shall ensure that the Issuing Agent has at all times a sufficient stock of executed but unauthenticated CDs of the types necessary for the purposes of issuing each relevant Series and any replacement CDs provided always that the Issuing Agent complies with its obligation under Condition 2.1.

3.3 **Notification of Issue:** The Issuer shall ensure that the Issuing Agent receives an Issue Terms Confirmation under either Clause 6.3.1 or 7.2.1 of the Programme Agreement and each such Issue Terms Confirmation shall constitute an irrevocable authority by the Issuer to the Issuing Agent to complete or cause to be completed CDs up to the aggregate face amount specified therein by inserting all the information required to be inserted and to activate such CDs by authenticating such CDs at or about 3:00 p.m. on the Business Day before the relevant Deposit Date.

If the Issuing Agent does not have a sufficient supply of duly executed but unauthenticated CDs for the purpose of any relevant Series it shall immediately notify the Issuer accordingly.

3.4 **Issue:** The completion of the matters referred to in Condition 3.3 (*Notification of Issue*) shall constitute the issue of such CDs.

3.5 **Direct Issue:** If the Issuer proposes to make a Direct Issue for which any Agent would be acting as an Agent, it shall as soon as practicable notify each relevant Agent of its intention to make that Direct Issue (together with relevant details of the proposed Direct Issue, including without limitation, details of the person to whom the CDs will be issued and delivered) and the relevant Agent shall, within five Business Days after receipt of such notification from the Issuer, confirm in writing whether it consents to such Direct Issue (which consent shall not be unreasonably withheld or delayed).

3.6 **Lodgement and/or Delivery:** Immediately following an issue, a Global CD shall be lodged directly with the CMU Service or delivered to a common depository, as appropriate, by the Issuing Agent, the Issuer or a Dealer, as the case may be, by the time and in the manner required by the relevant Clearing System or common depository.

3.7 **DvP Settlement:** If the CDs are to be lodged into the CMU Service:

3.7.1 The Issuing Agent shall arrange for settlement of any delivery and purchase of an interest in a Series comprising the whole of a relevant Dealer's interest in a Series to be effected through DvP if so requested by that Dealer before 10:00 a.m. on the second Business Day before the relevant Issue Date.

3.7.2 The Issuing Agent shall also use its best efforts to give effect to Clauses 8.11 (*Reversal of CMU Credits*) and 8.12 (*DvP Settlement*) of the Programme Agreement.

- 3.8 **Notification:** The Issuer shall notify the Issuing Agent (or procure that the Issuing Agent is notified) as soon as practicable if for any reason any proposed issue of CDs notified to the Issuing Agent is not to take place. In any such case, the relevant CDs shall not after that be lodged directly with the CMU Service or delivered to a common depository or delivered to the Issuing Agent as specified in Condition 3.6 (*Lodgement and/or Delivery*). The Issuing Agent shall destroy any CDs which have already been completed and shall provide to the Issuer and, if applicable, the Paying Agent a certificate of destruction.
- 3.9 **Shortfalls:** Notwithstanding Clause 8.11 (*Reversal of CMU Credits*) of the Programme Agreement, if for any reason (other than due to fraud, wilful default or negligence of the Issuing Agent) there is a shortfall in the amount which should have been paid to the Issuing Agent by or on behalf of any Dealer pursuant to Clause 13.2 (*Payments by Dealers and Issuing Agent*) of the Programme Agreement on any Deposit Date and the amount paid by the Issuing Agent to the Issuer in respect of that payment then the Issuer shall reimburse the Issuing Agent for that shortfall and the Issuing Agent shall be entitled to hold the CDs corresponding to that shortfall for its own account until it has been so reimbursed. The Issuer shall pay the Issuing Agent interest for the period from and including that Deposit Date up to but excluding the Business Day on which the Issuing Agent receives that reimbursement in an amount corresponding to the shortfall calculated on the basis of a year of 365 days, or 360 days if the Currency is US dollars, at an interest rate equal to the aggregate of one per cent. per annum and the rate per annum specified by the Issuing Agent as reflecting its cost of funds during the relevant period, as certified by the Issuing Agent to the Issuer. The determination of the rate of interest and the amount of interest payable by the Issuer pursuant to this condition to the Issuing Agent shall in the absence of manifest error or bad faith be final and conclusive. Upon such reimbursement, the Issuing Agent shall, if able, procure the cancellation of the relevant CD or the return of the relevant Definitive CDs, as referred to in Clause 8.11 (*Reversal of CMU Credits*) of the Programme Agreement.
- 3.10 **Confirmation of Details of Issue:** The Issuing Agent shall, within 15 Business Days after any issue of CDs (including replacement CDs), deliver to the Issuer and, if applicable, the Paying Agent a certificate specifying:
- 3.10.1 if Definitive CDs have been issued, the serial numbers and Series number of the CDs completed and authenticated by it and delivered or kept in safe keeping by it to or to the order of the Dealers pursuant to Condition 3.6 (*Lodgement and/or Delivery*) (and whether any of the Definitive CDs have been lodged with a Clearing System);
  - 3.10.2 the Issue Terms of those CDs; and
  - 3.10.3 the number (if any) of CDs which have been spoiled before issue and cancelled.
- 3.11 **Wastage:** The Issuer takes the sole risk of the wastage of CDs as a result of administrative or operational errors during the process of their completion for issue pursuant to this Condition (except in the case of gross negligence, fraud or wilful misconduct on the part of the Issuing Agent).

- 3.12 **Instructions by Authorised Persons:** Any instructions given to the Issuing Agent pursuant to Condition 3.4 (*Issue*) to complete, authenticate and issue CDs shall be given by any person who has been designated in an authority of the Issuer (a certified true copy of which has been supplied to the Issuing Agent and in respect of which no notice of revocation has been received by the Issuing Agent) as a person authorised to give such instructions. The Issuing Agent shall have no responsibility to the Issuer to determine whether the person giving such instructions is in fact a person so authorised if his name (and, if appropriate, signature) corresponds to the board resolution or power of attorney most recently so delivered to the Issuing Agent and shall incur no liability to the Issuer in acting upon any such instructions which it believes in good faith to have been given by a person so designated in such board resolution or power of attorney.

#### 4. **ISSUING OF REPLACEMENT CERTIFICATES**

- 4.1 **Replacement:** The Issuing Agent shall issue any replacement CDs to be issued in place of CDs which have been lost, stolen, mutilated, defaced or destroyed.
- 4.2 **Conditions to Replacement:** The Issuing Agent shall not issue any replacement CDs unless and until the applicant for that replacement CD:
- 4.2.1 pays the expenses, and any registration, stamp or other tax duty or charge incurred or payable in that connection;
  - 4.2.2 provides to the Issuing Agent such evidence, security, indemnity and otherwise as the Issuer may, in its discretion, require; and
  - 4.2.3 surrenders any CDs which are mutilated or defaced.
- 4.3 **Cancellation:** The Issuing Agent shall cancel any mutilated or defaced CDs which are replaced and shall inform the Issuer and the Paying Agent (if applicable) of the serial number and Issue Terms of any replacement CDs issued and the serial number and Issue Terms of the replaced CDs.
- 4.4 **Issue and Delivery of Replacements:** Promptly on the request of, and on payment by, the holder(s) of all out-of-pocket expenses of the Issuer and the Issuing Agent, the Issuing Agent shall complete and authenticate the replacement CDs and the Issuing Agent shall then release and/or make such CDs available for collection at the offices of the Issuing Agent specified in the Agency Appointment Agreement as such holder(s) shall direct.

#### 5. **APPOINTMENT OF THE PAYING AGENT**

The Issuer hereby appoints each person party to an Agency Appointment Agreement as a "Paying Agent" at its office specified in the relevant Agency Appointment Agreement as its paying agent (the "**Paying Agent**") either as a Programme Agent in respect of the Programme generally or in respect of a particular Series and the Paying Agent hereby agrees to act as paying agent in respect of the CDs under the Agency Appointment Agreement and any relevant Agency Appointment Agreement. The Paying Agent shall have the powers and authority granted to and conferred upon it hereby and such further



powers and authority, acceptable to it, to act on behalf of the Issuer as the Issuer may grant to, or confer upon, the Paying Agent.

## 6. FORMS OF CDS

### 6.1 The Global CD

6.1.1 Not later than 3:00 p.m. on the Business Day before a Deposit Date, the Issuer will deliver to the Issuing Agent a duly executed Global CD.

The Issuing Agent will, if requested, lodge that Global CD with the CMU Service as the lodging agent of the Issuer (as referred to in the CMU Rules) and will arrange for interest in the Global CD to be credited to accounts maintained by the initial holders of those interests, in accordance with their instructions.

6.1.2 In accordance with the lodging procedures of the CMU Service, the Issuing Agent will provide an undertaking to the CMU Service in the form of Schedule 10 (*CMU Service - Lodging Agent's Undertaking*) to the Programme Agreement.

### 6.2 Exchange of Global CD

6.2.1 **Notification of request for Definitive CDs:** The Paying Agent, on receiving notice in accordance with the terms of the Global CD that its holder requires to exchange the Global CD, or an interest in it, for Definitive CDs, will promptly as soon as practicable notify the Issuer of that request.

6.2.2 **Exchange:** At least seven days before any Exchange Date, the Issuer will deliver or procure the delivery of Definitive CDs in an aggregate principal amount equal to the outstanding principal amount of the Global CD or such lesser interest in the Global CD which is to be exchanged to or to the order of the Paying Agent. The Paying Agent (or its agent on its behalf) will make the Definitive CDs available for exchange against the Global CD in accordance with the terms of the Global CD. If a Global CD is not to be exchanged in full, the Paying Agent will endorse, or procure the endorsement of, a memorandum of the principal amount of that Global CD exchanged in the appropriate Schedule to that Global CD and will return that Global CD to the holder. On exchange in full of the Global CD, the Paying Agent will cancel it and, if so requested by the holder, return it to the holder.

6.2.3 **Direct Rights:** The Paying Agent will use all reasonable efforts to give effect to the provisions set out on Global CDs relating to exchanges of interests in that Global CD for Direct Rights.

### 6.3 Authentication

The Issuing Agent will arrange for the authentication certificate on the Global CD and on any other CD to be duly signed by an authorised signatory on or before the date of issue, exchange or replacement (as the case may be).

## 7. PAYMENT

- 7.1 ***Payment by the Issuer:*** Unless otherwise provided by this Agreement, all payments to be made by the Issuer to the Agents under this Agreement shall be made in funds either:
- 7.1.1 for same day value, to be received by not later than 11:00 a.m. (in Hong Kong) on the due date, by payment through "Hong Kong RTGS" (for HK\$ CDs or RMB CDs held in the CMU Service);
  - 7.1.2 for same day value, to be received by not later than 11:00 a.m. (in Hong Kong) on the due date (for CDs (other than HK\$ CDs or RMB CDs) held in the CMU Service);
  - 7.1.3 for same day value, to be received by not later than 12 noon (in London) on the due date, by payment through the relevant Clearing System (for CDs (other than HK\$ CDs) held in Euroclear or Clearstream);
  - 7.1.4 for same day value, to be received by not later than 12 noon (in Hong Kong) on the Business Day immediately preceding the due date, by payment through the relevant Clearing System (for HK\$ CDs held in Euroclear or Clearstream); or
  - 7.1.5 as otherwise agreed between the parties.
- 7.2 ***Payment by Paying Agent:*** Subject to the payments referred to in Condition 7.1 (*Payment by the Issuer*) being duly made in respect of the CDs comprising any Series, the Paying Agent shall, and the Issuer authorises and directs the Paying Agent to, pay or cause to be paid on behalf of the Issuer on or after the Maturity Date or, as the case may be, the Interest Payment Dates applicable thereto the amounts due to be paid on each date in accordance with the terms of those CDs and in the manner provided in the Agency Appointment Agreement. The Paying Agent shall also pay or cause to be paid on behalf of the Issuer any deposits, together with any interest accrued thereon, becoming payable under the early redemption provisions in the Conditions on the CDs (or any earlier, date on which repayment is required). Payment shall be made by means of telegraphic transfer or RTGS to the Paying Agent or by such other method which accords with practice for payments of this type at the time of payment. References in the Agency Appointment Agreement to principal and interest shall be deemed to include any additional amounts payable in accordance with the terms of the CDs.
- 7.3 ***Insufficient Funds:*** If for any reason (other than gross negligence, fraud or wilful misconduct on the part of the Paying Agent or the servants or agents of it), the amounts received by the Paying Agent pursuant to this Condition are not sufficient to satisfy all claims in respect of all payments then due on the CDs, the Paying Agent shall not be obliged to pay any such claims until the Paying Agent has received or has had made available to its order the full amount of the moneys then due and payable in respect of such CDs. If, however, the Paying Agent shall make payment on the CDs before it has received or has had made available to its order the amount so paid, the Issuer agrees forthwith on demand to pay to the Paying Agent, in addition to the amount which should have been paid under this Agreement, interest for the period from and including the day of such payment up to but excluding the Business Day, upon which the Paying Agent receives such reimbursement on an amount corresponding to such shortfall calculated on the basis of a year of 365 days, or 360 days if the Currency is US dollars, at an interest

rate equal to the aggregate of one per cent. per annum and the rate per annum specified by Paying Agent as reflecting its cost of funds during the relevant period, as certified by the Paying Agent to the Issuer. Until such reimbursement the Paying Agent shall hold the CDs corresponding to such shortfall for its own account. The determination of such rate of interest and the amount of interest payable pursuant to the foregoing sentence by the Paying Agent shall in the absence of manifest error or bad faith be final and conclusive.

- 7.4 **Late Payment:** Without prejudice to the obligations of the Issuer to make payments in accordance with the provisions of Condition 7.1 (*Payment by the Issuer*), if payment of the appropriate amount shall be made by or on behalf of the Issuer later than the time, but otherwise in accordance with the provisions, mentioned in such Condition, the Paying Agent will still act as paying agent of the Issuer for the CDs and will make or cause to be made payments as provided herein.
- 7.5 **No U.S. Payment:** In no event shall any payment be made (other than to the Issuer or any Clearing System), whether by mail, or electronic transfer, to an address or account in the United States of America or its territories or possessions.
- 7.6 **Clearing System Records Conclusive:** If, and for so long as, a CD is lodged with a Clearing System, the records of that Clearing System shall be conclusive evidence of the identity of the persons to whose accounts interests in that CD are credited and the principal amount(s) of the interest(s) and of the CDs represented by a Global CD. Save in the case of manifest error, the Paying Agent shall be entitled to rely on any Position Report (as defined in the CMU Rules) if the Global CD is held by the CMU Service or any other relevant statement by a Clearing System if the Global CD is held by another Clearing System of the identities and interests of persons credited with interests in the CDs.

## 8. **ENDORSEMENT AND CANCELLATION**

### 8.1 **Endorsements:**

- 8.1.1 The gross amount of interest and the actual date of payment of interest in respect of each Interest Period and each Interest Bearing CD which is not lodged with the CMU Service presented to the Paying Agent by or on behalf of the holder of that CD shall be endorsed on the reverse of each such CD and signed by an authorised signatory of the Paying Agent.
- 8.1.2 If, and for so long as, a CD is lodged with the CMU Service the Paying Agent shall pay any amounts due to be paid on surrender of the CDs on the Maturity Date or any amounts of principal and interest due on an Interest Payment Date, as the case may be, to the person(s) for whose account(s) interest(s) in the CD is/are credited by the CMU Service and shall not endorse the CD.
- 8.1.3 For CDs held by the CMU Service, on receiving reasonable notification from the CMU Service and/or the Issuer and/or any relevant lodging agent in respect of any CD that such CD is to be withdrawn from the CMU Service, the Paying Agent shall use all reasonable endeavours to ensure that the CD is endorsed in

respect of all payments of interest and/or principal that have been made in respect of that CD while that CD has been lodged with the CMU Service.

- 8.2 **Cancellation:** All CDs which are surrendered to the Paying Agent for payment on or after their Maturity Date shall be cancelled by the Paying Agent who shall as soon as reasonably possible and in any event within 30 days after the date of cancellation provide to the Issuer a certificate or certificates stating the serial numbers of, and the amount paid in respect of those CDs. On receipt of instructions from the Issuer, the Paying Agent shall destroy the cancelled CDs in its possession and provide to the Issuer a destruction certificate listing the serial numbers of the CDs in numerical sequence.
- 8.3 **Records:** The Paying Agent shall keep a full and complete record of all CDs and payments of interest in respect of the CDs and shall make that record available at all reasonable times to the Issuer at the principal office for the time being in Hong Kong of the Paying Agent.
- 8.4 **Presentation of Original CDs:** Whenever any CD alleged to have been lost, stolen or destroyed in replacement for which a new CD has been issued shall be presented to the Paying Agent for payment or exchange, the Paying Agent shall immediately send notice of that to the Issuer.
9. **CMU SERVICE**
- 9.1 **Membership of CMU:** The Paying Agent confirms that it is a member of the CMU Service pursuant to a CMU membership agreement ("**Membership Agreement**") and is aware of and bound by the terms of the CMU Rules.
- 9.2 **Lodging Agents:** The Paying Agent may be authorised to lodge any Series of CDs with the CMU Service as Lodging Agent on behalf of the Issuer (as such term is defined in the CMU Rules) and if such CD(s) are so lodged, will be nominated as paying agent to receive notification from the CMU Service in respect of interests in the CDs credited to accountholders with the CMU Service prior to the Interest Payment Dates and Maturity Date, as the case may be, of the CDs.
- 9.3 **Terms of Lodgement:** It is understood that, once any CDs are lodged with the CMU Service, the terms of the CMU Rules will apply to such CDs and to all transactions and operations effected through the CMU Service in relation to such CDs including transactions relating to the lodgement, withdrawal or redemption of such CDs.
- 9.4 **Suspension of Endorsements:** It is agreed that the obligations of the Paying Agent to make payments on surrender to it of any CD and to endorse that CD shall be suspended for so long as that CD is held by the CMU Service and that while any CD is held by the CMU Service, the Paying Agent shall make payments to the person(s) confirmed to it by the CMU Service prior to any relevant payment date as being credited with the interest(s) in the relevant CD in accordance with the terms of the CMU Rules. In accordance with the CMU Rules, the Paying Agent will be notified prior to any CD which has been lodged with the CMU Service, being withdrawn from the CMU Service. Upon such notification, the Paying Agent shall arrange to make such endorsements to the relevant CD as would have been made if it had not been lodged with the CMU Service or

otherwise so as to confirm that all payments on the relevant CD have been made up to the date of withdrawal from the CMU Service.

## 10. **APPOINTMENT AND FUNCTIONS OF THE CALCULATION AGENT**

10.1 **Appointment:** The Issuer hereby appoints each person party to an Agency Appointment Agreement as a "Calculation Agent" at its office specified in the relevant Agency Appointment Agreement as its agent (in such capacity the "**Calculation Agent**") either as a Programme Agent in respect of the Programme generally or in respect of a particular Series, in respect of the Floating Rate CDs under the Agency Appointment Agreement.

10.2 **Calculation of Floating Rates:** The Calculation Agent shall calculate the Interest Rate in respect of each Interest Period prescribed in the Floating Rate CDs in accordance with the terms of the Programme Agreement and the Conditions of the relevant Floating Rate CDs.

10.3 **Confirmation of Interest Rates:** As a separate and independent function, the Calculation Agent will, as soon as practicable after the determination on the Deposit Date or Interest Payment Date, as the case may be, of the Interest Rate in respect of each Series of Floating Rate CDs prepare a certificate specifying such Interest Rate and the interest payments therefore due on such Series. This certificate shall be available for inspection at the office of the Calculation Agent specified in the relevant Agency Appointment Agreement.

## 11. **DOCUMENTS**

The Issuer shall provide to the Issuing Agent and/or the Paying Agent, as the context requires, specimen CDs and any other documents which are required to be made available for inspection to holders of CDs or which the Issuing Agent and/or the Paying Agent, as the context requires, may reasonably require.

## 12. **INDEMNITY TO THE ISSUER**

Each Agent shall severally indemnify the Issuer against all loss, liability, cost, claim, action, demand or expense which result from the Agent's gross negligence, fraud or wilful misconduct under the Agency Appointment Agreement.

## 13. **RIGHTS OF AGENTS**

Each Agent accepts its obligations set out in the Agency Appointment Agreement, including, but not limited to, the following, to all of which the Issuer agrees:

13.1 **Indemnity:** The Issuer agrees to indemnify and hold harmless each Agent, its directors, officers, employees and agents in full at all times against any loss, liability, cost or expense properly incurred and against any claims, actions or demand which may be asserted against them directly arising out of or in connection with its appointment or the exercise or discharge of its powers and duties under the Agency Appointment Agreement (including capped fees and expenses of legal advisers), as well as, promptly on receipt of invoices, the costs and expenses of defending any claim of such liability, except such as may result from such Agent's gross negligence, fraud or wilful misconduct. No Agent

shall be liable for any action taken, omitted or suffered by them hereunder except for its gross negligence, bad faith or wilful misconduct. The foregoing indemnity shall survive the resignation or removal of the Agent or the termination of this Agreement.

- 13.2 **Reliance Upon Instructions:** Each Agent shall be protected and shall incur no liability for or in respect of any action taken, omitted or suffered in reliance upon any instruction, request or order from the Issuer, or upon any CD, notice, direction, consent, certificate, affidavit, statement, e-mail, telex, fax transmission or other paper or document believed by it in good faith to be genuine and to have been delivered, signed or sent by the proper party or parties.
- 13.3 **No Agency or Trust:** In acting hereunder and in connection with the CDs each Agent is acting solely as agent of the Issuer and does not assume any obligation towards or relationship of agency or trust for the owner or holder of any CD except that all funds held by the Paying Agent for the payment on maturity of the CDs shall be held in trust by it and applied as set forth herein and in the CDs, but need not be segregated from other funds held by it, except as required by law; **provided that** moneys paid by the Issuer to the Paying Agent for the payment on maturity of the CDs and remaining unclaimed at the end of one year after the date on which such maturity shall have become due and payable or were provided by the Issuer, whichever is the later, shall be repaid to the Issuer.
- 13.4 **Other Business:** Any Agent and its respective officers, directors and employees may, subject to and in accordance with the Agency Appointment Agreement and the Programme Agreement, become the owner of, or acquire any interest in any CD with the same rights that it or they would have if such Agent was not an agent under the Agency Appointment Agreement, and may engage or be interested in any financial or other transaction with the Issuer and may act on, or as depositary, trustee or agent for, any committee or body of holders of CDs or other obligations of the Issuer as freely as if it were not an Agent under the Agency Appointment Agreement.
- 13.5 **No Liability for Interest:** The Paying Agent shall not be under any liability for interest on any moneys at any time received by it pursuant to any of the provisions of the Agency Appointment Agreement or of the CDs and applied by it in accordance with the provisions of the Agency Appointment Agreement, except as otherwise agreed in writing.
- 13.6 **Specific Obligations:** Each Agent shall be obliged to perform such duties and only such duties as are herein specifically set forth, and no implied duties or obligations shall be read into the Agency Appointment Agreement or the CDs against any Agent except such duties as are necessarily related to such duties as are herein specifically set forth. No Agent shall be under any obligation to take any action under the Agency Appointment Agreement (other than as specifically required by the Agency Appointment Agreement) which may tend to involve it in any expenses or liability, the payment of which within a reasonable time is not, in its reasonable opinion, assured to it. No Agent shall be accountable or under any duty or responsibility for the delivery of the CDs drawn by the Issuing Agent (if any) and delivered to the purchasers of those CDs other than as provided in the Agency Appointment Agreement or for the application by the Issuer of

the proceeds of the CDs. No Agent shall have any duty or responsibility in case of any default by the Issuer in the performance of its covenants or agreements contained in the Agency Appointment Agreement or of its obligations under the CDs whether or not any Agent has knowledge of such default, including, without limiting the generality of the foregoing, any duty or responsibility to initiate or attempt to initiate any proceedings at law or otherwise or to make any demand for the payment of the CDs upon the Issuer.

- 13.7 **Holders as Owners:** Except as ordered by a court of competent jurisdiction or as required by law, the Agents shall (unless notice to the contrary is given) be entitled to treat the holder of any Definitive CD as the absolute owner of that Definitive CD and shall not be required to obtain any proof of ownership or as to the identity of the holder and, so long as any CDs are held by one or more of the Clearing Systems, shall be entitled to treat payments made and notices given to Accountholders or any person(s) credited by the Clearing System(s) as holding any relevant interest in those CD(s) as complete discharge of the relevant payment or notice obligation.
- 13.8 **Determinations by the Issuer:** The Issuing Agent may refer any question relating to the ownership of any Global CD or Definitive CD or the adequacy or sufficiency of any evidence supplied in connection with the replacement of any Global CD or Definitive CD to the Issuer for determination by the Issuer and may rely upon any determination so made.
- 13.9 **No inquiry:** Each Agent may rely upon and shall not be liable for acting or refraining from acting upon any written notice, instruction or request furnished to it hereunder and, other than to the extent such Agent is grossly negligent or acting in bad faith or fraudulently, believed by it to be genuine and to have been signed or presented by the proper party or parties. Each Agent shall be under no duty to inquire into or investigate the validity, accuracy or content of any such document.
- 13.10 **Illegality:** In the event that any Agent shall be uncertain as to its duties or rights hereunder or shall receive instructions, claims or demands from the Issuer which, in its opinion, conflict with any of the provisions of this Agreement, it shall be entitled to refrain from taking any action until it is directed in writing by a final order or judgment of a court of competent jurisdictions.
- 13.11 **Special Damages and Consequential Loss:** Notwithstanding any other term or provision of this Agreement to the contrary, each Agent shall not be liable under any circumstances for special, punitive, indirect or consequential loss or damage of any kind whatsoever including but not limited to loss of profits, whether or not foreseeable, even if such Agent is actually aware of or has been advised of the likelihood of such loss or damage and regardless of whether the claim for such loss or damage is made in negligence, for breach of contract, breach of trust, breach of fiduciary obligation or otherwise. The provisions of this Clause shall survive the termination or expiry of this Agreement or the resignation or removal of the Agent.
- 13.12 **Delegations:** Each Agent may execute any of its powers and perform any of its duties hereunder directly or through delegates or attorneys and may consult with counsel, accountants and other skilled persons to be selected and retained by it. Each Agent shall not be liable for the acts of such delegates or attorneys, or for anything done, suffered or

omitted by it in accordance with the advice or opinion of any such counsel, accountants or other skilled persons.

- 13.13 **Expert Advice:** Each Agent shall engage and consult with any legal adviser and professional adviser selected by it and rely upon any advice so obtained and each of the Agents and each of their respective directors, officers, employees and duly appointed agents shall be protected and shall not be liable in respect of any action taken, or omitted to be done or suffered to be taken, in accordance with such advice.

#### 14. **APPOINTMENT AND REMOVAL OF AGENTS**

##### 14.1 **Resignation or Removal:**

14.1.1 Any Agent may at any time resign by giving written notice of its resignation mailed to the Issuer specifying the date on which its resignation shall become effective, **provided that** such date shall be at least 30 days after the date on which such notice is given unless the Issuer agrees to accept shorter notice.

14.1.2 Upon receiving such notice of resignation, the Issuer shall use its best endeavours to promptly appoint a successor Issuing Agent, Paying Agent or Calculation Agent, as the case may be, by entry into an Agency Appointment Agreement in triplicate, one copy of which shall be delivered to the resigning Agent and one copy to the successor agent. Such resignation shall become effective only upon the acceptance of appointment by the successor agent as provided in Condition 14.2 (*Appointment of Successor Agent*). The Issuer may at any time and for any reason, on giving at least 30 days' notice remove any Agent and appoint a successor Issuing Agent, Paying Agent or Calculation Agent, as the case may be, by entry into an Agency Appointment Agreement in triplicate signed on behalf of the Issuer one copy of which shall be delivered to the Agent being removed and one copy to the successor Agent.

14.1.3 If the Issuer fails to appoint a successor Agent within such period, the Agent may select a leading bank acting through its office in Hong Kong to act as Agent hereunder and the Issuer shall appoint that agent as the successor Agent.

14.1.4 Any removal of any Agent and any appointment of a successor Agent shall become effective upon acceptance of appointment by the successor Agent as provided in Condition 14.2 (*Appointment of Successor Agent*). On its resignation or removal, an Agent shall be entitled to the payment by the Issuer of its compensation for the services rendered hereunder pro-rated up to the date of termination and to the reimbursement of all reasonable out-of-pocket expenses incurred in connection with the services rendered by it hereunder.

- 14.2 **Appointment of Successor Agent:** Any successor Issuing Agent, Paying Agent or Calculation Agent, appointed as provided in Condition 14.1 (*Resignation or Removal*) above shall execute, acknowledge and deliver to its predecessor and to the Issuer an Agency Appointment Agreement accepting such appointment, and thereupon, without any further act, deed or conveyance, it shall become vested with all the authority rights, powers, trusts, immunities, duties and obligations of such predecessor with like effect as



if originally named as Issuing Agent, Paying Agent or Calculation Agent; and such predecessor upon payment of its compensation and reasonable out-of-pocket expenses then unpaid shall become obliged to pay and hand over, and such successor agent shall be entitled to receive, all moneys, unissued CDs and other records and documents held by such predecessor.

- 14.3 **Mergers and Consolidations:** Any corporation into which any Agent may be merged, or any corporation resulting from any merger or consolidation to which any Agent shall be a party, if it shall be a leading bank in Hong Kong and upon execution by it of a suitable instrument whereby it agrees to assume and become bound by all the duties and obligations of any Agent under the Agency Appointment Agreement, shall thereupon become the Issuing Agent, Paying Agent or Calculation Agent under the Agency Appointment Agreement without the execution or filing of any further paper or any further act on the part of any of the parties to the Agency Appointment Agreement.
- 14.4 **Change of Address:** Any Paying Agent or Issuing Agent may change the address of its office where CDs are delivered, kept or paid pursuant to and in accordance with the Agency Appointment Agreement and the Programme Agreement, and any Calculation Agent may change its address, to any other address in Hong Kong in which event it shall give to the Issuer and, in the case of any such change by the Paying Agent not less than 45 days' prior written notice specifying the address of its new office and the date upon which such change is to take effect, whereupon such offices shall be deemed the offices specified in the Agency Appointment Agreement for all purposes of the Agency Appointment Agreement.
- 14.5 **Notification to Clearing System(s):** So long as any Outstanding CDs are lodged with one or more Clearing System(s), the Paying Agent or Issuing Agent, as the case may be, shall notify the relevant Clearing System(s) promptly as soon as practicable upon the appointment of any successor or replacement Paying Agent or Issuing Agent, as the case may be.
15. **SPANISH BAIL-IN POWER**
- 15.1 Upon the exercise of the Spanish Bail-in Power by the Relevant Spanish Resolution Authority with respect to any Certificate of Deposit, the Issuer or the Relevant Spanish Resolution Authority (as the case may be) will provide a written notice to the relevant Clearing System as soon as practicable regarding such exercise of the Spanish Bail-in Power for purposes of notifying the holders of such securities. The Issuer will also deliver a copy of such notice to the Bank for information purposes.
- 15.2 Notwithstanding any other term of this Agreement or any other agreements, arrangements, or understanding between the Issuer and the [Issuing/Paying/Calculation] Agent, the [Issuing/Paying/Calculation] Agent acknowledges, accepts, and agrees to be bound by:
- 15.2.1 (a) the effect of the exercise of the Spanish Bail-in Power by the Relevant Spanish Resolution Authority in relation to any BRRD Liability of the Issuer to the [Issuing/Paying/Calculation] Agent under this Agreement, that (without limitation) may include and result in any of the following, or some combination

thereof: (1) the reduction of all, or a portion, of the BRRD Liability or outstanding amounts due thereon; (2) the conversion of all, or a portion, of the BRRD Liability into shares, other securities or other obligations of the Issuer or another person, and the issue to or conferral on the [Issuing/Paying/Calculation] Agent of such shares, securities or obligations; (3) the cancellation of the BRRD Liability; (4) the amendment or alteration of any interest, if applicable, thereon, the maturity or the dates on which any payments are due, including by suspending payment for a temporary period; and

- 15.2.2 (b) the variation of the terms of this Agreement, as deemed necessary by the Relevant Spanish Resolution Authority, to give effect to the exercise of the Spanish Bail-in Power by the Relevant Spanish Resolution Authority.

For these purposes:

"**BRRD Liability**" has the same meaning as in such laws, regulations, rules or requirements implementing the BRRD including, but not limited to, Law 11/2015, RD 1012/2015 and the SRM Regulation;

"**Law 11/2015**" means Spanish Law 11/2015 of June 18, on the recovery and resolution of credit institutions and investment firms (*Ley 11/2015, de 18 de junio, de recuperación y resolución de entidades de crédito y empresas de servicios de inversión*).

"**RD 1012/2015**" means Royal Decree 1012/2015, of 6 November, implementing Law 11/2015;

"**Relevant Spanish Resolution Authority**" means the Spanish Fund for the Orderly Restructuring of Banks (*Fondo de Reestructuración Ordenada Bancaria*) (the "**FROB**"), the European Single Resolution Mechanism and, as the case may be, according to Law 11/2015, the Bank of Spain and the Spanish Securities Market Commission and any other entity with the authority to exercise the Spanish Bail-in Power from time to time.

"**Spanish Bail-in Power**" means any write-down, conversion, transfer, modification, or suspension power existing from time to time under, and exercised in compliance with any laws, regulations, rules or requirements in effect in the Kingdom of Spain, relating to the transposition of Directive 2014/59/EU of the European Parliament and the Council of the European Union of May 15, 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms, as amended from time to time (the "**BRRD**"), including, but not limited to Law 11/2015, as amended from time to time pursuant to which any obligation of the Issuer or any other person can be reduced, cancelled, modified, or converted into shares, other securities, or other obligations of the Issuer or any other person (or suspended for a temporary period).

"**Spanish Bail-in Power**" means any write-down, conversion, transfer, modification, or suspension power existing from time to time under, and exercised in compliance with any laws, regulations, rules or requirements in effect in Spain, relating to the transposition of the BRRD, as amended from time to time, including, but not limited to (i) Law 11/2015, as amended from time to time, (ii) RD 1012/2015, as amended from

time to time, (iii) the SRM Regulation, as amended from time to time, and (iv) any other instruments, rules or standards made in connection with either (i), (ii) or (iii), pursuant to which any obligation of an institution can be reduced, cancelled, modified, or converted into shares, other securities, or other obligations of such institution or any other person (or suspended for a temporary period).

"**SRM Regulation**" means Regulation (EU) No. 806/2014 of the European Parliament and the Council of the European Union.

## 16. GENERAL

- 16.1 **Authenticity of Instructions:** Unless otherwise specifically provided in these Conditions, any order, notice, request, direction or other communication from the Issuer made or given under any provision of the Agency Appointment Agreement shall be sufficient if it is signed by any person authorised to sign on behalf of the Issuer.
- 16.2 **Calculation of Amounts:** Provisions in the Agency Appointment Agreement relating to the payment of amounts due on the maturity of any CDs shall be deemed to include, in each case, any additional amounts payable in accordance with the terms of the CDs or the Agency Appointment Agreement.
- 16.3 **Force Majeure:** Notwithstanding anything to the contrary in this Agreement, no Agent shall in any event be liable for any failure or delay in the performance of its obligations hereunder if it is prevented from so performing its obligations by any circumstances beyond the control of such Agent, including without limitation, any existing or future act of governmental authority, Act of God, flood, war whether declared or undeclared, terrorism, riot, rebellion, civil commotion, strike or lockout.

## 17. EXPENSES

- 17.1 **Fees:** The Issuer will pay to the Agents in respect of their services under this Agreement the fees and commissions as may have been separately or may be agreed between the Issuer and the Agents from time to time.
- 17.2 **Expenses:** The Issuer will reimburse the Agents for all out-of-pocket expenses properly documented and incurred by them in the negotiation, preparation and execution of this Agreement, and will reimburse each Agent for all out-of-pocket expenses and any publication, advertising, communication, courier, postage and printing expenses) properly incurred in connection with its services under this Agreement (including, without limitation, in connection with its services set out in Condition 3.6 (*Lodgement and/or Delivery*) above) other than those costs and expenses as are separately agreed to be reimbursed out of the fees payable under Condition 16.1 (*Fees*) or otherwise than by reason of the gross negligence, wilful misconduct or fraud of the Agent or of its officers or employees as a result of or arising out of or in relation to its acting as the agent of the Issuer or the exercise of its powers and duties under the Agency Appointment Agreement in relation to any Series of CDs.

- 17.3 **Stamp Duties:** The Issuer will pay all stamp, registration and other taxes and duties (including without limitation, any documentary stamp tax and including any interest and penalties thereon or in connection therewith) which may be payable upon or in connection with the execution and delivery of this Agreement.

18. **COMMUNICATIONS**

- 18.1 **Communications:** Unless otherwise provided in the Agency Appointment Agreement, each communication or request under the Agency Appointment Agreement shall be made by fax transmission or delivered by hand in writing. Each communication or document to be delivered to any party under the Agency Appointment Agreement shall be sent to that party at the fax number or address (and marked for the attention of the person (if any), from time to time designated by that party) set out in the execution clauses of the applicable Agency Appointment Agreement or such other fax number or address as such party may notify to the other party.

- 18.2 **Deemed Receipt:** Any communication from one party to another party shall not be effective until received by such other party and any such communication shall be deemed to be received by such other party (if sent by fax transmission with an error free transmission report at the end of the transmission) on the working day in the place to which it is sent or (in any other case) when left at the address required by Condition 17.1 (*Communications*).

19. **AMENDMENT**

Each Agency Appointment Agreement may be amended by the parties to that Agency Appointment Agreement, without the consent of the holder(s) of any CD, for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained herein, or in any manner which the parties may mutually deem necessary or desirable and which shall not materially or adversely affect the interests of the holders of the CDs.

20. **REDEMPTION OPTIONS**

- 20.1 **Redemption Notices:** The Paying Agent will keep a stock of notices ("**Redemption Notices**") in the form set out in Appendix I to the Deed of Covenant and will make them available on demand to holders of the CDs.

- 20.2 **Redemption Mechanics:** If a CD is deposited with the Paying Agent, or an interest in a CD is transferred to the Paying Agent, under any Condition entitling a holder to early redemption, the Paying Agent shall hold such CD or interest on behalf of the relevant holder or person transferring that interest (but shall not release it) until the due date for redemption pursuant to that Condition. On that date the Paying Agent shall:

- 20.2.1 if the CD(s) is/are held by a Clearing System, make payment in accordance with the directions on the Redemption Notice given by the person who issued the relevant notice and who transferred the relevant CD(s) to the Paying Agent; or

20.2.2 if the CD(s) is/are not held by a Clearing System, surrender the relevant CD(s) to itself for payment and shall make payment in accordance with the holder's directions given on the relevant Redemption Notice.

20.3 **Endorsement of Global Certificate:** In respect of a Global CD, the Issuer and the Paying Agent shall arrange for the Paying Agent to endorse, or procure the endorsement of, Schedule 1 to each Global CD so as to note the details of any redemption made and to note the remaining aggregate principal amount of the Global CD.

## 21. **INFORMATION SHARING**

21.1.1 Subject to below, the Agents will treat all information relating to the Issuer as confidential.

21.1.2 The Issuer consents to the Agents effecting such disclosure as the Agents may deem necessary and appropriate to enable the Agents to transfer, disclose or otherwise process Issuer's records and information (including in connection with the provision of any service and for data processing, statistical and risk analysis purposes), to process and execute the Issuer's instructions, or in pursuance of the Agents' commercial interest, to any of their head office, branches, affiliates, professional advisers, agents or third party service providers ("**intended recipient**") provided that the intended recipient is under a confidentiality obligation with respect to the disclosed information.

21.1.3 The Agents and any branch, subsidiary, representative office, affiliate, agent or third party may transfer and disclose any such information as required by any law, court regulator or legal process.

## SCHEDULE 9 SELLING RESTRICTIONS

### 1. **Distribution**

By its purchase and acceptance of CDs issued under the Agreement to which these Selling Restrictions are scheduled, each Dealer (which term shall, in the case of a Syndicated Issue and in this Schedule, include Syndicate Dealers), represents and agrees to the Issuer that it will observe all applicable laws and regulations in any jurisdiction in which it may offer, sell or deliver CDs; and it will not directly or indirectly offer, sell, re-sell, re-offer or deliver CDs or any participation in the CDs or distribute any offering material or any circular, advertisement or other offering material in any country or jurisdiction except under circumstances that will, to the best of its knowledge and belief, result in compliance with all applicable laws and regulations.

### 2. **Hong Kong**

Each Dealer represents and agrees that and each further Dealer appointed under the Programme will be required to represent and agree that:

- (i) it has not offered or sold and will not offer or sell in Hong Kong, by means of any document, any Certificates other than (a) to "professional investors" as defined in the Securities and Futures Ordinance (Cap. 571) of Hong Kong and any rules made under that Ordinance; or (b) in other circumstances which do not result in the document being a "prospectus" as defined in the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) of Hong Kong or which do not constitute an offer to the public within the meaning of that Ordinance; and
- (ii) it has not issued or had in its possession for the purposes of issue, and will not issue or have in its possession for the purposes of issue, whether in Hong Kong or elsewhere, any advertisement, invitation or document relating to the Certificates, which is directed at, or the contents of which are likely to be accessed or read by, the public of Hong Kong (except if permitted to do so under the securities laws of Hong Kong) other than with respect to Certificates which are or are intended to be disposed of only to persons outside Hong Kong or only to "professional investors" as defined in the Securities and Futures Ordinance and any rules made under that Ordinance.

### 3. **People's Republic of China ("PRC")**

The Dealer and investors who are citizens of the PRC, which shall, for the purposes of this paragraph, exclude Hong Kong, Macau and Taiwan, or residents in the PRC ("**PRC Investors**") have acknowledged that this Information Memorandum, or the Certificates or any material or information contained or incorporated by reference in this Information Memorandum relating to the Certificates, have not been, and will not be submitted to become, approved/verified by or registered with any relevant government authorities under PRC law. Accordingly the Certificates may not be offered or sold directly or indirectly in the PRC and this Information Memorandum may not be supplied to the

public in the PRC or used in connection with any offer for subscription or sale of the Certificates in the PRC directly or indirectly. The material or information contained or incorporated by reference in this Information Memorandum relating to the Certificates does not constitute an offer to sell or the solicitation of an offer to buy any securities by any person in the PRC. The Certificates may only be offered or sold to PRC Investors that are authorised to engage in the purchase of Certificates of the type being offered or sold, whereas "authorised" means:

- (i) any Qualified Domestic Institutional Investor ("**QDII**") – a programme which requires specific use of funds and compliance with relevant requirements, quota and regulatory procedures with the China Securities Regulatory Commission ("CSRC") (for QDII managed by securities firm and mutual fund management companies) or the China Banking Regulatory Commission (for QDII managed by commercial banks) and the State Administration of Foreign Exchange);
  - (ii) some of licensed financial institutions such as commercial banks, securities brokerage firms and insurance companies which may carry out principal money investments (instead of client money) without participating in the QDII programme but still need to comply with relevant rules governing the investment activities of financial institutions as opposed to other types of entities; and
  - (iii) other types of investment vehicles that may be used, for example, the pilot programmes such as the Qualified Domestic Limited Partnership and the Qualified Domestic Investment Enterprise where relevant requirements for launching or executing the investments may vary among cities.
4. Each Dealer has represented, warranted and agreed, and each further Dealer appointed under this Programme will be required to represent, warrant and agree, to and with the Issuers that it has not made, and will not make, any offers, promotions, solicitations for sales of or for, as the case may be, any Certificates in the PRC, except where permitted by CSRC or the People's Bank of China and other competent authorities or where the activity otherwise is permitted under PRC law. PRC Investors should note that they themselves are responsible for informing themselves about observing all legal and regulatory restrictions, obtaining all relevant government regulatory approvals/licenses, verifications and/or registrations from all relevant governmental authorities (including but not limited to the CSRC or the People's Bank of China and/or the State Administration of Foreign Exchange), and complying with all the applicable PRC regulations, including but not limited to any relevant PRC foreign exchange regulations and/or outbound investment regulations.

#### 5. **Spain**

Each Dealer and the Issuer represents, warrants and agrees that the CDs may not be offered, sold or distributed, nor may any subsequent resale of CDs be carried out in Spain, except in circumstances which do not constitute a public offer of securities in Spain within the meaning of the consolidated text of the Securities Market Law approved by Legislative Royal Decree 4/2015, of 23 October (*Real Decreto 4/2015, de 23 de octubre, por el que se aprueba el texto refundido de la ley del Mercado de Valores*) and

Royal Decree 1310/2005 of 4 November 2005 (*Real Decreto 1310/2005, de 4 de noviembre*), each, as amended and restated, or without complying with all legal and regulatory requirements under Spanish securities laws. No publicity or marketing of any kind shall be made in Spain in relation to the CDs.

Each Dealer has represented, warranted and agreed that any funds collected from the sale or resale of CDs may not be transferred to Spain.

Neither the CDs nor the Information Memorandum has been registered with the Spanish Securities Market Commission (*Comisión Nacional del Mercado de Valores*) and therefore the Information Memorandum is not intended for any public offer of the CDs in Spain.

## 6. **Selling Restrictions addressing additional United Kingdom Securities Laws**

Each Dealer represents and agrees as follows:

### 6.1 ***No deposit-taking:*** In relation to CDs with a Tenor of less than one year,

(i) it is a person whose ordinary activities involve it in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of its business; and

(ii) it has not offered or sold and will not offer or sell any CDs other than to persons:

(1) whose ordinary activities involve them in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of their businesses; or

(2) who it is reasonable to expect will acquire, hold, manage or dispose of investments (as principal or agent) for the purposes of their businesses,

where the issue of the CDs would otherwise constitute a contravention of section 19 of the Financial Services and Markets Act 2000 (the "**FSMA**") by the Issuer;

6.2 ***Financial promotion:*** It has only communicated or caused to be communicated and will only communicate or cause to be communicated any invitation or inducement to engage in investment activity (within the meaning of section 21 of the FSMA) received by it in connection with the issue or sale of any CDs in circumstances in which section 21(1) of the FSMA does not apply to the Issuer; and

6.3 ***General compliance:*** It has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the CDs in, from or otherwise involving the United Kingdom.

## 7. **United States of America**

7.1 The CDs have not been and will not be registered under the U.S. Securities Act of 1933 (the "**Securities Act**") and may not be offered or sold within the United States or to, or



for the account or benefit of, U.S. persons except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act. The CDs, are being offered outside the United States in compliance with Regulation S under the Securities Act. Each Dealer represents that it has offered and sold the CDs, and agrees that it will offer and sell the CDs (i) as part of its distribution at any time and (ii) otherwise until 40 days after the later of the commencement of the offering and the closing date, only in accordance with Rule 903 of Regulation S under the Securities Act. Accordingly, neither it, its affiliates nor any persons acting on its or their behalf have engaged or will engage in any directed selling efforts with respect to the CDs, and they have complied and will comply with the offering restrictions requirement of Regulation S under the Securities Act. Each Dealer agrees that, at or before confirmation of sale of CDs, it will have sent to each distributor, dealer or person receiving a selling concession, fee or other remuneration that purchases CDs from it during the Restricted Period a confirmation or notice to substantially the following effect:

"The Securities covered hereby have not been registered under the U.S. Securities Act of 1933, as amended (the "**Securities Act**") and may not be offered and sold within the United States or to, or for the account or benefit of, U.S. persons (i) as part of their distribution at any time or (ii) otherwise until 40 days after the later of the commencement of the offering and the closing date, except in either case in accordance with Regulation S under the Securities Act. Terms used above have the meanings given to them by Regulation S under the Securities Act."

Terms used in this paragraph 6.1 have the meanings given to them by Regulation S under the Securities Act.

- 7.2 Each Dealer agrees that all of its activities and services under the Agreement will be performed outside the United States.
- 7.3 It will cause any agreement or instrument evidencing a participation in any CD purchased from it to contain the legend and the restrictions on the place of payment appearing in each CD.
8. **Singapore**

The Issuer and each Dealer acknowledges, represents and agrees that the Information Memorandum has not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, the Issuer and each Dealer has represented, warranted and agreed that it has not offered or sold any CDs or caused such CDs to be made the subject of an invitation for subscription or purchase, and will not offer or sell such CDs or cause such CDs to be made the subject of an invitation for subscription or purchase, and has not circulated or distributed, nor will it circulate or distribute, the Information Memorandum or any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of such CDs, whether directly or indirectly, to persons in Singapore other than ((i) to an institutional investor pursuant to Section 274 of the Securities and Futures Act, Chapter 289 of Singapore ("**SFA**"), (ii) to a relevant person pursuant to Section 275(1), or any person pursuant to Section 275(1A), and in accordance with the conditions specified in Section 275 of the SFA or (iii) otherwise

pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA.

9. **Japan**

The CDs have not been and will not be registered under the Financial Instruments and Exchange Act of Japan (Act No.25 of 1948, as amended, the "**Financial Instruments Securities and Exchange Act**"). Accordingly, each of the Dealers represents and agrees that it has not, directly or indirectly, offered or sold and will not, directly or indirectly, offer or sell any CDs in Japan or to, or for the benefit of, a resident of Japan (which term as used herein means any person resident in Japan, including any corporation or other entity organised under the laws of Japan) or to others for re-offering or re-sale, directly or indirectly, in Japan or to, or for the benefit of, any resident in Japan except pursuant to an exemption from the registration requirements of, and otherwise in compliance with, the Act and Exchange Act and other relevant laws and regulations of Japan.

As used in this paragraph, "**resident of Japan**" means any person resident in Japan, including any corporation or other entity organised under the laws of Japan.

10. **Amendments to Selling Restrictions**

If as the result of a change in or the making of any law, treaty or official directive or request (whether or not having the force of law, but if not having the force of law compliance with which is in accordance with the practice of responsible financial institutions in the country concerned) the Issuer determines that the foregoing selling restrictions require amendment or variation to ensure compliance with such law, treaty or official directive or request, the Issuer may promulgate new selling restrictions to each Dealer which shall take effect as if set out in this Schedule from the date specified in such notice in accordance with the terms of the Agreement.

**SCHEDULE 10**  
**CMU SERVICE - LODGING AGENT'S UNDERTAKING**

Date: [•]

To: Hong Kong Monetary Authority as operator of The Central Moneymarkets Unit Service (the "**CMU Service**")

From: [Agent/Dealer]

cc: Banco Santander, S.A., Hong Kong Branch

Dear Sirs,

1. We refer to the CMU Membership Agreement between us dated [•] (the "**Agreement**"). Clause 1 of the Agreement shall apply to the interpretation of this undertaking.
2. In consideration of your agreeing to our acting as lodging agent for the [*Currency and Principal Amount*] Global Certificate of Deposit ([**CMU Certificate Number**]) representing [•] Definitive Certificates of Deposit with denominations of [HK\$[•]] [US\$[•]] [RMB [•]] [*OTHER*] each and due [•] (the "**CMU Instrument[s]**") issued or accepted by the Principals listed in Schedule 1, (each a "**Principal**") we hereby represent and warrant that we have obtained from each of the Principals an acknowledgement and authority in the terms set out in Schedule 2.
3. We undertake to inform you immediately if we cease to act as lodging agent for the CMU Instrument. This Undertaking shall survive the termination of the lodging agent's membership with the CMU Service.

Yours faithfully

.....  
[Agent/Lender]

**SCHEDULE 1 TO CMU SERVICE – LODGING AGENT'S UNDERTAKING**

**Principal**

**BANCO SANTANDER, S.A., HONG KONG BRANCH**

**SCHEDULE 2 TO CMU SERVICE – LODGING AGENT'S UNDERTAKING**  
**Acknowledgements and Authorities of Principal**

- (A) An acknowledgement by the Principal, expressed to be in favour of the Monetary Authority (the "MA") and its servants and agents, that the terms of the Agreement and the CMU Rules (as defined in the Agreement) will apply to the CMU Instrument specified in paragraph 2 above which is lodged with the CMU Service and to all transactions and operations effected through the CMU Service in relation to the CMU Instrument, including transactions and operations relating to the lodgement, withdrawal or redemption of the CMU Instrument and in particular (but without limiting the generality of the foregoing):
- (i) that the MA and its servants and agents are, with the limited exceptions expressly provided in the Agreement, exempt from liability caused directly or indirectly by the operation of the CMU Service and the MA is entitled without liability to act without further enquiry on instructions or information or purported instructions or information received through the CMU Service or otherwise in accordance with the CMU Manual;
  - (ii) that the MA is under no liability to any person (whether or not a member of the CMU Service) as a result of any actual or alleged defect or irregularity with respect to any CMU Instrument lodged with or held in the CMU Service, any signature or purported signature appearing on any such CMU Instrument, any disposition or purported disposition of any such CMU Instrument or any inconsistency of any such CMU Instrument with the details specified in respect of that CMU Instrument in the CMU Service.
- (B) An authority for the CMU Member on behalf of the Principal to do all such acts and things and execute all such documents as may be required to enable the CMU Member fully to observe and perform its obligations under the Agreement and the CMU Rules and to enter into any arrangement which the CMU Member considers proper in connection with the lodgement with the CMU Service of the CMU Instrument, the holding of the CMU Instrument in the CMU Service and (unless another CMU Member is for the time being appointed to act as paying agent of the CMU Instrument on behalf of the Principal) the redemption of the CMU Instrument, including (but without limiting the generality of the foregoing) authorities for the CMU Member on behalf of the Principal:
- (i) to issue and authenticate the CMU Instrument (including issue and authentication on splitting and, where necessary, on withdrawal from the CMU Service);
  - (ii) to make payments in respect of the CMU Instrument in the manner prescribed by the CMU Rules.
- (C) An acknowledgement by the Principal that no further or other demand or presentment for payment of the CMU Instrument shall be required than the credit of the CMU Instrument to a CMU Account of a CMU Member (whether acting on its own behalf or as paying agent) in accordance with the CMU Rules and a waiver by the Principal of any further or other demand or presentment for payment.

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Authorised Signature(s)/Company Chop

**SCHEDULE 11**  
**TERMS AND CONDITIONS**

*These are the Conditions applicable to CDs issued under the EUR5,000,000,000 Certificate of Deposit Programme for Banco Santander, S.A., Hong Kong Branch.*

**1. PAYMENTS**

- 1.1 Principal is repayable and interest is payable on each Global CD and Definitive CD to (or to the order of) the relevant CD Holder.
- 1.2 If a CD is held by the CMU Service, payment of interest or principal by the Paying Agent to the CMU Accountholder at the relevant time as notified to the Paying Agent by a relevant Position Report will discharge the obligations of the Issuer in respect of that payment. For these purposes, a notification from the CMU Service will be conclusive evidence of the records of the CMU Service unless there is manifest error.
- 1.3 If a CD is held by a Clearing System (other than the CMU Service), payment to the person who has been recorded by that Clearing System as being credited with an Entry or Entries in that CD will discharge the obligations of the Issuer in respect of that payment.
- 1.4 If a CD is held by the Issuer or a Nominated Custodian, payment to the person who has been recorded by the Issuer or the Nominated Custodian as being credited with an Entry or Entries in that CD in accordance with the terms and conditions governing the relationship between the Issuer and that person will discharge the obligations of the Issuer in respect of that payment.
- 1.5 Payment of interest or principal by the Paying Agent to the bearer of a Definitive CD who has presented or surrendered, as the case may be, that Definitive CD to the office of the Paying Agent will discharge the obligations of the Issuer in respect of that payment.
- 1.6 All payments of principal and interest in respect of a RMB CD will be made solely by credit to a Renminbi bank account maintained in accordance with applicable laws and regulations at a bank in Hong Kong.

**2. INTEREST PAYMENT DATES AND INTEREST PERIODS**

- 2.1 If this CD is expressed to be Fixed Rate or Floating Rate, the Deposit bears interest from the Deposit Date and (subject to Condition 2.2) the interest will be payable on each Interest Payment Date.
- 2.2 If any Interest Payment Date, including the Maturity Date, would otherwise fall on a day which is not a Business Day it shall be adjusted in accordance with the Business Day Convention specified in the Issue Terms.
- 2.3 "**Interest Period**" means each period from (and including) one Period End Date to (but excluding) the following applicable Period End Date, except that the initial Interest

Period will commence on (and include) the Deposit Date and the final Interest Period will end on (but exclude) the Maturity Date.

- 2.4 Interest or amortisation for any period of time (whether or not constituting an Interest Period, the "**Calculation Period**") will be calculated by reference to the applicable Day Count Fraction specified in the Issue Terms.

**3. RATES OF INTEREST (FOR FIXED RATE CDS AND FLOATING RATE CDS)**

- 3.1 For a Fixed Rate CD, interest will accrue at the Fixed Rate.

- 3.2 For a Floating Rate CD, the rate of interest per annum (the "**Interest Rate**") payable on the Deposit in respect of each Interest Period will be calculated by the Calculation Agent as:

3.2.1 if the Floating Rate Determination is Screen Rate Determination, the aggregate of the Margin and the Floating Rate Benchmark, calculated in accordance with Condition 3.3, 3.4 or 3.5, in effect on the Interest Determination Date for a period equivalent to that Interest Period; and

3.2.2 if the Floating Rate Determination is ISDA Rate Determination, the aggregate of the Margin and the ISDA Rate, calculated in accordance with Condition 3.6,

in effect on the Interest Determination Date for a period equivalent to that Interest Period.

- 3.3 If the Floating Rate Determination is Screen Rate Determination and the Floating Rate Benchmark is HIBOR, "**HIBOR**" will be the rate determined by the Calculation Agent on the following basis:

3.3.1 If, at or about 11:00 a.m. (Hong Kong time) on the Interest Determination Date, an averaged offered rate for Hong Kong dollar deposits for the period comparable to the relevant Interest Period (or, if the periods are not the same, such period, if any, as the Calculation Agent determines to be substantially the same) is quoted on the fixing line of the page "HKABHIBOR" of the Reuters Money 3000 Service, if the Floating Rate Benchmark is "HIBOR/Reuters" (or such other page or service as may replace the appropriate page or service for the purpose of displaying Hong Kong inter-bank offered rates of leading banks for Hong Kong dollars), then HIBOR for the relevant Interest Period will, except as provided below, be that rate.

3.3.2 If, on any Interest Determination Date, the average offered rate so appearing is replaced by the corresponding rates of more than one bank or financial institution the rate will be the arithmetic mean of the respective rates so appearing (rounded, if necessary, to five decimal places).

3.3.3 If, on any Interest Determination Date, the rates described in Condition 3.3.1 or 3.3.2 do not appear, the Calculation Agent will request each of the Reference Banks to provide the Calculation Agent with its offered quotation to leading



banks for Hong Kong dollar deposits in Hong Kong for a period equivalent or approximately equivalent to the relevant Interest Period in the amount equal or approximately equal to the Nominal Definitive Principal Amount as at or about 11:00 a.m. (Hong Kong time) on the Interest Determination Date in question and HIBOR for the relevant Interest Period will, subject as provided below, be the arithmetic mean (rounded, if necessary, to five decimal places) of those offered quotations, as determined by the Calculation Agent.

- 3.3.4 If, on any Interest Determination Date, one or two only of the Reference Banks, when requested to do so, provide(s) the Calculation Agent with such offered quotation, then HIBOR for the Interest Period concerned will, subject as provided below, be determined as in Condition 3.3.3 on the basis of the offered quotations of those Reference Banks providing those quotation.
- 3.3.5 If, on any Interest Determination Date, none of the Reference Banks when requested to do so provides the Calculation Agent with the offered quotations, then HIBOR will, subject as provided below, be HIBOR in effect for the last preceding Interest Period to which Conditions 3.3.1 to 3.3.4 applied; **provided that** if at any time during the relevant Interest Period, the Calculation Agent determines that a rate can once again be determined in accordance with any of Conditions 3.3.1 to 3.3.4 above the Calculation Agent will determine the rate and references to an Interest Period will be construed as being references to the period from such date of determination until the next succeeding Interest Payment Date.
- 3.4 If the Floating Rate Determination is Screen Rate Determination and the Floating Rate Benchmark is LIBOR, "**LIBOR**" will be the rate determined by the Calculation Agent on the following basis:
- 3.4.1 LIBOR for the relevant Interest Period will be the the offered rate for US dollar deposits which are quoted at or about 11:00 a.m. (London time) on the Interest Determination Date on the "**LIBOR01**" page on the Reuters Money 3000 Service (or such other page or service as may replace it for the purpose of displaying London inter-bank offered rates of leading banks for US dollars) as being the interest rate(s) offered in the London inter-bank market for US dollar deposits for the period comparable to the relevant Interest Period (or, if the periods are not the same, such period, if any, as the Calculation Agent determines to be substantially the same) but if such rate does not appear on the relevant page, then the relevant rate will be determined on the basis of the respective rates (as quoted to the Calculation Agent) at which each of the Reference Banks is offering US dollar deposits for the relevant Interest Period in an amount equal or approximately equal to the Nominal Definitive Principal Amount to leading banks in the London inter-bank market at or about 11 a.m. (London time) on the Interest Determination Date and LIBOR for the relevant Interest Period will, subject as provided below, be the arithmetic mean (rounded, if necessary, to five decimal places) of those offered quotations, as determined by the Calculation Agent.

- 3.4.2 If, on any Interest Determination Date, one or two only of the Reference Banks, when requested to do so, provide(s) the Calculation Agent with such offered quotations, then LIBOR for the Interest Period concerned will, subject as provided below, be determined on the preceding paragraph on the basis of the offered quotations of those Reference Banks providing those quotations.
- 3.4.3 If no Reference Bank provides such a quotation, LIBOR will be the rate of interest in effect for the last preceding Interest Period in which interest could be determined in any of the methods set out in Conditions 3.4.1 and 3.4.2, until such date that the Calculation Agent determines that a rate can once again be determined in accordance with any of the provisions in Conditions 3.4.1 and 3.4.2, in which case the Calculation Agent will determine such a rate and references to an Interest Period will be construed as being references to the period from such date of determination until the next succeeding Interest Payment Date.
- 3.5 If the Floating Rate Determination is Screen Rate Determination and the Floating Rate Benchmark is SHIBOR, "**SHIBOR**" will be the rate determined by the Calculation Agent on the following basis:
- 3.5.1 If, at or around 11:30 a.m. (Beijing time) on the Interest Determination Date, the Shanghai Interbank Offered Rate for the critical term comparable to the relevant Interest Period (or, if the periods are not the same, such period, if any, as the Calculation Agent determines to be substantially the same) is quoted on the fixing line of the page "SHIBOR" of the Reuters Money 3000 Service, then the relevant SHIBOR will, except as provided below, be that rate.
- 3.5.2 If, on any Interest Determination Date, the rates described in Condition 3.5.1 do not appear, the relevant SHIBOR will, except as provided below, be the Shanghai Interbank Offered Rate as published on <http://www.shibor.org> by the China Foreign Exchange Trade System & National Interbank Funding Centre under the authorisation of the People's Bank of China for the critical term comparable to the relevant Interest Period (or, if the periods are not the same, such period, if any, as the Calculation Agent determines to be substantially the same).
- 3.5.3 If for any reason the relevant SHIBOR is not published on <http://www.shibor.org> in respect of a certain Interest Determination Date, the relevant SHIBOR in respect of the Business Day immediately preceding that Interest Determination Date shall be applied in place thereof.
- 3.5.4 If on any Interest Determination Date for any reason such offered rate described in Condition 3.5.1, 3.5.2 or 3.5.3 is not published or is unavailable, then the rate to be applied in place shall be the offered rate that the Calculation Agent obtains from quotations provided by four leading dealers in the relevant inter-bank market (selected in good faith by the Calculation Agent) for such rate at, or as soon as practicable following, such time. If four such quotations are received by the close of business on such day, the applicable offered rate shall be the arithmetic mean of the quotations received (ignoring the highest and lowest

quotations). If two or three such quotations are received by such time, the applicable offered rate shall be, subject as provided below, the arithmetic mean of such quotations.

- 3.5.5 If, on any Interest Determination Date, only one or none of the Reference Banks when requested to do so provides the Calculation Agent with the offered quotations, then SHIBOR will be the SHIBOR in effect for the last preceding Interest Period to which Conditions 3.5.1 to 3.5.4 applied.
- 3.6 Where the Floating Rate Determination is ISDA Determination, ISDA Rate will be the rate equal to the Floating Rate under an interest rate swap transaction if the Calculation Agent were acting as "Calculation Agent" (as defined in the ISDA Definitions (as defined below)) for that swap transaction under the terms of an agreement incorporating the 2006 ISDA Definitions as published by the International Swaps and Derivatives Association, Inc. (the "**ISDA Definitions**") and as amended and updated as at the relevant Issue Date and under which:
- 3.6.1 the Floating Rate Option is specified in the Issue Terms;
- 3.6.2 the Designated Maturity is a period specified in the Issue Terms;
- 3.6.3 the relevant Reset Date is, (I) if the applicable Floating Rate Option is based on HIBOR, the first day of that Interest Period, or (II) if the applicable Floating Rate Option is based on LIBOR, the first day of that Interest Period, or (III) in any other case, as specified in the Issue Terms.

For the purpose of this Condition 3.6, Floating Rate, Floating Rate Option, Designated Maturity and Reset Date have the meanings given to those terms in the ISDA Definitions.

- 3.7 The Calculation Agent will, as soon as practicable after 11:00 a.m. on each Interest Determination Date calculate the amount of interest payable in respect of each CD for the relevant Interest Period (the "**Interest Amount**").
- 3.8 A statement from the Calculation Agent as to the amount on which and the rate at which interest accrues during any Interest Period and as to the amount of interest accrued in respect of any Interest Period or part of an Interest Period will be conclusive and binding on the holder of a CD and each Accountholder.
- 3.9 The Calculation Agent will, as soon as practicable after the receipt of a request (in accordance with the rules of the relevant Clearing System or the terms and conditions governing the relationship between the Issuer and that holder of a CD or that Accountholder) from a holder of a CD or Accountholder, certify to that holder or Accountholder the Interest Rate in respect of any Interest Period and the Interest Amount payable in respect of that Interest Period.
- 3.10 If full repayment is improperly withheld or refused on any due date, interest will continue to accrue on the Deposits at a rate calculated by reference to the Margin and the Interest Rate determined by the Calculation Agent, on the basis of interest periods having approximately the same length as the Interest Periods.

#### 4. **RMB DISRUPTION**

If a Series of CDs is denominated in RMB, notwithstanding the foregoing, if by reason of Inconvertibility, Non-transferability or Illiquidity (each, a "RMB Disruption"), the Issuer is not able to satisfy payments of principal or interest (in whole or in part) in respect of the Notes when due in Renminbi, the Issuer shall, by sending an irrevocable notice not less than five or more than 30 calendar days prior to the due date for payment to the Holders, settle any such payment (in whole or in part) in U.S. Dollars on the due date at the U.S. Dollar Equivalent of any such Renminbi denominated amount. In case the Issuer needs to satisfy payments of principal or interest in part in Renminbi and in part in U.S. Dollars, it shall to the extent possible make payment to each Holder in the same pro rata amount of Renminbi and U.S. Dollar in accordance with the rules of the Clearing System from time to time.

For the purposes of this Condition 4,

**"Determination Business Day"** means a day (other than a Saturday or Sunday) on which commercial banks are open for general business (including dealings in foreign exchange) in Hong Kong, Beijing, London, TARGET and in New York City;

**"Determination Date"** means the day which is three Determination Business Days before the due date for any payment of the relevant amount under these Conditions;

**"Governmental Authority"** means any de facto or de jure government (or any agency or instrumentality thereof), court, tribunal, administrative or other governmental authority or any other entity (private or public) charged with the regulation of the financial markets (including the central bank) of the PRC and Hong Kong;

**"Illiquidity"** means where the general Renminbi exchange market in Hong Kong becomes illiquid as a result of which the Issuer cannot obtain sufficient Renminbi in order to satisfy its obligation to pay interest or principal (in whole or in part) in respect of the Notes as determined by the Issuer in good faith and in a commercially reasonable manner following consultation with two Renminbi Dealers;

**"Inconvertibility"** means the occurrence of any event that makes it impossible for the Issuer to convert any amount due in respect of the Notes in the general Renminbi exchange market in Hong Kong, other than where such impossibility is due solely to the failure of the Issuer to comply with any law, rule or regulation enacted by any Governmental Authority (unless such law, rule or regulation is enacted after [Issue Date] and it is impossible for the Issuer, due to an event beyond its control or any other laws applicable to the Issuer, to comply with such law, rule or regulation);

**"Non-transferability"** means the occurrence of any event that makes it impossible for the Issuer to transfer Renminbi between accounts inside Hong Kong or from an account inside Hong Kong to an account outside Hong Kong and outside the PRC or from an account outside Hong Kong and outside the PRC to an account inside Hong Kong, other than where such impossibility is due solely to the failure of the Issuer to comply with any law, rule or regulation enacted by any Governmental Authority (unless such law, rule or regulation is enacted after [Issue Date] and it is impossible for the Issuer, due to

an event beyond its control or any other laws applicable to the Issuer, to comply with such law, rule or regulation);

**"Renminbi Dealer"** means an independent foreign exchange dealer of international repute active in the Renminbi exchange market in Hong Kong;

**"Spot Rate"** means the spot CNY/U.S. dollar exchange rate for the purchase of U.S. dollars with Renminbi in the over-the-counter Renminbi exchange market in Hong Kong for settlement in two Determination Business Days, as determined by the Calculation Agent at or around 11 a.m. (Hong Kong time) on the Determination Date, on a deliverable basis by reference to Reuters Screen Page TRADCNY3, or if no such rate is available, on a non-deliverable basis by reference to Reuters Screen Page TRADNDF. If neither rate is available, the Calculation Agent will determine the Spot Rate at or around 11 a.m. (Hong Kong time) on the Determination Date as the most recently available CNY/U.S. dollar official fixing rate for settlement in two Determination Business Days reported by The State Administration of Foreign Exchange of the PRC, which is reported on the Reuters Screen Page CNY=SAEC. Reference to a page on the Reuters Screen means the display page so designated on the Reuters Monitor Money Rates Service (or any successor service) or such other page as may replace that page for the purpose of displaying a comparable currency exchange rate.

**"U.S. Dollar Equivalent"** means the Renminbi amount converted into U.S. Dollars using the Spot Rate for the relevant Determination Date.

## 5. TAXES

All payments of principal and interest (if any) under a CD will be made free and clear of and without deduction or withholding for or on account of any present or future taxes, duties or other governmental charges of whatsoever nature imposed or levied by or on behalf of Hong Kong or Spain or any political subdivision or any authority in Hong Kong or Spain having power to tax unless the Issuer is required by law to deduct or withhold any such taxes, duties or other charges, in which event the Issuer will pay in like manner and at the same time such additional amounts as will be necessary in order to ensure that the net amounts received by a CD Holder after that deduction or withholding will equal the respective amounts of principal and interest which would have been receivable by that CD Holder if no such deduction or withholding had been required to be made except that no such additional amounts will be payable in respect of any payment to be made:

- (i) to the extent that a CD Holder (or any person for whom a CD Holder holds an interest in that CD (an "**Owner**")) is liable to those taxes, duties, or governmental charges in respect of its interest in that CD by reason of its having some connection with Hong Kong or Spain other than the mere holding of, or of an interest in, that CD;
- (ii) where withholding or deduction could be avoided by the CD Holder or the Owner making a declaration of non-residence or other similar claim for

exemption to the appropriate authority or by providing other reasonable information regarding the CD Holder 's or the Owner's identity;

- (iii) more than 30 days after the Relevant Date except to the extent that the Issuer would have been required to pay such additional amounts on the last day of the period of 30 days; or
- (iv) where such withholding or deduction is imposed on a payment to an individual and is required to be made pursuant to any European Council Directive 2003/48/EC on the taxation of savings income or any law implementing or complying with, or introduced in order to conform to, such Directive.

In these Conditions, "Relevant Date" means whichever is the later of (a) the date on which the payment in question first becomes due and (b) if the full amount payable has not been received by the Owner on or prior to such due date, the date on which the full amount is so received by the Owner.

## 6. TAX CALL

6.1 The Issuer may at its option redeem all Deposits comprising a Series at any time in whole, but not in part on giving not less than 14 days' irrevocable notice to all CD Holders and the Paying Agent (**provided that** the notice must expire on an Interest Payment Date if this is a Fixed Rate CD or a Floating Rate CD), at its principal amount, if:

- (i) the Issuer has or will become obliged to pay additional amounts under the Condition titled "Taxes" as a result of any change in, or amendment to, the laws or regulations of Hong Kong or Spain or any authority in Hong Kong or Spain having power to tax, or any change in the application or official interpretation of such laws or regulations, which change or amendment becomes effective on or after the Deposit Date; and
- (ii) that obligation cannot be avoided by the Issuer taking reasonable measures available to it,

**provided that** no notice of redemption will be given earlier than 14 days before the earliest date on which the Issuer would be obliged to pay such additional amounts were a payment in respect of the CDs then due.

6.2 After issuing a notice under Condition 6.1, the Issuer will be obliged to repay all the Deposits in the Series

- 6.2.1 for each Fixed Rate CD and Floating Rate CD in a Series, together with any unpaid interest accrued on the CD in accordance with these Conditions; or
- 6.2.2 for each Discounted CD in a Series, subject to a deduction from the Global Principal Amount (for a Global CD) or Nominal Definitive Principal Amount (for a Definitive CD) to represent the unamortised amount of the Deposit calculated by reference to the Discounted Bid Rate and on the basis of the

actual number of days remaining from the date fixed for redemption to the Maturity Date and in accordance with the relevant Day Count Fraction,

on the date provided in the relevant notice on surrender of that CD (if that CD is not held by the CMU Service, or by transfer of the interest in that CD to the Paying Agent (if that CD is held by the CMU Service)).

Notice will be deemed to have been given to a CD Holder when published in accordance with the Condition titled "Notices" below.

## **7. PUT OPTION**

7.1 If the Issue Terms specify that a Put Option is applicable for a CD the Issuer will redeem the CD on any Put Option Exercise Date specified in the Issue Terms on the following basis:

7.1.1 If the CD is held by the CMU Service, a CD Holder wishing to exercise the Put Option must:

- (i) deliver to the Paying Agent a duly completed Redemption Notice not earlier than 45 days before and not later than 30 days before the relevant Put Option Exercise Date; and
- (ii) transfer the relevant part of its interest in the CD to the Paying Agent's account with the CMU Service as specified in the form of Redemption Notice provided by the Paying Agent.

7.1.2 If the Put Option is being exercised for a Global CD which is held by or on behalf of a Clearing System other than the CMU Service:

- (i) the CD Holder must (in accordance with the rules of that Clearing System) instruct the Clearing System through which they hold their interests in the Global CD and, on receiving those instructions, the holder of the Global CD must deliver to the Paying Agent one or more Redemption Notices not earlier than 45 days before and not later than 30 days before the relevant Put Option Exercise Date (as stated in the Issue Terms), specifying in each case the aggregate Nominal Definitive Principal Amount(s) (as stated in the Issue Terms) for which the Put Option is being exercised; and
- (ii) the holder of the Global CD must present the Global CD to the Paying Agent at the same time as delivering a Redemption Notice so that the Global CD may be annotated on the Put Option Exercise Date to record that the relevant interests have been repaid.

7.1.3 If the Put Option is being exercised for a Global CD which is held by the Issuer or a Nominated Custodian:

- (i) the CD Holder must (in accordance with the terms and conditions governing the relationship between the Issuer and the CD Holder) deliver to the Issuer a Redemption Notice not earlier than 45 days

before and not later than 30 days before the relevant Put Option Exercise Date, specifying the aggregate Nominal Definitive Principal Amount(s) for which the Put Option is being exercised; and

- (ii) the Issuer is entitled to prohibit any transfers by the CD Holder of an interest in a Global CD for which a Redemption Notice has been received until the relevant Put Option Exercise Date.

7.1.4 If the Put Option is being exercised in respect of a Definitive CD which is not held by or on behalf of a Clearing System:

- (i) the CD Holder must deliver to the Paying Agent a duly completed Redemption Notice not earlier than 45 days before and not later than 30 days before the relevant Put Option Exercise Date; and
- (ii) the CD Holder must deposit that Definitive CD with the Paying Agent at the same time as delivering the Redemption Notice.

7.2 To the extent that the procedures in Conditions 7.1.1, 7.1.2, 7.1.3 or 7.1.4 are followed, the Issuer will repay each relevant Deposit on the relevant Put Option Exercise Date in accordance with the directions given to the Paying Agent in the relevant Redemption Notice and the relevant CD(s), or interest in the relevant CD(s), will be surrendered.

7.3 Any Redemption Notice received by the Paying Agent will be irrevocable and will bind both the Issuer and each relevant CD Holder.

7.4 Any CD so deposited may not be withdrawn and any transfer so made may not be reversed without the prior consent of the Issuer.

7.5 On the relevant Put Option Exercise Date, the CD (or interest in a CD) for a Fixed Rate CD and a Floating Rate CD for which the Redemption Notice has been received will become immediately due and payable at its principal amount together with accrued interest (except as otherwise provided in the Issue Terms).

7.6 The Put Option under this Condition 7 shall not be applicable to a Discounted CD.

## **8. CALL OPTION**

8.1 If the Issue Terms specify that a Call Option is applicable for a CD, the Issuer may at its option repay all the Deposits comprising a Series in whole but not in part on any Call Option Exercise Date (specified in the Issue Terms) on giving not more than 45 nor less than 30 days' prior written notice to each CD Holder and the Paying Agent of its intention to exercise the option, which notice will be irrevocable and will be binding on both the Issuer and each CD Holder.

8.2 After issuing a notice under Condition 8.1, the Issuer will be obliged to repay all the Deposits comprising a Series on the relevant Call Option Exercise Date (specified in the Issue Terms) on surrender of the relevant CDs (in respect of the CDs not held by the CMU Service), or by transfer of the interest in that CD to the Paying Agent (if that CD is held by the CMU Service).



- 8.3 Notice will be deemed to have been given to each CD Holder when published in accordance with the Condition titled "Notices" below.
- 8.4 On the relevant Call Option Exercise Date (specified in the Issue Terms and the notice from the Issuer), the Deposits in the Series for Fixed Rate CDs and Floating Rate CDs will become immediately due and payable at their principal amount together with accrued interest (except as otherwise provided in the Issue Terms).
- 8.5 The Call Option under this Condition 8 shall not be applicable to a Discounted CD.

**9. DEFAULT**

If, in respect of the interest bearing CDs, the Issuer fails to pay interest on the CD when due and that failure continues for a period of seven Business Days, then a holder of a Definitive CD or an Accountholder of a Global CD can declare, by notice in writing given to the Paying Agent at its specified office, that a Definitive CD or any interest in a Definitive CD represented by a Global CD is immediately due and payable and at that time it will become immediately due and payable:

- (a) for a Fixed Rate CD and a Floating Rate CD, at its principal amount together with accrued interest; or
- (b) for a Discounted CD, subject to a deduction from the Global Principal Amount (for a Global CD) or Nominal Definitive Principal Amount (for each Definitive CD) to represent the unamortised amount of the Deposit calculated by reference to the Discounted Bid Rate and on the basis of the actual number of days remaining from the date fixed for redemption to the Maturity Date and in accordance with the relevant Day Count Fraction,

without further formality unless that repayment event is remedied before the Paying Agent receives the notice.

**10. NOTICES**

10.1 Subject to Conditions 10.2 and 10.3 below, notices may be published in the South China Morning Post or any other leading daily newspaper published in the English language in Hong Kong:

- 10.1.1 specifying any appointment or change of Paying Agent or Calculation Agent;
- 10.1.2 giving notice under the Conditions titled "Tax Call" and "Call Option" above; or
- 10.1.3 giving notice in respect of any other matters for which a notice is to be given under the Conditions as soon as is practicable.

Any notice will be deemed duly given on the date it is published or, if published more than once, the first date of that publication.

10.2 If a CD is held by the CMU Service notices may be made to CMU Accountholders in accordance with the CMU Rules.

- 10.3 If a CD is held on behalf of Euroclear or Clearstream, notices may be given by their being delivered to Euroclear or Clearstream, as the case may be, or otherwise to the Accountholders.
- 10.4 If the Issuer or a Nominated Custodian holds an interest in a CD on behalf of a person, notice may be given to that person in accordance with any arrangements that apply between the Issuer and that person (which, for a customer of the Issuer, may include any arrangements for giving notice in accordance with terms and conditions applying to that customer).

## **11. PURCHASES**

- 11.1 The Issuer or its subsidiaries may at any time purchase CDs in the open market or otherwise and at any price.
- 11.2 Any CDs purchased by the Issuer in the ordinary course of business of dealings in securities or as a nominee may be resold by it in the open market or otherwise and at any price.
- 11.3 Any CDs purchased by the Issuer otherwise than in the ordinary course of business of dealings in securities or as a nominee shall be cancelled and shall not be reissued or resold.
- 11.4 All CDs so purchased by a subsidiary of the Issuer may be cancelled, held by such subsidiary or resold.

## **12. FURTHER ISSUES**

The Issuer may from time to time without the consent of any holder or Accountholder take deposits evidenced by further CDs having the same terms and conditions as this CD in all respects and so that such further issue will be consolidated and form a single series with the outstanding CDs of this Series. References in a CD to any such deposits or Series include (unless the context requires otherwise) any other deposits evidenced by other certificates of deposit issued under this Condition and forming a single series with that CD.

## **13. SPANISH BAIL-IN POWER**

- 13.1 Notwithstanding any other term of the CDs or any other agreements, arrangements, or understandings between the Issuer and any holder of a CD, by its acquisition or acceptance of a CD, each holder of a CD (including the holder of a beneficial interest in a CD) acknowledges, accepts, consents and agrees to be bound by: (i) the effect of the exercise of the Spanish Bail-in Power (as defined below) by the Relevant Spanish Resolution Authority (as defined below), that may include and result in any of the following, or some combination thereof: (1) the reduction of all, or a portion, of the BRRD Liability (as defined below) or outstanding amounts due thereon on any CD; (2) the conversion of all, or a portion, of the BRRD Liability on any CD into shares, other securities or other obligations of the Issuer or another person (and the issue

to or conferral on such holder of any such shares, securities or obligations), including by means of an amendment, modification or variation of the terms of any CD issued pursuant to the Programme; (3) the cancellation of any CD; (4) the amendment or alteration of the maturity of, or amendment of the amount of interest payable on, any CD, or the date on which interest becomes payable, including by suspending payment for a temporary period; (5) the cancellation of the BRRD Liability; and (6) the variation of the terms of any CD or the terms and conditions stated herein, if necessary, to give effect to the exercise of the Spanish Bail-in Power by the Relevant Spanish Resolution Authority.

- 13.2 By its acquisition or acceptance of a CD, each holder acknowledges and agrees that neither (i) a reduction or cancellation, in part or in full, of the BRRD Liability on any CD or the conversion thereof into another security or obligation of the Issuer or another person, in each case as a result of the exercise of the Spanish Bail-in Power by the Relevant Spanish Resolution Authority with respect to the Issuer, nor (ii) the exercise of the Spanish Bail-in Power by the Relevant Spanish Resolution Authority with respect to any CD, nor (iii) the Issuer's inability to fulfil its obligations under the terms of any CD as a result of the exercise of the Spanish Bail-in Power by the Relevant Spanish Resolution Authority will give rise to a Default with respect to any CD pursuant to the terms and conditions herein.
- 13.3 By its acquisition or acceptance of a CD, each holder further acknowledges and agrees that no repayment or payment of the BRRD Liability or amounts due thereon on any CD will become due and payable or be paid after the exercise of the Spanish Bail-in Power by the Relevant Spanish Resolution Authority if and to the extent such amounts have been reduced, converted, cancelled, amended or altered as a result of such exercise.
- 13.4 By its acquisition or acceptance of a CD, each holder will waive any and all claims, in law and/or in equity, against the applicable Paying Agent for, agree not to initiate a suit against the applicable Paying Agent in respect of, and agree that the applicable Paying Agent will not be liable for, any action that the applicable Paying Agent takes, or abstains from taking, in either case in accordance with the exercise of the Spanish Bail-in Power by the Relevant Spanish Resolution Authority with respect to any CD. Additionally, by its acquisition or acceptance of a CD, each holder will acknowledge and agree that, upon the exercise of the Spanish Bail-in Power by the Relevant Spanish Resolution Authority with respect to any CD, the Form of Agency Appointment Agreement in schedule 8 of the Programme Agreement (the "**Agency Appointment Agreement**") pursuant to which any Paying Agent is appointed, will not impose any duties upon the applicable Paying Agent whatsoever with respect to the exercise of the Spanish Bail-in Power by the Relevant Spanish Resolution Authority.

- 13.5 By its acquisition or acceptance of a CD, each holder shall be deemed to have authorized, directed and requested the Clearing Systems (as defined herein) and any direct participants of the Clearing Systems or other intermediary through which it holds such CDs to take any and all necessary action, if required, to implement the exercise of the Spanish Bail-in Power with respect to any CD as it may be imposed, without any further action or direction on the part of such holder.
- 13.6 Upon the exercise of the Spanish Bail-in Power by the Relevant Spanish Resolution Authority with respect to any CD, the Issuer or the Relevant Spanish Resolution Authority (as the case may be) will provide a written notice to the relevant Clearing System(s) (as applicable) as soon as practicable regarding such exercise of the Spanish Bail-in Power for purposes of notifying the holders of such securities. The Issuer will also deliver a copy of such notice to the Paying Agent for information purposes.
- 13.7 Each holder that acquires a CD in the secondary market or otherwise shall be deemed to acknowledge and agree to be bound by and consent to the above and to the provisions specified in the Agency Appointment Agreement, to the same extent as the holders that acquire CDs upon their initial issuance.

For this purpose:

"**BRRD Liability**" has the same meaning as in such laws, regulations, rules or requirements implementing the BRRD including, but not limited to, Law 11/2015, RD 1012/2015 and the SRM Regulation;

"**Law 11/2015**" means Spanish Law 11/2015 of June 18, on the recovery and resolution of credit institutions and investment firms (*Ley 11/2015, de 18 de junio, de recuperación y resolución de entidades de crédito y empresas de servicios de inversión*).

"**RD 1012/2015**" means Royal Decree 1012/2015, of 6 November, implementing Law 11/2015;

"**Relevant Spanish Resolution Authority**" means the Spanish Fund for the Orderly Restructuring of Banks (*Fondo de Reestructuración Ordenada Bancaria*) (the "**FROB**"), the European Single Resolution Mechanism and, as the case may be, according to Law 11/2015, the Bank of Spain and the Spanish Securities Market Commission and any other entity with the authority to exercise the Spanish Bail-in Power from time to time;

"**Spanish Bail-in Power**" means any write-down, conversion, transfer, modification, or suspension power existing from time to time under, and exercised in compliance with any laws, regulations, rules or requirements in effect in Spain, relating to the transposition of the BRRD, as amended from time to time, including, but not limited to (i) Law 11/2015, as amended from time to time, (ii) RD 1012/2015, as amended from time to time, (iii) the SRM Regulation, as amended from time to time, and (iv) any other instruments, rules or standards made in connection with either (i), (ii) or (iii), pursuant to which any obligation of an institution can be reduced, cancelled, modified, or converted into shares, other securities, or other obligations of such institution or any other person (or suspended for a temporary period); and

"**SRM Regulation**" means Regulation (EU) No. 806/2014 of the European Parliament and the Council of the European Union.

#### **14. GOVERNING LAW AND JURISDICTION**

14.1 *Governing law:* The CDs and any non-contractual obligations arising out of or in connection with the CDs are governed by Hong Kong law.

14.2 *Jurisdiction:* The courts of Hong Kong shall have exclusive jurisdiction to settle any dispute (a "**Dispute**") arising out of or in connection with the CDs (including a dispute regarding any non-contractual obligation arising out of or in connection with the Notes).

14.3 *Appropriate forum:* The Issuer agrees that the courts of Hong Kong are the most appropriate and convenient courts to settle any Dispute and, accordingly, that it will not argue to the contrary.

#### **15. RIGHTS OF THIRD PARTIES**

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

#### **16. DEFINITIONS IN A CD:**

"**Accountholder**" means, in respect of a Global CD at any time:

- (i) each CMU Accountholder credited with an interest in that Global CD except for a CMU Accountholder which is credited with that interest in its capacity as a Clearing System;
- (ii) each holder of one or more accounts with a Clearing System (other than the CMU Service) credited with an Entry or Entries in that Global CD except for any Clearing System which holds that account in its capacity as a Clearing System; or
- (iii) where a Global CD is held by the Issuer or a Nominated Custodian and has not been lodged with a Clearing System, each person who has been recorded by the Issuer or the Nominated Custodian as being credited with an Entry or Entries in that Global CD except for any Clearing System which is credited with that interest in its capacity as a Clearing System.

"**Alternative Currency**" means any freely transferable and available currencies other than Hong Kong dollars, US dollars or Renminbi that may be specified in the Issue Terms for a CD.

"**Alternative Currency CDs**" means CDs denominated or to be denominated in an Alternative Currency.

"**Alternative Floating Rate Benchmark**" means, for any Series, any method for calculating floating rate interest (other than HIBOR or LIBOR or SHIBOR) in respect

of that Series which may be agreed in writing for a particular Series between the Issuer and any Dealer(s) and Agent(s) participating in that Series before the issue of such Series.

**"Business Day"** means a day (other than a Saturday, a Sunday or a public holiday) on which commercial banks and foreign exchange markets are open for business in Hong Kong; and

- (i) for a US\$ CD, on which banks and foreign exchange markets are open for business in London and New York City;
- (ii) for an Alternative Currency CD, in the principal financial centre on which dealings in the Alternative Currency are carried out and on which, if the Alternative Currency CD is a Floating Rate CD, the relevant Floating Rate Benchmark or ISDA Rate can be determined; and
- (iii) if the CD is held by a Clearing System, on which that Clearing System is operating.

**"Business Day Convention"** means:

- (i) if **"Floating Rate"** is specified in the Issue Terms, the relevant date shall be postponed to the next day that is a Business Day unless it would thereby fall into the next calendar month, in which event:
  - (a) such date shall be brought forward to the immediately preceding Business Day; and
  - (b) each subsequent such date shall be the last Business Day of the month in which such date would have fallen had it not been subject to adjustment;
- (ii) if **"Following"** is specified in the Issue Terms, the relevant date shall be postponed to the next day that is a Business Day;
- (iii) if **"Modified Following"** is specified in the Issue Terms, the relevant date shall be postponed to the next day that is a Business Day unless it would then fall into the next calendar month, in which event such date shall be brought forward to the immediately preceding Business Day; or
- (iv) if **"Preceding"** is specified in the Issue Terms, the relevant date shall be brought forward to the immediately preceding Business Day.

**"CD"** means any Global CD or Definitive CD.

**"CD Holder"** means, in respect of a CD at any time:

- (i) for a Global CD held by the CMU Service, each CMU Accountholder credited with an interest in that Global CD;
- (ii) for a Global CD held by a Clearing System (other than the CMU Service), each holder of one or more accounts with a Clearing System credited with an Entry or Entries in that Global CD;

- (iii) for a Global CD held by the Issuer or a Nominated Custodian, each person who has been recorded by the Issuer or the Nominated Custodian as being credit with an Entry or Entries in that Global CD; or

for a Definitive CD, each holder of that Definitive CD.

"**Clearing System(s)**" means any of Clearstream, the CMU Service and Euroclear.

"**Clearstream**" means Clearstream Banking S.A.

"**CMU Accountholder**" means, for any CD held by the CMU Service, any person or persons for whose account(s) interests in that CD are credited in accordance with the CMU Rules.

"**CMU Rules**" means the agreements, rules and regulations from time to time governing the operation of the CMU Service.

"**CMU Service**" means the Hong Kong Monetary Authority acting as operator of the Central Moneymarkets Unit Service.

"**Day Count Fraction**" is the method for calculating interest or unamortised amounts payable by the Issuer in certain circumstances for any period of time and will be calculated by reference to:

- (i) if "**Actual/Actual**" is specified in the Issue Terms, the actual number of days in the Calculation Period divided by 365 (or, if any portion of that Calculation Period falls in a leap year, the sum of (a) the actual number of days in that portion of the Calculation Period falling in a leap year divided by 366 and (b) the actual number of days in that portion of the Calculation Period falling in a non-leap year divided by 365);
- (ii) if "**Actual/365 (Fixed)**" is specified in the Issue Terms, the actual number of days in the Calculation Period divided by 365;
- (iii) if "**Actual/360**" is specified in the Issue Terms, the actual number of days in the Calculation Period divided by 360;
- (iv) if "**30/360**" is specified in the Issue Terms, the number of days in the Calculation 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:

"Y1" is the year, expressed as a number, in which the first day of the Calculation Period falls;

"Y2" is the year, expressed as a number, in which the day immediately following the last day included in the Calculation Period falls;

"M1" is the calendar month, expressed as a number, in which the first day of the Calculation Period falls;

"M2" is the calendar month, expressed as a number, in which the day immediately following the last day included in the Calculation Period falls;

"D1" is the first calendar day, expressed as a number, of the Calculation Period, unless such number would be 31, in which case D1 will be 30; and

"D2" is the calendar day, expressed as a number, immediately following the last day included in the Calculation Period, unless such number would be 31 and D1 is greater than 29, in which case D2 will be 30; and

- (v) if "**30E/360**" is specified in the Issue Terms, the number of days in the Calculation Period divided by 360, calculated on a formula basis as follows:

$$\text{Day Count Fraction} = \frac{[360 \times (Y2 - Y1)] + [30 \times (M2 - M1)] + (D2 - D1)}{360}$$

where:

"Y1" is the year, expressed as a number, in which the first day of the Calculation Period falls;

"Y2" is the year, expressed as a number, in which the day immediately following the last day included in the Calculation Period falls;

"M1" is the calendar month, expressed as a number, in which the first day of the Calculation Period falls;

"M2" is the calendar month, expressed as a number, in which the day immediately following the last day included in the Calculation Period falls;

"D1" is the first calendar day, expressed as a number, of the Calculation Period, unless such number would be 31, in which case D1 will be 30; and

"D2" is the calendar day, expressed as a number, immediately following the last day included in the Calculation Period, unless such number would be 31, in which case D2 will be 30,

**"Deed of Covenant"** means the deed of covenant dated on or about the date of the Programme Agreement (as defined below) and executed by the Issuer in relation to the Relevant Accountholders.

**"Definitive CDs"** means any definitive certificate of deposit issued or required to be issued under the terms of a Global CD, substantially in the form attached to that Global CD, subject to any necessary changes.

**"Deposit"** means:



- (i) for a CD specified to be Fixed Rate or Floating Rate, the Initial Global Principal Amount of a Global CD or the Nominal Definitive Principal Amount of a Definitive CD; and
- (ii) for a CD specified to be Discounted, a principal amount which, together with interest accrued thereon, will amount on the Maturity Date to the Global Principal Amount of any relevant Global CD or Nominal Definitive Principal Amount of a Definitive CD and to which a discount would be applied in respect of any repayment before the Maturity Date in accordance with the Conditions to reflect the unamortised amount of that interest at the relevant time.

**"Direct Rights"** has the meaning given to it in the Deed of Covenant.

**"Entry"** means any entry relating to any Global CD (or to the relevant part of it) or the Definitive CDs represented by the Global CD which is or has been made in an account of any account holder with a Clearing System, the Issuer or a Nominated Custodian and **"Entries"** shall have a corresponding meaning.

**"Euroclear"** means Euroclear Bank SA/NV

**"Exchange Date"** has the meaning given to it in the Condition in a Global CD titled "Exchange for Definitive CDs".

**"Floating Rate Benchmark"** means:

- (i) for Hong Kong dollars, HIBOR;
- (ii) for US dollars, LIBOR;
- (iii) for RMB, SHIBOR; or
- (iv) any applicable Alternative Floating Rate Benchmark.

**"Global CD"** means a permanent global certificate of deposit issued under the Programme which is specified as a "Global CD".

**"Global Principal Amount"** means the Initial Global Principal Amount (as specified in the Issue Terms) as reduced by reason of purchase and cancellation, exchanges for Definitive CDs, the creation of Direct Rights or early redemptions in accordance with the terms and conditions of a Global CD.

**"Hong Kong"** means the Hong Kong Special Administrative Region of the People's Republic of China.

**"HK\$" and "Hong Kong dollars"** means the lawful currency of Hong Kong.

**"HK\$ CD"** means a CD denominated in Hong Kong dollars.

**"Interest Determination Date"** means:

- (i) for a HK\$ CD, the first day of an Interest Period;

- (ii) for a US\$ CD, the second London Business Day before the first day of an Interest Period;
- (iii) for a RMB CD, the business day (which, for the purposes hereof, shall be a day on which banks are open for business in Shanghai) before the first day of an Interest Period; and
- (iv) for an Alternative Currency CD, the day agreed between the Issuer and the relevant Agent(s) and Dealer(s) on which Interest Rate quotations are obtained, for the purposes of Condition 3.2, in respect of that Alternative Currency CD.

**"Interest Payment Date"** means, with respect to each Series of CDs, each such date specified in the relevant Issue Terms of such Series.

**"Issue Terms"** means, a document substantially in the form of Schedule 1 (*Issue Terms*) to the Programme Agreement completed to specify all the information relating to an actual or proposed CD or Series which is required to be specified for the particular purpose of that document in accordance with the completion instructions in Schedule 1 (*Issue Terms*) to the Programme Agreement (together with any Alternative Floating Rate Benchmark (if applicable)) and which may be used (subject to the information which is specified on it and the basis on which it has been completed) as:

- (i) the basis of the information to be delivered in a Telephone Request for Bids;
- (ii) an attachment to (and forming part of) a Written Request for Bids;
- (iii) an attachment to (and forming part of) a Response to Request for Bids;
- (iv) an attachment to (and forming part of) an Unsolicited Offer;
- (v) an attachment to (and forming part of) an Issue Terms Confirmation; or
- (vi) an attachment to (and forming part of) a Global CD or a Definitive CD.

**"Issuing Agent", "Paying Agent" or "Calculation Agent"** means any person specified as any of these in the Issue Terms of any relevant CD.

**"London Business Day"** means a day (other than a Saturday, a Sunday or a public holiday) on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) in London.

**"Nominal Definitive Principal Amount"** means such amount specified in the Issue Terms.

**"Nominated Custodian"** means any person appointed by the Issuer to act as custodian of a Global CD which is not held by or on behalf of a Clearing System.

**"Period End Date"** means each Interest Payment Date, except that in the case "No Adjustment" is specified in the Issue Terms, each such Interest Payment Date will not be subject to adjustment in accordance with the Business Day Convention for the purposes of this definition, notwithstanding that such date occurs on a day that is not a Business Day.

**"Position Report"** means a position report issued by the CMU Service or such other notification issued from time to time by the CMU Service, in accordance with the CMU Rules, to confirm the interests of CMU Accountholders in a CD.

**"PRC"** means the People's Republic of China, which for the purpose of this Agreement, shall exclude the Hong Kong Special Administrative Region, the Macau Special Administrative Region of the People's Republic of China and Taiwan.

**"Programme"** means the certificate of deposit programme established by the Issuer on 20 July 2011, initially for an aggregate amount of EUR5,000,000,000 or its equivalent.

**"Programme Agreement"** means the amended and restated programme agreement (as amended from time to time) relating to the Programme dated 5 July 2016 entered into by the Issuer, the Arranger, the Dealers and the Agents named therein.

**"Redemption Notice"** means a notice based on the form set out in the Deed of Covenant.

**"Reference Banks"** means the principal offices of three major banks active in the relevant inter-bank market for the relevant currency in:

- (i) Hong Kong (if the currency is HK\$);
- (ii) London (if the currency is US\$);
- (iii) Shanghai (if the currency is RMB); or
- (iv) the principal financial centre of any currency which is an Alternative Currency, as selected by the Issuer or, if one is specified in the Issue Terms, the Calculation Agent, acting reasonably.

**"Relevant Accountholder"** has the meaning given to it in the Deed of Covenant.

**"Relevant Time"** means the time when Direct Rights take effect as contemplated by the Condition in a Global CD titled "Exchange for Direct Rights" and by the Deed of Covenant.

**"RMB"** and **"Renminbi"** means the lawful currency of the People's Republic of China.

**"RMB CD"** means a CD denominated in Renminbi.

**"Series"** means each series of CDs which are all issued on the same terms and conditions (except, in some circumstances, only for Deposit Date) and which are all expressed to form part of the same Series.

**"Spain"** means Kingdom of Spain.

**"United States"** or **"U.S."** means the United States of America, including the states and the District of Columbia and its "possessions" include Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Wake Island and the Northern Mariana Islands.

**"US\$" and "US dollars"** means the lawful currency of the United States.

"**US\$ CD**" means a CD denominated in US dollars.

References to a **time of the day** are, except where the context requires otherwise, to Hong Kong time.

**IN WITNESS** whereof the parties hereto have caused this Agreement to be duly executed the day and year first above written.

*Issuer*

**BANCO SANTANDER, S.A., HONG KONG BRANCH**

Address: Room 1501, One Exchange Square  
8 Connaught Place  
Central  
Hong Kong  
Tel: + 852 2101 2101  
Fax: + 852 2101 2000  
Attention: Jose Platas

By:

.....

*Arranger*

**CITIBANK EUROPE PLC, UK BRANCH**

Address: Citigroup Centre  
Canada Square  
Canary Wharf  
London E14 5LB  
United Kingdom  
Tel: +44 20 7986 6837  
Fax: +44 20 7986 9070  
Attention: Short Term Fixed Income Desk

By:

.....

*Initial Programme Agents*

**CITICORP INTERNATIONAL LIMITED**

Address: 10/F, Citi Tower  
One Bay East,  
83 Hoi Bun Road  
Kwun Tong  
Kowloon  
Hong Kong

Fax: +852-2306-3183  
Attention: Regional A&T OPS

With a copy to:

Address: 39th Floor, Citibank Tower  
Citibank Plaza  
3 Garden Road, Central  
Hong Kong

Fax: +852 2323 0279  
Attention: Agency and Trust

By:

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**CITIBANK, N.A., LONDON BRANCH**

Address: C/O Citibank, N.A  
Ground Floor  
DUB-01-11  
1 North Wall Quay  
Dublin 1  
Ireland

Fax: +353 1 622 4029  
Attention: CD Issuances

By:

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*Initial Programme Dealers*

**BARCLAYS BANK PLC**

Address: 41/F Cheung Kong Centre  
2 Queen's Road Central  
Hong Kong  
Tel: +852 2903 2706  
Fax: +852 2903 4136  
Attention: Transaction Management Group

By:

.....

**BNP PARIBAS**

Address: 63/F, Two International Finance Centre  
8 Finance Street  
Central  
Hong Kong  
Tel: +852 2108 5228  
Fax: +852 2108 5836  
Attention: Head of Syndicate

By:

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**CITIBANK EUROPE PLC, UK BRANCH**

Address: Citigroup Centre  
Canada Square  
Canary Wharf  
London E14 5LB  
United Kingdom  
Tel: +44 20 7986 6837  
Fax: +44 20 7986 9070  
Attention: Short Term Fixed Income Desk

By:

.....

**CITICORP INTERNATIONAL LIMITED**

Address: 50/F Citibank Tower  
Citibank Plaza  
3 Garden Road  
Central  
Hong Kong  
Tel: +852 2501 2844  
Fax: +852 2501 8123  
Attention: Debt Capital Market, Hong Kong

By:

.....

**THE HONGKONG AND SHANGHAI BANKING CORPORATION LIMITED**

Address: Level 17, HSBC Main Building  
1 Queen's Road Central  
Hong Kong  
Tel: +852 2822 2283/3897  
Fax: +852 2530 1538  
Attention: Transaction Management

By:

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**NOMURA INTERNATINAL (HONG KONG) LIMITED**

Address: 30/F, Two International Finance Centre  
8 Finance Street  
Central  
Hong Kong  
Tel: +852 2536 1111  
Fax: +852 2536 1888  
Attention: Debt Origination

By:

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**STANDARD CHARTERED BANK (HONG KONG) LIMITED**

Address: 12/F Two International Finance Centre  
8 Finance Street  
Hong Kong  
Tel: 852 3983 8641  
Fax: 852 3983 8660  
Attention: Alex Wu

By:  
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