

# Placing Agreement

relating to HK\$122,000,000 aggregate principal amount of 3%  
Unsecured and Unsubordinated Convertible Notes due 2010

Dated 22 October 2007

**WAH YUEN HOLDINGS LIMITED (the "Issuer")**  
**BOCI ASIA LIMITED (the "Placing Agent")**

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# Placing Agreement

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# Placing Agreement

## Details

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<b>Parties</b>	<b>WAH YUEN HOLDINGS LIMITED and BOCI ASIA LIMITED</b>	
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<b>The Issuer</b>	<b>Name</b>	<b>WAH YUEN HOLDINGS LIMITED</b>
	Incorporated in	the Cayman Islands
	Principal place of business	2nd Floor, On Shing Industrial Building, 2-16 Wo Liu Hang Road, Fo Tan, Shatin, New Territories, Hong Kong
	Telephone	+852 2692 2221
	Fax	+852 2691 0971
	Attention	The Board of Directors

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<b>The Placing Agent</b>	<b>Name</b>	<b>BOCI ASIA LIMITED</b>
	Incorporated in	Hong Kong
	Principal place of business	26th Floor, Bank of China Tower, 1 Garden Road, Central, Hong Kong
	Telephone	+852 2867 6333
	Fax	+852 2840 1032
	Attention	Debt Capital Markets

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<b>Recitals</b>	<b>A</b>	The Issuer and the Placing Agent wish to record the arrangements agreed among them in relation to an issue of HK\$122,000,000 aggregate principal amount of 3% convertible notes due 2010 of the Issuer (the "Notes", which expression where the context so admits includes the Global Note (as defined below)).
	<b>B</b>	The Notes are being offered outside the United States in reliance on Regulation S (as defined below) under the Securities Act (as defined below).

- C The Notes will be constituted by the Trust Deed (as defined below). Payments of principal, premium and interest on the Notes will be made on behalf of the Issuer by the paying and conversion agent appointed under the Agency Agreement (as defined below). The definitive Notes, if required to be issued, will be in registered form in the denomination of HK\$100,000 each or integral multiples thereof. Each Note will be convertible at the option of the holder into fully-paid ordinary shares of par value HK\$0.01 each in the capital of the Issuer (the "Shares") at an initial conversion price of HK\$1.43 per Share ("**Conversion Price**").

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**Governing law**      Hong Kong

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**Date of agreement**      See Signing page

# Placing Agreement

## General terms

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### 1 Definitions and Interpretation

#### 1.1 Definitions

In this Agreement (including the paragraph above), the following expressions shall, unless the context requires otherwise, have the following meanings:

- “Affiliate”** means, with respect to any specified Person, any Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control” when used with respect to any Person means the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and the terms “controlling” and “controlled” and “under common control with” have meanings correlative to the foregoing;
- “Agency Agreement”** means the paying and conversion agency agreement to be entered into between the Issuer and the paying and conversion agent (the identity of which shall be agreed by the Issuer and the Placing Agent);
- “Agreement”** means this Agreement, as amended or varied from time to time by an agreement or deed in writing duly executed by the parties;
- “Business Day”** means a day other than a Saturday or Sunday or a day on which a tropical cyclone warning no. 8 or above or a black rainstorm warning signal is hoisted in Hong Kong at any time between 9:00a.m. and 5:00p.m. on which commercial banks are open for business during their normal business hours in Hong Kong;
- “CEWH”** China Environmental Water Holdings Limited, a company incorporated in Hong Kong with limited liability;
- “CEWH Group”** CEWH and its Subsidiaries;
- “Closing Date”** means on or about 21 November 2007 or such later date as the parties hereto shall mutually agree;

<b>“Conditions”</b>	means the terms and conditions of the Notes in or substantially in the form set out in Schedule 3 as from time to time modified in accordance with the Trust Deed and, with respect to any Notes represented by a Global Note, as modified by the provisions of such Global Note. Any reference to a particularly numbered Condition shall be construed accordingly;
<b>“Conversion Price”</b>	has the meaning given to it in Recital C;
<b>“Global Note”</b>	means the duly executed and authenticated global note representing the entire principal amount of the Notes in or substantially in the form to be provided in the Trust Deed;
<b>“Group”</b>	means the Issuer and its Subsidiaries as at the date of this Agreement and the expression <b>“member of the Group”</b> shall be construed accordingly;
<b>“Hong Kong”</b>	means the Hong Kong Special Administrative Region of the PRC;
<b>“HK\$”</b>	means Hong Kong dollars, the lawful currency of Hong Kong;
<b>“Listing Rules”</b>	means the Rules Governing the Listing of Securities on the Stock Exchange and the expression <b>“Listing Rule”</b> shall be construed accordingly;
<b>“Person”</b>	means any individual, corporation, partnership, limited liability company, joint venture, trust, unincorporated organisation or government or any agency or political subdivision thereof;
<b>“Placee”</b>	means any professional, institutional or other investor who are, to the best knowledge of the Placing Agent, independent of and not connected with the Issuer or its connected persons (as defined in the Listing Rules) procured by or on behalf of the Placing Agent to purchase any of the Notes pursuant to the Placing Agent’s obligations hereunder;
<b>“Placing”</b>	means the offer by way of a private placing of the Notes, on a best efforts basis, by or on behalf of the Placing Agent to selected investors of the Notes on the terms and subject to the conditions set out in this Agreement;
<b>“Placing Period”</b>	means the period commencing upon the execution of this Agreement and terminating at

	completion on the Closing Date, unless terminated earlier pursuant to Clause 12;
<b>"PRC"</b>	means the People's Republic of China;
<b>"Regulation S"</b>	means Regulation S under the Securities Act;
<b>"Seabuckthorn Group"</b>	means Conseco Seabuckthorn Co. Ltd., a sino-foreign equity joint venture established under the laws of the PRC, whose equity interest is held as to 50% by CEWH and its Subsidiaries;
<b>"Securities Act"</b>	means the United States Securities Act of 1933, as amended;
<b>"SFO"</b>	means the Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong);
<b>"Share Option Scheme"</b>	means the Issuer's share options scheme adopted on 3 June 2003;
<b>"Stock Exchange"</b>	means The Stock Exchange of Hong Kong Limited;
<b>"Subsidiary"</b>	means in relation to any Person and at any particular time, any entity of which more than 50% of the issued share capital having ordinary voting power to elect a majority of the board of directors or other Persons performing similar functions is then beneficially owned by such Person and/or one or more of its Subsidiaries and Subsidiaries means one or more of such companies;
<b>"taxation" and "tax"</b>	means any and all federal, state, local, foreign and other taxes, levies, fees, imposts, duties and charges of whatever kind (including any interest, penalties or addition to the tax imposed in connection therewith or with respect thereto), including, without limitation, taxes imposed on, or measured by, income, franchise, profits or progress receipts, and also ad valorem, value added, sales, use, service, environmental, real or personal property, capital stock, licence, payroll, withholding, employment, social security, workers' compensation, unemployment compensation, utility, severance, production, excise, stamp, occupation, premium, windfall profits, transfer and gains taxes and custom duties;
<b>"Trust Deed"</b>	means the trust deed, to be entered into between the Issuer and the trustee (the identity of which

shall be agreed by the Issuer and the Placing Agent);

“United States” has the meaning set out in Regulation S;

“VSA” means a very substantial acquisition conducted on the part of the Issuer whereby a wholly-owned Subsidiary of the Issuer acquired 100% equity interest in CEWH and its subsidiaries, including Seabuckthorn Group details of which are set out in the VSA Circular;

“VSA Circular” means the circular dated 24 September 2007 issued by the Issuer to its shareholders in connection with the VSA; and

“VSA Entities” means entities acquired by the Issuer and/or its wholly-owned Subsidiary pursuant to the VSA.

## 1.2 Construction and certain references

- (a) In this Agreement (save as otherwise expressly stated herein), references to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time, amended, extended or re-enacted.
- (b) The headings in this Agreement are inserted for convenience only and shall be ignored in construing this Agreement. Unless the context otherwise requires, words denoting the singular number only shall include the plural and vice versa. References to Clauses and Schedules are to be construed as references to Clauses of, and Schedules to, this Agreement.
- (c) All references in this Agreement in relation to any time, date or period shall mean Hong Kong time.

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## 2 Appointment of the Placing Agent

### 2.1 Appointment

Subject to the provisions of this Agreement, the Issuer hereby appoints the Placing Agent as agent to the exclusion of all others and the Placing Agent agrees to act as agent for the Issuer during the Placing Period to use its best efforts to procure purchasers for the Notes.

### 2.2 Powers

- (a) The Issuer hereby confirms that the appointment referred to in Clause 2.1 confers on the Placing Agent all of its powers, authorities and discretions which are necessary for, or incidental to, the making of the Placing and hereby agrees to ratify and confirm everything which the Placing Agent may lawfully do in the exercise of such powers, authorities and discretion in accordance with this Agreement.
- (b) The Placing Agent or its nominees may at any time elect to subscribe as principal some or all of the Notes and, in that event, the Notes may



be on-sold to purchasers at any price (as determined by the Placing Agent), without any obligation to notify the Issuer of such election or of the amount of the Notes so purchased or of the price at which the Notes were on-sold to such purchasers.

- (c) The Placing Agent shall not have any authority to make, and the Placing Agent hereby undertakes that it will not make, any representation or warranty on behalf of the Issuer unless the same is contained in the placing announcement or any other public announcement to be issued by the Issuer in relation to the Placing.

### **2.3 Placing**

- (a) The Notes shall be offered by the Placing Agent as agent for the Issuer during the Placing Period.
- (b) The Notes shall be offered by the Placing Agent to Placees. The choice of Placees for the Notes shall be determined solely by the Placing Agent, subject to the requirements of the Listing Rules, if any.

### **2.4 Sub-Agents**

The Issuer hereby acknowledges that the Placing Agent, in performing its functions under this Clause 2, is authorised at its own cost and expense to appoint one or more sub-placing agents (the "Sub-agents") and that such agents shall be agents of the Placing Agent relating to the Placing on the terms of and subject to the provisions of this Agreement, and the Issuer hereby authorises and confirms that it will as soon as practicable upon request by the Placing Agent ratify and confirm all actions taken or to be taken lawfully by such agents and the Placing Agent in connection with the Placing in accordance with the terms of this Agreement or, with regards to the Placing Agent, all actions taken lawfully by the Placing Agent in anticipation of the terms of this Agreement, which actions, unless otherwise disclosed to and expressly approved by the Issuer prior to the execution of this Agreement are not inconsistent with the terms of this Agreement. All fees, commissions, costs, charges and expenses of such agents shall be paid and borne by the Placing Agent out of the commissions, costs, charges and expenses payable by the Issuer under Clauses 9 and 10. Subject to the terms of this Agreement, the Placing Agent may enter into any agreements with any of such agents for such purpose which agreements shall not contain any terms which are inconsistent with the requirements of this Agreement.

### **2.5 Agency**

Any transaction lawfully carried out by the Placing Agent and any Sub-agent under and in accordance with this Agreement on behalf of the Issuer (and not as principal) shall constitute a transaction carried out at the request of the Issuer and as its agent and not in respect of the Placing Agent's own account.

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## **3 Issue of the Notes; Payment**

### **3.1 Agreement to Issue**

Subject to and upon the terms and conditions of this Agreement, the Issuer agrees to issue the Notes on the Closing Date. The Notes will be placed, on a best efforts basis, at a price equal to the issue price of 100% of their principal

amount less the commission referred to in Clause 9 and less the expenses referred to in Clause 10.

### **3.2 The Notes**

The Notes will be issued in accordance with the terms of the Trust Deed and issued subject to, and with the benefit of, the Agency Agreement. This Agreement, the Trust Deed and the Agency Agreement are together referred to herein as the "Contracts".

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## **4 Agreements by the Placing Agent and the Issuer**

### **4.1 Restrictions**

The Placing Agent warrants and agrees that it has complied and will comply with the terms set out in Schedule 1.

### **4.2 Safe Harbours**

Notwithstanding any other provision of this Agreement, the Issuer shall perform such acts as are necessary on its part to ensure that the Notes may lawfully be offered, sold, and distributed using the "safe harbours" in, and pursuant to, the applicable securities laws and regulations of the United States, European Economic Area (including the United Kingdom), Japan, Hong Kong and Singapore, described (whether by reference to specific sections of law or regulation or by tracking the language thereof) in Schedule 1 and shall refrain from any acts which would render any of these "safe harbours" unavailable.

### **4.3 No Other Fiduciary or Agency Relationship**

Except as provided in Clause 2, nothing in this Agreement or the nature of the services provided by the Placing Agent shall be deemed to create a fiduciary or agency relationship between the Placing Agent and the Issuer or any of their respective shareholders, creditors, employees or any other party.

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## **5 Representations and Warranties**

### **5.1 Warranties**

The Issuer represents and warrants to the Placing Agent that as at the date of this Agreement and as at the Closing Date (and at any time from the date hereof up to and including the Closing Date):

#### **(a) Incorporation**

Each of the Issuer and the Issuer's Subsidiaries is duly incorporated and validly existing and in good standing under the laws of its jurisdiction of incorporation with the necessary power and authority to conduct its business presently carried on by it and is lawfully qualified to do business, and has all permits, licences and other authorisations required, in each jurisdiction in which business is conducted by it and has been operating its business pursuant to and in compliance with the terms of all such permits, licences and other authorisations; the Issuer has the necessary power and authority, and is able lawfully, to enter into and perform its obligations under the Notes and the Contracts.

(b) Receivership

No encumbrance has taken possession of, and no receiver has been appointed over, the whole or any substantial part of the assets or undertaking of the Issuer or its Subsidiaries.

(c) Insolvency

Each of the Issuer and the Issuer's Subsidiaries is not (and is not, and could not be, deemed by law or a court to be) insolvent or bankrupt or unable to pay its debts, has not stopped, suspended or threatened (through actions of its board of directors or otherwise) to stop or suspend payment of all or any part of (or of a particular type of) its debts, has not proposed or made any agreement for the deferral, rescheduling or other readjustment of all of (or of a particular type of) its debts (or of any part which it will or might otherwise be unable to pay when due), has not proposed or made a general assignment or an arrangement or composition with or for the benefit of the relevant creditors in respect of any such debts and a moratorium has not been agreed or declared in respect of or affecting all or any part of (or of a particular type of) its debts;

For the purpose of this paragraph, a company shall be deemed to be unable to pay its debts:

- (i) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum then due equal to or exceeding HK\$4,000,000 (or its equivalent), has served on the company, by leaving it at the registered office of the company, a demand requiring the company to pay the sum so due, and the company has for 3 weeks thereafter failed to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor; or
- (ii) if execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or
- (iii) if it is proved to the satisfaction of the court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the court shall take into account the contingent and prospective liabilities of the company; or
- (iv) if deemed to be unable to pay its debt by any provision of the law by which it is incorporated equivalent to paragraphs (i) to (iii) inclusive.

(d) Winding-up

No order has been made and no effective resolution has been passed for the winding-up or dissolution or administration or receivership of the Issuer or any of its Subsidiaries, and neither the Issuer nor any of its Subsidiaries has threatened (through actions of its board of

directors or otherwise) to cease to carry on all or a material part of its business or operations except where the Subsidiary is a dormant company without any operation and/or to the extent that it has made disposals of assets or shares in the ordinary course of its business for fair value.

(e) Validity of Contracts

The Contracts have been duly authorised by the Issuer; this Agreement has been, and the other Contracts will on the Closing Date have been, duly executed and delivered by the Issuer; and this Agreement constitutes, and the other Contracts will, on the Closing Date, constitute, valid and legally binding obligations of the Issuer, enforceable in accordance with their respective terms, except enforcement thereof may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights generally, moratorium laws or by general principles of equity.

(f) Validity of Notes

The Notes have been duly authorised by the Issuer and, when duly executed, authenticated, issued and delivered in accordance with the Trust Deed and the Agency Agreement, will constitute valid and legally binding obligations of the Issuer enforceable in accordance with their respective terms, except enforcement thereof may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights generally, moratorium laws or by general principles of equity.

(g) Status of the Notes

The Notes will constitute direct, general, unsubordinated, unconditional and unsecured obligations of the Issuer which (i) rank *pari passu* and without preference among themselves and (ii) will at all times rank *pari passu* to all outstanding unsecured and unsubordinated obligations of the Issuer, save for such obligations as may be provided by mandatory provisions of applicable law.

(h) Stamp Duty

No stamp, transfer or other duty or tax and no capital gain or income tax is assessable or payable in, and no withholding or deduction for any taxes, duties, assessment or governmental charges of whatever nature is imposed or made for or on account of any income, registration, transfer or turnover taxes, customs or other duties or taxes of any kind, levied, collected, withheld or assessed by or within Bermuda, the British Virgin Islands, the Cayman Islands, Hong Kong, the PRC or any other relevant jurisdiction in connection with the creation, issue, offering, delivery or sale of the Notes to the account of the Placing Agent of the Notes, the issue and delivery of the Shares upon conversion of the Notes or the execution or delivery of the Contracts.

(i) Consents

Subject to the fulfilment of the condition precedent set out in Clause 7.1(g), no action or thing is required to be taken, fulfilled or done (including, without limitation, the obtaining of any consent or licence or the making of any filing or registration) on the part of the Issuer in the British Virgin Islands, the Cayman Islands, Hong Kong, the PRC or elsewhere for the issue of the Notes and the Shares to be issued upon conversion of the Notes, the carrying out of the other transactions contemplated by the Contracts or the compliance by the Issuer with the terms of the Notes and the Contracts, as the case may be.

(j) Compliance

The execution and delivery of the Contracts, the issue of the Notes and the Shares to be issued upon conversion of the Notes, the use of the proceeds from the issue of the Notes as described in Clause 6.9, the carrying out of the other transactions contemplated by the Contracts and compliance with their terms do not and will not (i) violate or conflict with the Issuer's constitutional documents (as they may have been amended or will be amended); (ii) violate, conflict with, result in breach of, constitute a default (or an event which, with the giving of notice or lapse of time or both, would constitute a default) under, or result in the acceleration of performance under, or termination or cancellation of, any note, bond, mortgage, indenture, lease deed of trust, licence, agreement or any other instrument or obligation to which the Issuer or any Subsidiary is a party, or by which the Issuer or any Subsidiary may be bound or affected; (iii) results in the creation of any lien, pledge, option, charge, security interest, claim or encumbrance of any nature whatsoever (collectively, "Liens") other than (A) non-material Liens for Taxes, assessments and governmental charges due and being contested in good faith by the Issuer, (B) non-material Liens for Taxes either not due and payable or due but for which notice of assessment has not been given, or which may thereafter be paid without penalty, (C) non-material Liens, charges and privileges incidental to current operations or the ordinary course of business and (D) non-material statutory Liens, charges or adverse claims claimed or held by any governmental authority that have not at the time been filed or registered against the Issuer or that relate to obligations that are not due or delinquent; (iv) infringe any existing applicable law, rule, regulation, judgment, order or decree of any government, governmental body or court, domestic or foreign, having jurisdiction over the Issuer or any of its Subsidiaries or any of its Affiliates or any of its properties, or infringe the rules of the Stock Exchange and if there is any such infringement, the effect of such infringement would not materially affect the ability of the Issuer to perform its obligations prescribed in this Agreement.

(k) Financial Statements

- (i) The audited balance sheet and profit and loss account of the Group for the financial year ended 31 December 2006 (the "Group Financials"), the audited balance sheet and profit and loss account for the CEWH Group for the financial year ended 31 March 2007 (the "CEWH Group Financials"), the

unaudited balance sheet and profit and loss account of the Group for the period up to 30 June 2007 and the unaudited pro forma balance sheet for the Group and the CEWH Group as at 31 December 2006 (as published on 24 September 2007 on the Stock Exchange's website relating to the VSA Circular) have been prepared in accordance with Hong Kong Financial Reporting Standards and Hong Kong Accounting Standards ("HKFRS") consistently applied and give a true and fair view of the financial condition and the results of operations of the Issuer and its Subsidiaries and CEWH Group (as the case may be) as of or as at the dates thereof and for the periods covered therein, and

- (ii) there has been no change (nor any development or event involving a prospective change of which the Issuer is, or might reasonably be expected to be, aware) which is materially adverse to the condition (financial or other), business, properties, shareholders' equity, results of operations or general affairs of the Group since 31 December 2006 or of CEWH Group since 31 March 2007.

(l) Contingent Liabilities

There are no outstanding guarantees or contingent payment obligations of the Issuer or any of its Subsidiaries in respect of indebtedness of third parties (other than amongst members of the Group); each of the Issuer and its Subsidiaries is in compliance with all of its obligations under any outstanding guarantees or contingent payment obligations.

(m) Off-balance Sheet Arrangements

Neither the Issuer nor any of its Subsidiaries are engaged in, party to, or have any material off-balance sheet transactions, arrangements and obligations, and neither the Issuer nor any of its Subsidiaries has any material relationships with unconsolidated entities that are contractually limited to narrow activities that facilitate the transfer of or access to assets by the Issuer or any of its Subsidiaries, such as structured finance entities and special purpose entities, that are reasonably likely to have a material effect on the liquidity of the Issuer or any of its Subsidiaries or the availability thereof or the requirements of the Issuer or any of its Subsidiaries for capital resources.

(n) Internal Accounting Controls

- (i) Each of the Issuer and its Subsidiaries maintains a system of internal accounting controls sufficient to provide reasonable assurance that (A) transactions are executed in accordance with the management's general or specific authorisations; (B) transactions are recorded as necessary to permit the preparation of financial statements in conformity with HKFRS and to maintain asset accountability; (C) access to assets is permitted only in accordance with the management's

general or specific authorisation; and (D) the recorded accountability for its assets and liabilities is compared with the existing assets and liabilities at reasonable intervals and appropriate action is taken with respect to any differences;

- (ii) each of the Issuer and its Subsidiaries has made and kept true and correct books, records and accounts which, in reasonable detail, truly, correctly and fairly reflect the transactions and dispositions of assets of such entity and provide a sufficient basis for the preparation of its financial statements (on a consolidated basis or otherwise) in accordance with HKFRS; and
- (iii) the Issuer's current management information and accounting control system has been in operation for at least 12 months during which neither the Issuer nor any of its Subsidiaries has experienced any material difficulties with regard to (i) and (ii) above.

(o) Title

- (i) Each of the Issuer and its Subsidiaries has legal, good and valid title to all real properties and personal properties and other assets owned by it and any rights or interests thereto, free and clear of all liens, encumbrances and defects that would materially affect the value of such property or interfere with the use made or to be made of such properties or assets by it and each of the Issuer and its Subsidiaries has received all necessary approvals in order to have legal, good and valid title to the foregoing property and assets, including without limitation, approvals relating to the evaluation, acquisition and perfection of title;
- (ii) there are no adverse rights that will interfere in any material respect with use made or to be made by the Issuer or its Subsidiaries of all properties currently owned or occupied by them;
- (iii) where any such property and assets are held under lease by the Issuer or any of its Subsidiaries, each such lease is a legal, valid, subsisting and binding lease enforceable in accordance with its terms, except enforcement thereof may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights generally, moratorium laws or by general principles of equity;
- (iv) each of the Issuer and its Subsidiaries has all licenses, franchises, permits, authorisations, approvals, orders and concessions that are necessary to own, lease and use its properties and assets; and
- (v) the ownership, possession or operations of its properties and assets does not infringe any applicable law, or regulation, judgment, order, authorisation or decree by which the Issuer

or any of its Subsidiaries is bound or to which any of the Issuer's or any of its Subsidiaries' properties or assets are subject.

(p) Licences

The Issuer and its Subsidiaries possess such permits, licences, approvals, consents and other authorisations (collectively, "Governmental Licences") issued by the appropriate governmental or regulatory agencies or bodies necessary to conduct the business now operated by them; the Issuer and its Subsidiaries are in compliance with the terms and conditions of all such Governmental Licences; all of the Governmental Licences are valid and in full force and effect; and neither the Issuer nor any of its Subsidiaries has received any notice of proceedings relating to the revocation or modification (in any material manner) of any such Governmental Licences.

(q) Insurance

(i) The Issuer and each of its Subsidiaries are insured by and maintain insurance policies of recognised financial responsibility against all risks and losses of the business carried on by them, which are in the reasonable opinion of the Issuer prudent and customary for companies carrying on similar business; neither the Issuer nor any of its Subsidiaries has been refused any insurance coverage sought or applied for and neither the Issuer nor any of its Subsidiaries has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a material adverse effect on any Group member (ii) nothing has been done or has been omitted to be done by the Issuer or its Subsidiaries whereby any of the said policies has or may become void or voidable; (iii) no notice of cancellation or termination has been received with respect to any such policies; and (iv) the Issuer or the relevant Subsidiary, as the case may be, is entitled to the full benefits of such insurance.

(r) Litigation

There are no pending actions, suits or proceedings against or affecting the Issuer or any of its Subsidiaries or any of its properties or executive directors is involved in any litigation, arbitration or other proceedings, enquiries or investigation relating to claims which, if determined adversely to the Issuer or any of its Subsidiaries or properties, would individually or in the aggregate, have a material adverse effect on the condition (financial or other), business, property, shareholders' equity, results of operations or general affairs of the Issuer and its Subsidiaries, taken as a whole, or on the ability of the Issuer to perform its obligations under the Notes or the Contracts, or which are otherwise material in the context of the issue of the Notes and, to the best of the Issuer's knowledge, no such actions, suits or proceedings are threatened (in writing) or contemplated.



(s) Labour Disputes

No labour dispute with the employees of the Issuer or any of its Subsidiaries exists or, to the best of the knowledge and belief of the Issuer having made all due enquiries, is imminent which may have a material adverse effect on the Issuer and its Subsidiaries, taken as a whole.

(t) Intellectual Property Rights

(i) The Issuer owns or has valid licences in full force and effect, or otherwise have the legal right to use, all material patents, patent licences, patent rights, inventions, copyrights, trademarks, service marks, trade names, domain names and know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures), information, proprietary rights and processes ("**Intellectual Property**") currently employed and operated by them in connection with the business.

(ii) No member of the Group has received any notice or claim of infringement of or conflict with asserted rights of others with respect to any of the Intellectual Property which, individually or in the aggregate, should an unfavourable decision, ruling or finding be made in respect thereof, would result in material adverse effect on the Group, taken as a whole, and in conducting its business activities, no member of the Group has infringed any patent, copyright, title, trademark, service mark, trade name, domain name or other intellectual property rights already registered by a third party in Hong Kong or any other jurisdiction other than such infringements, which individually or in the aggregate, would have a material adverse effect on the Group, taken as a whole.

(u) Environmental Compliance

(i) Neither the Issuer nor any of its Subsidiaries is in violation of any applicable statute, rule, regulation, ordinance, code, policy, decision or order of any governmental agency or body or any court, domestic or foreign, relating to pollution or protection of human health, or the use, disposal or release of hazardous or toxic substances or relating to the protection or restoration of the environment or human exposure to hazardous or toxic substances (collectively, "**Environmental Laws**"), owns or operates any real property contaminated with any substance that is subject to any Environmental Laws, is liable for any off-site disposal or contamination pursuant to any Environmental Laws, or is subject to any claim relating to any Environmental Laws, which violation, contamination, liability or claim could, individually or in the aggregate, have a material adverse effect on the Issuer and its Subsidiaries, taken as a whole.

- (ii) Each of the Issuer and its Subsidiaries has and, in respect of the existing assets and the new assets acquired by the Issuer under the VSA as the Issuer and its Subsidiaries are aware, each of the Issuer and its Subsidiaries has, all permits, authorisations and approvals required under any applicable Environmental Laws and is in compliance in all material respect with their requirements.
- (iii) There are no pending or threatened (in writing) administrative, regulatory or judicial actions; suits, demands, demand letters, claims, liens, notices of non-compliance or violations, investigation or proceedings relating to any Environmental Laws against the Issuer or any of its Subsidiaries and that would reasonably be expected to implicate in any material respect the Issuer or any of its Subsidiaries.
- (iv) Neither the Issuer nor any of its Subsidiaries is aware of any events or circumstances that might reasonably be expected to form the basis of an order for clean-up or remediation, or an action, suit or proceeding by any private party or governmental body or agency, against or affecting the Issuer relating to hazardous materials or violation of any Environmental Laws.

(v) **Business Contracts**

All contracts, agreements, leases and instruments (the "**Business Contracts**") to which the Issuer or any its Subsidiaries is a party to or otherwise bound and which are material to the assets, liabilities, condition (financial or other), business, properties, shareholders' equity, results of operations or general affairs of the Issuer and its Subsidiaries (taken as a whole) are valid and are in full force and effect and constitute legal, valid and binding obligations of the Issuer or such relevant Subsidiary and, assuming due execution and delivery, of the other parties thereto, and are enforceable in accordance with their respective terms except enforcement thereof which may be limited by bankruptcy, insolvency or other similar laws effecting the enforcement of creditors' rights, moratorium laws or by general principal of equity. The Issuer has no knowledge of any notice or threat to terminate any such Business Contracts which are material to the Issuer and its Subsidiaries (taken as a whole). Neither the Issuer nor, to the best of the Issuer's knowledge and belief having made all due enquiries, any other party is in material default in complying with any provisions of any such Business Contract, and no condition or event or fact exists which, with notice, lapse of time or both, could constitute a material default thereunder on the part of the Issuer or any of its Subsidiaries;

(w) **Disclosure; Due Diligence**

- (i) The Issuer has made all appropriate disclosure and filed all such documents as may be required under the Listing Rules or by the SFO and other applicable laws and regulations.

- (ii) Each of the documents (including periodic reports and announcements) filed with, or submitted to, the Stock Exchange when filed or submitted (A) complied as to form in all material respect with the applicable requirements of the Stock Exchange and (B) was true and correct in all material respect and did not omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading in any material respect, except in each case as superseded in any subsequent filings.
- (iii) There has been no development or occurrence relating to the condition (financial or other), business, properties, shareholders' equity, results of operations or general affairs of the Issuer and its Subsidiaries, taken as a whole, which is not in the public domain and which would reasonably be expected to be material to potential purchasers of the Notes.
- (iv) All information (written or oral) relating to the Group or the CEWH Group provided by the Issuer or its Subsidiaries (or its agents or representatives) to the Placing Agent and its advisers in connection with the Placing is complete, true and correct and not misleading in any material respect.
- (v) All forecasts and estimates relating to the Issuer or any of its Subsidiaries so supplied or disclosed have been made after due, careful and proper consideration, are based on reasonable assumptions and represent reasonable and fair expectations honestly held based on facts known to the Issuer or its Subsidiaries.

(x) Events of Default

No event has occurred or circumstance arisen which, had the Notes already been issued, is likely to (whether or not with the giving of notice and/or the passage of time and/or the fulfilment of any other requirement) constitute an event of default or require an adjustment of the Conversion Price of the Notes.

(y) General Solicitation or General Advertising

Neither the Issuer nor any of its affiliates (as such term is defined in Rule 501(b) under the Securities Act), or any persons acting on their behalf (other than the Placing Agent or the Sub-agent as to which the Issuer makes no representation) has engaged, or will engage, in connection with the Placing, any form of general solicitation or general advertising within the meaning of Rule 502(c) under the Securities Act.

(z) No U.S. Registration

Neither the Issuer nor any of its affiliates (as such term is defined in Rule 501(b) under the Securities Act), or any persons acting on their behalf (other than the Placing Agent or the Sub-agent as to which the

Issuer makes no representation) has, directly or indirectly, solicited any offer to buy, sold or effect to sell, offer or offer to sell or solicit offer to buy or otherwise negotiated in respect of any securities to any U.S. citizen or resident, in the United States or which would be integrated with the sale of the Notes in a manner that would require the registration of any of the Notes under the Securities Act.

(aa) Directed Selling Efforts

With respect to the Placing, (i) none the Issuer or any of its affiliates (as such term is defined in Rule 501(b) under the Securities Act), or any persons acting on their behalf (other than the Placing Agent or the Sub-agent) has engaged, or will engage, in any "directed selling efforts" within the meaning of Regulation S, and (ii) each of the Issuer and its affiliates (as such term is defined in Rule 501(b) under the Securities Act), or any persons acting on their behalf (other than the Placing Agent or the Sub-agent) has complied and will comply with the offering restriction requirements of Regulation S. The Issuer is a "foreign issuer" (as such term is defined in Rule 902(e) under the Securities Act) that reasonably believes that there is no "substantial U.S. market interest" (as such term is defined in Rule 902(j) under the Securities Act) with respect to any debt or equity securities of the Issuer.

(bb) OFAC

Neither the Issuer nor any of its Subsidiaries or its respective Affiliates are currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury.

(cc) FCPA

Neither the Issuer nor any of its Subsidiaries or its respective Affiliates has used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977 (the "FCPA"); or made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment prohibited under any applicable law or regulation equivalent to the FCPA.

(dd) Anti-Money Laundering

The operations of the Issuer and each of its Subsidiaries are and have been conducted at all times in compliance with applicable financial record keeping and reporting requirements and money laundering laws, rules, regulations and guidelines in Hong Kong and other applicable jurisdictions, and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Issuer or any of its Subsidiaries with respect to money laundering laws is pending or threatened.

(ee) Pre-emptive or Other Third Party Rights

The Issuer has made available free from pre-emptive or other third party rights out of its authorised but unissued share capital such number of Shares as would or may be required to be issued upon conversion at the Conversion Price of all of the Notes now being issued, and the Shares when issued and delivered in accordance with the Trust Deed and the Notes will be freely transferable, duly and validly issued, fully paid and non-assessable and free and clear from all liens, charges, encumbrances, security interests and other third party rights.

(ff) Ranking of the Shares

The Shares to be issued upon conversion of the Notes will rank *pari passu* in all respects with all other Shares in issue of the Issuer and be entitled to all dividends and other distributions declared, paid or made by the Issuer upon issue.

(gg) No Restrictions applicable to the Shares

There are no restrictions which will be applicable to the Shares generally upon the voting or transfer of any of the Shares pursuant to the Issuer's constitutional documents or pursuant to any agreement or other instrument to which the Issuer is a party or by which the Issuer may be bound.

(hh) Authorised Share Capital

The Issuer has an authorised share capital of HK\$40,000,000 divided into 4,000,000,000 Shares, of which 553,625,000 Shares have been issued; all of the issued Shares (or Shares committed under any option or other rights) of the Issuer have been duly and validly authorised and issued and are fully paid or credited as fully paid and non-assessable.

(ii) Public Record

All publicly available information published and approved for publication by, and records filed by the Issuer or any of its Subsidiaries for public record are true and accurate and not misleading in any material respect.

## 5.2 Interpretation

- (a) For the purpose of this Clause 5, the term "Subsidiaries" includes the VSA Entities existing at the time of completion of the VSA.
- (b) Prior to completion of the VSA, the Issuer shall not be or deemed to be in breach of any warranties given in Clause 5.1 in respect of any matter, fact or event of the VSA Entities which is attributable to or occurred or appeared at any time preceding completion of the VSA. Forthwith upon completion of the VSA, the parties agree and acknowledge that this Clause 5.2(b) shall cease to have effect from

the date of this Agreement as if this Clause 5.2(b) had never existed in this Agreement.

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## **6 Undertakings by the Issuer**

The Issuer undertakes with the Placing Agent as follows:

### **6.1 Taxes**

The Issuer will pay (a) any stamp, issue, registration, documentary or other taxes and duties, including interest and penalties, payable by it in Hong Kong, the Cayman Islands, the British Virgin Islands and the PRC or other relevant jurisdictions on or in connection with the creation, issue and offering of the Notes or the execution or delivery of the Contracts; and (b) in addition to any amount payable by it under this Agreement, any value added, turnover or similar tax (other than a tax levied on the overall tax income of the Placing Agent or Sub-Agents) payable in respect of that amount. The Issuer shall indemnify the Placing Agent against any claim, demand, action, liability, damages, cost, loss or expense (including, without limitation, reasonable legal fees) which it may incur as a result or arising out of or in relation to any failure to pay or delay in paying any of the same except where such failure or delay is caused by the gross negligence, wilful default or fraud on the part of the Placing Agent.

### **6.2 Warranties**

The Issuer will as soon as practicable notify the Placing Agent if at any time prior to the tenth day following the Closing Date anything occurs which renders or may render untrue or incorrect any of the representations and warranties (assuming and deeming them to have been repeated at the time of the occurrence) contained in Clause 5 and will as soon as practicable take such steps as the Placing Agent may reasonably require to remedy and/or publicise the fact.

### **6.3 Delivery of Notes and issue of Shares**

The Issuer will make such reasonable arrangements satisfactory to the Placing Agent as it can to ensure that the Global Note and any definitive Notes are delivered to the paying and conversion agent (to be appointed pursuant to the Agency Agreement) for authentication in the form required by, and otherwise in accordance with, the Trust Deed and the Agency Agreement.

The Issuer will deliver, in accordance with the Trust Deed, the Shares free and clear of all liens, claims, charges, security, encumbrances or like interests upon conversion of the Notes.

### **6.4 Due Diligence**

The Issuer will, to the reasonable satisfaction of the Placing Agent, its agents, representatives and professional legal advisers, co-operate with them and give full access to all facilities and information including but not limited the business, assets, liabilities, contracts and affairs of the Group and other evidence of ownership of the assets owned by the Group in respect of, and participate in, the due diligence procedures required by the Placing Agent in connection with the issue and distribution of the Notes.

## **6.5 Restrictions on Other Issues**

Neither the Issuer nor any of its Affiliates or any person acting on its or their behalf will, for a period from the date of this Agreement up to 90 days after the Closing Date ("Lock-up Period"), without the prior written consent of the Placing Agent (such consent not to be unreasonably withheld or delay):

- (a) offer, allot, issue or sell, or agree to allot, issue or sell, grant or agree to grant any option, right or warrant over, or otherwise dispose of (or enter into any transaction which is designed to, or might reasonably be expected to, result in the disposition (whether by actual disposition or effective economic disposition due to cash settlement or otherwise) by the Issuer or any of its Affiliates), either directly or indirectly, conditionally or unconditionally, any Shares or any securities convertible into or exchangeable for such Shares or enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of subscription or ownership of Shares or such securities, whether any of the foregoing transactions is to be settled by delivery of Shares or such securities, in cash or otherwise or announce any intention to effect any such transaction during the Lock-up Period; and
- (b) issue or create any mortgage, pledge, charge or other security interest or any rights in favour of any other person over, directly or indirectly, conditionally or unconditionally, any Shares or other securities of the Issuer or any interest therein (including but not limited to any securities that are convertible into or exchangeable for, or that represent the right to receive, any Shares or securities of the Issuer) or repurchase any Shares or securities of the Issuer or grant any options, warrants or other rights to subscribe for any Shares or other securities of the Issuer or agree to do any of the foregoing,

save for the issue of Shares pursuant to (a) the conversion provisions of the Notes; (b) any obligation in existence at the date of this Agreement; (c) the terms and conditions of the convertible notes in relation to the VSA; and (d) the outstanding share options granted under the Share Option Scheme or which has otherwise been disclosed to the Placing Agent, and save further for the granting of any options under the Share Option Scheme.

## **6.6 No Adjustments of the Conversion Price prior to Closing Date**

Between the date of this Agreement and the Closing Date (both dates inclusive), neither the Issuer nor any Person acting on behalf of its behalf will take, directly or indirectly, any action designed to or which constitutes or which might reasonably be expected to cause or result in an adjustment of the Conversion Price of the Notes.

## **6.7 No Encumbrances**

The Issuer shall deliver, in accordance with the Trust Deed, the Shares to be issued upon conversion of the Notes free and clear of all liens, claims, charges, security, encumbrances or like interests upon conversion of the Notes.

## **6.8 No Announcements**

From the date of this Agreement to (and including) the Closing Date, neither the Issuer shall, without the prior written consent of the Placing Agent, make any public announcement which might reasonably be expected to have a material adverse effect on the marketability of the Notes other than any public announcement required to be made by any applicable law, regulation or listing rules governing the Issuer and the Shares, provided that, subject to compliance with applicable laws, prior to the making or despatch thereof the Issuer shall consult (to the maximum extent practicable) with the Placing Agent as to the content, timing and manner of making such public announcement or despatch thereof and the Issuer shall consider all reasonable requests of the Placing Agent in relation thereto.

## **6.9 Use of Proceeds**

The Issuer shall use the proceeds from the issue of the Notes for engagement of capital, capital expenditures on factories as well as general working capital including expanding domestic and overseas network, marketing and research and development and financing of future investments in furtherance of its business.

## **6.10 Approvals and listing**

The Issuer will use its best endeavours to obtain and maintain all approvals and consents and promptly to make all notifications, registrations and filings as may from time to time be required to be obtained, maintained or made on the part of the Issuer in relation to the Notes and the Shares issuable upon conversion of the Notes, including a listing of Shares issuable upon conversion of the Notes on the Stock Exchange or, if it is unable to maintain such listings having used such best endeavours, use its best endeavours to obtain and maintain a listing of the Shares, as the case may be, on such other stock exchange or exchanges satisfactory to the parties hereto and to the trustee.

## **6.11 Right of first refusal**

So long as any Note remains outstanding, if the Issuer receives a firm written offer from a prospective investor, arranger or a lead manager to acquire, arrange or underwrite an offer to issue and allot any securities, debt or Shares of the Issuer, which the Issuer internally resolves to take up, the Issuer shall inform the Placing Agent in writing of the material terms and conditions of any such offer. The Placing Agent or any of its affiliates has the right to make (but not obliged to) a written proposal to the Issuer by delivering a written notice to the Issuer within five Business Days. If the Issuer considers in its reasonable opinion that the Placing Agent's written proposal as set out in such notice is equal to or materially matches the previous offer, the Issuer shall accept the Placing Agent's offer to participate in the proposed issuance and allotment.

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# **7 Conditions Precedent**

## **7.1 Conditions Precedent**

The obligations of the Placing Agent under this Agreement and completion of which are conditional upon the following:

- (a) the execution and delivery of the Contracts by the respective parties;



- (b) the representations and warranties being true and correct in all material respects as of the date hereof and as of the Closing Date;
- (c) the Issuer having performed all of its obligations required to be performed by it under this Agreement (to the extent required to be performed by it on or before the Closing Date);
- (d) there having been, as at the Closing Date, no change (nor any development or event involving a prospective change of which the Issuer is, or might reasonably be expected to be, aware) which is materially adverse to the condition (financial or other), business, properties, shareholders' equity, results of operations or general affairs of the Group, since 31 December 2006, and with respect of CEWH Group since 31 March 2007 respectively;
- (e) there having been delivered to the Placing Agent certificates dated the Closing Date, signed by a duly authorised officer of the Issuer (substantially in the form of Schedule 2) to the effect stated in (b) - (d) above;
- (f) on or before the Closing Date, there having been delivered to the Placing Agent opinions, in form and substance reasonably satisfactory to the Placing Agent, dated as of the Closing Date, of
  - (i) Michael Li & Co., legal advisers to the Issuer as to Hong Kong laws;
  - (ii) Mallesons Stephen Jaques, legal advisers to Placing Agent as to Hong Kong laws;
  - (iii) Jun He Law Offices, legal advisers to the Placing Agent as to PRC laws,
  - (iv) Conyers Dill & Pearman, legal advisers to the Issuer as to the British Virgin Islands laws; and
  - (v) Conyers Dill & Pearman, legal advisers to the Issuer as to the Cayman Islands laws;
- (g) the Stock Exchange having granted an approval for the listing of and permission to deal in the Shares to be issued upon conversion of the Notes;
- (h) the Issuer shall have obtained its shareholder's approval and all other necessary government and/or regulatory and internal approvals for the transaction contemplated under the VSA;
- (i) the Placing Agent shall have been satisfied in its sole and absolute discretion with the results of the due diligence investigations conducted by it (or its agent(s) or adviser(s)) on the Issuer, its Subsidiaries and CEWH Group (whether legal, financial position, business, assets or otherwise);
- (j) on or before the Closing Date, there having been delivered to the Placing Agent any other documents (including, but not limited to, any

resolutions, consents and authorities) which are necessary for and incidental to the issue of the Notes as the Placing Agent may reasonably require; and

- (k) the VSA having been duly completed in accordance with the terms and conditions of the sale and purchase agreement dated 29 June 2007 entered into between a wholly-owned Subsidiary of the Issuer and other parties named therein in relation to the VSA.

## **7.2 Waiver**

The Placing Agent may, at its discretion and upon such terms as it thinks fit, waive compliance with the whole or any part of Clause 7.1 (other than Clause 7.1(g)).

Upon satisfaction of all the conditions which have not been waived by the Placing Agent, the Issuer shall give a notice in writing to the Placing Agent confirming such satisfaction. The notice shall also set out the scheduled Closing Date which shall be the seventh day following the date of such notice.

If any of the conditions set forth in clause 7.1 is not satisfied or waived on or prior to 6 December 2007, the parties hereto shall be released and discharged from their respective obligations relating to the Notes (except for the respective obligations of the parties pursuant to clause 13 and save and except any antecedent breach of the terms of this Agreement prior to such date).

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## **8 Closing**

### **8.1 Delivery of Global Note and Registration of Holdings**

Not later than 10.00 a.m. (Hong Kong time) on the Closing Date, the Issuer will issue and deliver to the Placing Agent or its order in such place as the Placing Agent may reasonably require the Global Note duly executed and authenticated on behalf of the Issuer and registered in the name of a nominee of the common depositary and will register the holdings of the Notes represented by the Global Note in the register maintained by the registrar for the Notes outside of Hong Kong.

### **8.2 Payment**

Immediately against such delivery and registration, the Placing Agent will, subject to the conditions mentioned in Clause 7, pay, or procure to be paid, to the Issuer in Hong Kong dollars, the net subscription moneys (being the amount of the Notes placed less all legal fees payable to Mallesons Stephen Jaques and Jun He Law Offices in respect of the Placing and any amounts deductible under, or under any arrangements referred to in, Clause 9 and Clause 10 (up to the extent that such amounts can be ascertained with reasonable certainty at the time of payment to the Issuer)) for the Notes placed by it. Such payment shall be made by or on behalf of the Placing Agent in Hong Kong dollars in same day settlement funds to such Hong Kong dollar account in Hong Kong as shall be notified by the Issuer to the Placing Agent not later than five Business Days prior to the Closing Date, evidence of such payment taking the form of a confirmation by the paying bank that it has made the relevant payment to the Issuer.

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## **9 Commission**

The Issuer agrees to pay to the Placing Agent a commission (comprising of a selling concession and a management fee) of 3% of the principal amount of the Notes placed in the Placing. Such commission shall be deducted from the subscription moneys for the Notes, if any, subscribed by the Placing Agent.

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## **10 Fees and Expenses**

### **10.1 General Expenses**

The Issuer agrees to pay, or in the case of expenses incurred by the Placing Agent, reimburse as soon as practicable upon presentation of invoices, to the extent reasonable and properly incurred:

- (a) all costs and expenses in connection with (i) the preparation, production and (where appropriate) printing of the Notes, the Contracts and all other documents relating to the issue of the Notes; (ii) the initial delivery and distribution (including transportation and packaging) of the Notes; and (iii) the listing of the Shares on Stock Exchange; and
- (b) the fees and expenses of the Placing Agent's legal counsel and any other professional advisers engaged by the Placing Agent in connection with the issue of the Notes and all travelling, telecommunications, postage, accommodation, marketing and other out-of-pocket and road show and investor presentation expenses, disbursements of the Placing Agent, any charges levied by regulators or Stock Exchange.

### **10.2 Issuer's Other Expenses**

The Issuer shall bear and pay, to the extent properly and reasonably incurred:

- (a) the fees and expenses of the trustee and the agents appointed under the Trust Deed and the Agency Agreement in relation to the preparation and execution of the Contracts, the issue and authentication of the Notes and the performance of their duties under the Contracts, including the legal fees and expenses of trustee's counsel; and
- (b) the fees and expenses of the legal, accountancy and any other professional advisers instructed by the Issuer in connection with the creation and issue of the Notes.

### **10.3 Withholding Tax**

All payments by the Issuer under this Agreement shall be paid without set-off or counterclaim, and free and clear of and without deduction or withholding for or on account of, any present or future taxes, levies, imports, duties, fees, assessments or other charges of whatever nature (other than income tax in respect of the commission receivable by the recipients in relation to the Placing), imposed by Bermuda, the British Virgin Islands, the Cayman Islands, Hong Kong, the PRC or any other relevant jurisdiction or by any department, agency or other political subdivision or taxing authority thereof or therein, and all interest, penalties or similar liabilities with respect thereto.

If any taxes are required by law to be deducted or withheld in connection with any such payment, the Issuer will increase the amount paid so that the full amount of such payment is received by the payee as if no such deduction or withholding had been made. In addition, the Issuer agrees to indemnify and hold the Placing Agent harmless against any taxes (other than income tax in respect of the commission receivable by the recipients in relation to the Placing), which it is required to pay in respect of any amount paid by the Issuer under this Agreement.

#### **10.4 Stamp Duties**

The Issuer shall pay all stamp, registration and other taxes and duties (including any interest and penalties thereon or in connection therewith) which may be payable by it upon or in connection with the creation and issue of the Notes and the execution of the Contracts, and the Issuer shall indemnify the Placing Agent against any claim, demand, action, liability, damages, cost, loss or expense (including, without limitation, reasonable legal fees) which it may incur as a result or arising out of or in relation to any failure to pay or delay in paying any of the same except where such failure or delay is caused by the gross negligence, wilful default or fraud on the part of the Placing Agent.

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### **11 Indemnification**

**11.1** Without prejudice to the other rights or remedies of the Placing Agent, the Issuer undertakes to the Placing Agent that if the Placing Agent or any of its affiliates, directors, officers, employees, agents or controlling persons (within the meaning of section 15 of the Securities Act and Section 20 of the U.S. Securities Exchange Act of 1934, as amended) (together with the Placing Agent, each a "Relevant Party") incurs any liability, damages, cost, loss or expense (including, without limitation, legal fees, costs and expenses) (a "Loss") arising out of, in connection with, or based on:

- (a) any actual or alleged breach of the representations, warranties and undertakings contained in, or made or deemed to be made by the Issuer under, this Agreement; or
- (b) any untrue or misleading (or allegedly untrue or misleading) statement in, or any omission (or alleged omission) from, any materials provided by the Issuer and used in the offering and sale of the Notes; or
- (c) the failure by the Issuer or any of the Issuer's directors or officers to comply with the requirements of the applicable laws or regulation in relation to the offering and sale of the Notes,

the Issuer shall pay to the Placing Agent within 7 (seven) days after a written demand is made by the Placing Agent an amount equal to such Loss. The Placing Agent shall not have any duty or obligation, whether as fiduciary or trustee for any Relevant Party or otherwise, to recover any such payment or to account to any other Person for any amounts paid to it under this Clause 11.1.

- 11.2** In case any action shall be brought against any Relevant Party in respect of which recovery may be sought from the Issuer under this Clause 11, the Placing Agent shall promptly notify the Issuer in writing but failure to do so will not relieve the Issuer from any liability under this Agreement.
- 11.3** The Issuer shall, without the prior written consent of the Relevant Party, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim or action in respect of which recovery may be sought hereunder (whether or not any Relevant Party is an actual or potential party to such claim or action) unless such settlement, compromise or consent includes an unconditional release of each Relevant Party from all liability arising out of such claim or action and does not include a statement as to or an admission of fault, culpability or failure to act by or on behalf of a Relevant Party.
- 11.4** If a judgment, order or proof of debt for an amount in connection with the Contracts is expressed in a currency other than U.S. Dollars, then the Issuer will indemnify the Placing Agent against any loss incurred by the Placing Agent as a result of any variation between:
- (a) the rate of exchange at which the U.S. Dollar amount is converted into the judgment currency for the purpose of such judgment or order; and
  - (b) the rate of exchange at which the Placing Agent is able to purchase U.S. Dollars with the amount of the judgment currency actually received by the Placing Agent.

The term "rate of exchange" includes any premiums and costs of exchange payable in connection with the purchase of or conversion into U.S. Dollars.

- 11.5** The foregoing indemnities are separate and independent obligations of the Issuer and shall continue in full force and effect notwithstanding the termination of this Agreement.

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## **12 Termination**

### **12.1 The Placing Agent's Ability to Terminate**

Notwithstanding anything contained in this Agreement, the Placing Agent may, by giving written notice to the Issuer at any time prior to payment of the net subscription moneys for the Notes to the Issuer on the Closing Date, terminate this Agreement in any of the following circumstances:

- (a) if there shall have come to the notice of the Placing Agent any breach by the Issuer of, or any event rendering untrue or incorrect (as the case may be), any of the warranties and representations (assuming and deeming them to have been repeated at the time of the occurrence) contained in Clause 5 or any failure to perform any of the Issuer's undertakings or agreements in this Agreement (to the extent required to be performed by it on or before the Closing Date);
- (b) if any of the conditions specified in Clause 7 has not been satisfied or waived by the Placing Agent by the Closing Date; or
  - (i) if, in the Placing Agent's sole and absolute opinion, since the date of this Agreement, there shall have been such a change (whether or not foreseeable at the date of this Agreement) in national or international 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 Notes or dealings in the Notes in the secondary market or (ii) if there occurs any disruption to trading generally on the New York Stock Exchange, the NASDAQ Stock Market, the London Stock Exchange, Shanghai Stock Exchange, Shenzhen Stock Exchange or the Stock Exchange or (iii) there occurs a suspension in trading in the Issuer's securities on the Stock Exchange for a consecutive period of 5 trading days (save in respect of any suspension in trading of the Shares for the purposes of clearing an announcement in respect of the issue of the Notes or otherwise in relation to the transactions contemplated in or relating to this agreement);

- (c) if, in the Placing Agent's sole and absolute opinion, there occurs any attack on, outbreak or escalation of hostilities, act of terrorism, disease or social instability involving the United States, the United Kingdom, the PRC, the British Virgin Islands, the Cayman Islands or Hong Kong; or
- (d) a banking moratorium has been declared by any authorities in the United States, the United Kingdom, the PRC, the British Virgin Islands, the Cayman Islands or Hong Kong.

## 12.2 Consequences of Termination

Upon such notice being given this Agreement shall terminate and be of no further effect and no party shall be under any liability to any other in respect of this Agreement, except that the Issuer shall remain liable for the payment of all costs and expenses referred to in Clause 10 and any liabilities arising before or in relation to such termination and any liabilities arising before or in relation to such termination and the respective obligations of the parties hereto pursuant to clause 13 which would have continued had the arrangements for the subscription and issue of the Notes been completed, shall continue.

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## 13 Survival of Representations and Obligations

The representations, warranties, agreements, undertakings and indemnities of the Issuer in this Agreement shall continue in full force and effect notwithstanding the Placing Agent's actual or constructive knowledge with respect to any of the matters referred to in the representations and warranties given by the Issuer, the completion of the arrangements set out in this Agreement for the subscription and issue of the Notes or the termination of this Agreement pursuant to clause 12.

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## 14 Communications

- 14.1 Any notice required to be given under this Agreement shall be in writing in the English language and shall be communicated to the address specified in Clause 14.2 and may be:
  - (a) personally delivered, in which case it shall be deemed to have been given upon delivery at the relevant address;

- (b) if within Hong Kong, sent by pre-paid post, in which case it shall be deemed to have been given two Business Days after the date of posting;
- (c) if from or to any place outside Hong Kong, sent by pre-paid airmail, in which case it shall be deemed to have been given seven Business Days after the date of posting; or
- (d) sent by facsimile, in which case it shall be deemed to have been given when dispatched, subject to confirmation of uninterrupted transmission by a transmission report, provided that any notice dispatched by facsimile after 5:00 p.m. on any day shall be deemed to have been received at 9:00 a.m. on the next Business Day.

#### **14.2 Addresses**

in the case of notices to the Issuer, to the Issuer at:

Wah Yuen Holdings Limited

2nd Floor

On Shing Industrial Building

2-16 Wo Liu Hang Road

Fo Tan, Shatin

New Territories

Hong Kong

Fax no.: +852 2691 0971

Attention: The Board of Directors

in the case of notices to the Placing Agent, to the Placing Agent at:

BOCI Asia Limited

26th Floor

Bank of China Tower

1 Garden Road

Hong Kong

Fax no.: +852 2840 1032

Attention: Debt Capital Markets

- 14.3** Any party may notify the other party of any change to the address or any of the other details specified in Clause 14.2, provided that such notification shall only

be effective on the date specified in such notice or five Business Days after the notice is given, whichever is later.

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## **15 Governing Law and Jurisdiction**

### **15.1 Governing Law**

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

### **15.2 Jurisdiction**

Subject to subclause 15.3, the Issuer hereby agrees for the benefit of the Placing Agent that the courts of Hong Kong are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement and accordingly submits to the exclusive jurisdiction of such courts. The Placing Agent may take any suit, action or proceedings (together referred to as Proceedings) against the Issuer in any other court of competent jurisdiction and concurrent proceedings in any number of jurisdictions.

### **15.3 Immunity**

The Issuer hereby irrevocably and unconditionally waives with respect to this Agreement any right to claim sovereign or other immunity from jurisdiction or execution and any similar defence, and irrevocably and unconditionally consents to the giving of any relief or the issue of any process, including, without limitation, the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment made or given in connection with any proceedings.

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## **16 Counterparts**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original.



# Placing Agreement

## Schedule 1 - Selling Restrictions

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### 1 General

No action has been or will be taken in any jurisdiction by the Issuer or the Placing Agent that would permit a public offering of the Notes or possession or distribution of any offering or publicity material relating to the Notes, in any country or jurisdiction where action for that purpose is required. The Placing Agent agrees that it is duly authorised to enter into and to act under this Agreement and will comply with all applicable laws and regulations in each jurisdiction in which it, directly or indirectly, acquires, offers, sells or delivers the Notes. It will also ensure that no obligations are imposed on the Issuer (save with the consent of the Issuer) in any such jurisdiction as a result of any of its actions. The Issuer will have no responsibility for, and the Placing Agent shall obtain any consent, approval or permission required by it for, the offer, sale or delivery by it of the Notes under the laws and regulations in force in any jurisdiction to which it is subject or in or from which it makes any offer, sale or delivery.

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### 2 United States

The Notes have not been and will not be registered under 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 in accordance with Regulation S under the Securities Act or pursuant to an exemption from the registration requirements of the Securities Act. Terms used in this paragraph have the meanings given to them by Regulation S.

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### 3 United Kingdom

The Placing Agent represents, warrants and agrees that:

- (a) 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 Financial Services and Markets Act 2000 (the "FSMA")) received by it in connection with the issue or sale of any Notes in circumstances in which section 21(1) of the FSMA does not apply; and
- (b) it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the Notes in, from or otherwise involving the United Kingdom.

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### 4 European Economic Area

In relation to each Member State of the European Economic Area which has implemented the Prospectus Directive (each, a "Relevant Member State"), the Placing Agent represents, warrants and agrees that, with effect from and

including the date on which the Prospectus Directive is implemented in that Relevant Member State (the "Relevant Implementation Date"), it has not made and will not make an offer of the Notes to the public in that Relevant Member State prior to the publication of a prospectus in relation to the Notes which has been approved by the competent authority in that Relevant Member State or, where appropriate, approved in another Relevant Member State and notified to the competent authority in that Relevant Member State, all in accordance with the Prospectus Directive, except that it may, with effect from and including the Relevant Implementation Date, make an offer of the Notes to the public in that Relevant Member State at any time:

- (a) to legal entities which are authorised or regulated to operate in the financial markets or, if not so authorised or regulated, whose corporate purpose is solely to invest in securities;
- (b) to any legal entity which has two or more of (i) an average of at least 250 employees during the last financial year; (ii) a total balance sheet of more than 43,000,000 Euros and (iii) an annual net turnover of more than 50,000,000 Euros, as shown in its last annual or consolidated accounts; or
- (c) in any other circumstances which do not require the publication by the Issuer of a prospectus pursuant to Article 3 of the Prospectus Directive.

For the purposes of this provision, the expression "an offer of Notes to the public" in relation to any Notes in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the Notes to be offered so as to enable an investor to decide to purchase or subscribe the Notes, as the same may be varied in that Member State by any measure implementing the Prospectus Directive in that Member State and the expression Prospectus Directive means Directive 2003/71/EC and includes any relevant implementing measure in each Relevant Member State.

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## 5 Japan

The Notes have not been and will not be registered under the Securities and Exchange Law of Japan (the Securities and Exchange Law) and the Placing Agent agrees that it will not offer or sell any Notes, directly or indirectly, in Japan or to, or for the benefit of, any 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 resale, directly or indirectly, in Japan or to a resident of Japan except pursuant to an exemption from the registration requirements of, and otherwise in compliance with, the Securities and Exchange Law and any other applicable laws and regulations of Japan.

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## 6 Hong Kong

The Placing Agent represents and agrees that:

- (a) it has not offered or sold and will not offer or sell in Hong Kong, by means of any document, any Notes other than (i) to "professional

investors” as defined in the SFO and any rules made under that ordinance; or (ii) in other circumstances which do not result in the document being a “prospectus” as defined in the Companies Ordinance (Cap. 32) of Hong Kong or which do not constitute an offer to the public within the meaning of that ordinance; and

- (i) it has not issued or had in its possession for the purpose of issue, and will not issue or have in its possession for the purpose of issue, whether in Hong Kong or elsewhere, any advertisement, invitation or document relating to the Notes, 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 the Notes which are or are intended to be disposed of only to persons outside Hong Kong or only to “professional investors” as defined in the SFO and any rules made under that ordinance.

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## 7 Singapore

The Notes have not been registered and will not be registered with the Monetary Authority of Singapore under the Securities and Futures Act, Chapter 289 of Singapore, as amended (the “Securities and Futures Act”). The Placing Agent represents, warrants and agrees that the Notes may not be offered or sold or made the subject of an invitation for subscription or purchase nor may the prospectus or any other document or material in connection with the offer or sale or invitation for subscription or purchase of any Notes be circulated or distributed, whether directly or indirectly, to the public or any member of the public in Singapore other than (a) to an institutional investor or other person falling within Section 274 of the Securities and Futures Act, (b) to a relevant person, or any person pursuant to Section 275(1A) of the Securities and Futures Act, and in accordance with the conditions specified in Section 275 of the Securities and Futures Act or (c) otherwise than pursuant to, and in accordance with the conditions of, any other applicable provision of the Securities and Futures Act.

# Placing Agreement

## Schedule 2 - Form of Closing Certificate of the Issuer

\_\_\_\_\_ 2007

To: BOCI Asia Limited  
26th Floor  
Bank of China Tower  
1 Garden Road  
Hong Kong

Attention: Debt Capital Markets

Dear Sirs

Wah Yuen Holdings Limited (the "Issuer")  
HK\$122,000,000 3% Unsecured and Unsubordinated due 2010 (the "Notes")

I, being a duly authorised officer of the Issuer, refer to the Placing Agreement dated 22 October 2007 (the "Placing Agreement") between the Issuer and BOCI Asia Limited relating to the issue of the Notes.

As required by the Placing Agreement, I certify that: (a) the representations and warranties of the Issuer contained in the Placing Agreement are true and correct at, and as if made, today, (b) the Issuer has performed all of its obligations under the Placing Agreement required to be performed by it under the Placing Agreement (to the extent required to be performed by it on or before today) and (c) there has been no change (nor any development or event involving a prospective change of which the Issuer is, or might reasonably be expected to be, aware) which is materially adverse to the condition (financial or other), business, properties, shareholders' equity, results of operations or general affairs of the Group, since 31 December 2006, and with respect of CEWH Group since 31 March 2007 respectively (as defined in the Placing Agreement).

Yours faithfully

Wah Yuen Holdings Limited

By: \_\_\_\_\_  
[name]  
Director

# Placing Agreement

## Schedule 3 - Form of Conditions of the Notes

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## TERMS AND CONDITIONS OF THE NOTES

The HK\$122,000,000 3% Unsecured and Unsubordinated Convertible Notes due 2010 (the "Notes" as further described in Condition 2) of Wah Yuen Holdings Limited (the "Issuer") are constituted by a trustee deed, dated as of [•] 2007 (as amended or supplemented from time to time) (the "Trust Deed"), made between the Issuer and [•] (the "Trustee") which expression shall include its successors as trustee under the Trust Deed, as trustee for the holders of the Notes (the "Noteholders"). The issue of the Notes was authorised by resolutions of the Board of Directors of the Issuer adopted on [•] 2007. The statements of these Terms and Conditions ("Conditions") include summaries of, and are subject to, the detailed provisions of, and definitions in, the Trust Deed. The Notes also have the benefit of an agency agreement, dated as of [•] 2007 (as amended or supplemented from time to time) (the "Agency Agreement"), made among the Issuer, the Trustee, the Paying and Conversion Agent (as defined below), the transfer agent and the registrar. Copies of the Trust Deed and the Agency Agreement are available for inspection during normal business hours at the registered office of the Trustee, being at the date hereof at [•], and at the specified office of the Paying and Conversion Agent. The Noteholders are entitled to the benefit of the Trust Deed and are bound by, and are deemed to have notice of, all the provisions of the Trust Deed and the Agency Agreement.

The Issuer has appointed [•] as the Paying and Conversion Agent, the transfer agent and the registrar.

Each Note is convertible into the Shares (as defined below), subject to the provisions described in these Conditions.

### 1. Certain Definitions

Set forth are certain defined terms. Reference should be made to the Trust Deed for a definition of capitalised terms used and for which no definition is provided herein.

"**Accountholder**" means a Person who is for the time being shown in the records of Euroclear or Clearstream, Luxembourg (other than Clearstream, Luxembourg, if Clearstream, Luxembourg shall be an accountholder of Euroclear, and Euroclear, if Euroclear shall be an accountholder of Clearstream, Luxembourg) as the holder of a particular amount of such Notes and in which regard any certificate or document issued by Euroclear or Clearstream, Luxembourg as to the principal amount of the Notes standing to the account of any Person shall be conclusive and binding;

"**Accounting Principles**" means generally accepted accounting principles in Hong Kong, including Hong Kong Financial Reporting Standards;

"**Affiliate**" means, with respect to any specified Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, "control" when used with respect to any Person means the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms "controlling" and "controlled" and "under common control with" have meanings correlative to the foregoing;

"**Alternative Stock Exchange**" means at any time, in the case of the Shares, if they are not at that time listed and traded on the Stock Exchange, the principal stock

exchange or securities market, if any, on which the Shares are then listed or quoted or dealt in;

**"Average Closing Price"** means the arithmetic average of the closing price per Share of each Trading Day during the Relevant Period;

**"Business Day"** means a day other than a Saturday or Sunday or a day on which a tropical cyclone warning no. 8 or above or a black rainstorm warning signal is hoisted in Hong Kong at any time between 9:00 a.m. and 5:00p.m. on which commercial banks are open for business during their normal business hours in Hong Kong;

**"Capital Distribution"** means (a) any distribution of assets in specie by the Issuer for any financial period whenever paid or made and however described, and for these purposes a distribution of asset in specie, includes, without limitation, an issue of Share or other securities credited as fully or partly paid (other than Shares credited as fully paid) by way of capitalisation of reserves, and (b) any cash Dividend by the Issuer for any financial period (whenever paid and however described) which is an Extraordinary Dividend;

**"Capital Stock"** means, with respect to any Person, any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents (however designated, whether voting or non-voting) in equity of such Person, whether outstanding or issued thereafter, including, without limitation, all common stock and preferred stock;

**"CCASS"** the Central Clearing and Settlement System operated by the Hong Kong Securities Clearing Co., Ltd.;

**"Clearstream, Luxembourg"** means Clearstream Banking, *société anonyme* S.A.;

**"Consolidated Total Debt"** means the amount equal to the aggregate outstanding Indebtedness of the Issuer on a consolidated basis;

**"Conversion Expenses"** means any stamp, documentary, issue, transfer and registration taxes, duties and other expenses relating to the issuance of the Convertible Shares;

**"Conversion Price"** means the price at which Shares will be issued upon conversion, as adjusted from time to time, which will initially be HK\$1.43 per Share but will be subject to adjustment in the manner provided in Condition 6;

**"Convertible Shares"** means new Shares which may fall to be allotted and issued by the Issuer upon the exercise of the Conversion Rights;

**"Current Market Price"** means, in respect of a Share at a particular time on a particular date, the average of the volume weighted average trading prices quoted by the Stock Exchange or, as the case may be, by the Alternative Stock Exchange for one Share (being a Share carrying full entitlement to Dividend) for the 20 consecutive Trading Days ending on the Trading Day immediately preceding such date; *provided that* if at any time during the said 20 Trading Day period the Shares shall have been quoted ex-dividend and during some other part of that period the Shares shall have been quoted cum-dividend then:

- (i) if the Shares to be issued in such circumstances do not rank for the Dividend in question, the quotations on the dates on which the Shares shall have been quoted cum-dividend shall for the purpose of this definition be deemed to be the Fair Market Value thereof reduced by an amount equal to the amount of that Dividend per Share; or
- (ii) if the Shares to be issued in such circumstances rank for the Dividend in question, the quotations on the dates on which the Shares shall have been quoted ex-dividend shall for the purpose of this definition be deemed to be the amount thereof increased by such similar amount;

and *provided further that* if the Shares on each of the said 20 Trading Days have been quoted cum-dividend in respect of a Dividend which has been declared or announced but the Shares to be issued do not rank for that Dividend, the quotations on each of such dates shall for the purpose of this definition be deemed to be the amount thereof reduced by an amount equal to the Fair Market Value of that Dividend per Share.

and *provided further that*:

- (iii) if such volume weighted average trading prices are not available on each of the 20 Trading Days during the relevant period, then the arithmetic average of such closing prices which are available in the Relevant Period shall be used (subject to a minimum of two such closing prices); and
- (iv) if only one or no such volume weighted average trading prices is available in the relevant period, then the Current Market Price shall be determined in good faith by two independent investment banks of good repute (acting as experts) appointed by the Issuer and approved by the Trustee in writing;

"Default" means any event that is, or after notice or passage of time or both would be, an Event of Default;

"Definitive Notes" means Notes in definitive, registered form;

"Delisting" means, either (a) the Shares cease to be listed or admitted to trading or are suspended from trading for a continuous period of 10 or more Trading Days on the Stock Exchange or the Alternative Stock Exchange (as the case may be), or (b) the Shares cease to be listed or admitted to trading or are suspended from trading for a continuous period of 7 or more Trading Days on the Stock Exchange or the Alternative Stock Exchange and such suspension occurs more than twice within any calendar year, save as otherwise agreed by the Noteholder(s) holding not less than 75% in principal of the Notes in writing;

"Disqualified Stock" means any class or series of Capital Stock of any Person that by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable) or otherwise is (a) required to be redeemed prior to the Stated Maturity of the Notes, (b) redeemable at the option of the holder of such class or series of Capital Stock at any time prior to the Stated Maturity of the Notes or (c) convertible into or exchangeable for Capital Stock referred to in clause (a) or (b) above or Indebtedness having a scheduled maturity prior to the Stated Maturity of the Notes; *provided, that* any Capital Stock that would not constitute Disqualified Stock but for provisions thereof giving holders thereof the right to require such Person to repurchase or redeem such Capital Stock upon the occurrence of an "asset sale" or "change of control" occurring prior to the Stated Maturity of the Notes shall not constitute



Disqualified Stock if the "asset sale" or "change of control" provisions applicable to such Capital Stock are no more favourable to the holders of such Capital Stock than the provisions contained in Condition 4(f) and such Capital Stock specifically provides that such Person will not repurchase or redeem any such stock pursuant to such provision prior to the Issuer's repurchase of the Notes in accordance with these Conditions;

"**Dividend**" means any dividend or distribution of any kind, whether of cash, assets or other property, and whenever paid or made and however described (and for these purposes a distribution of assets includes, without limitation, an issue of Shares or other securities credited as fully or partly paid up); *provided, that* (a) where a cash Dividend is announced which is to be, or may at the election of a shareholder be, satisfied by the issue or delivery of Shares or other property or assets, then the Dividend in question shall be treated as a Dividend hereunder of (i) the cash Dividend so announced or (ii) the Current Market Price on the date of announcement of such Shares to be issued or the Fair Market Value of other property or assets to be delivered in satisfaction of such Dividend (or which would be issued or delivered if all shareholders have elected or are deemed to have elected therefor, regardless of whether any such election is made) if the Current Market Price of such Shares or the Fair Market Value of such property or assets is greater than the cash Dividend so announced; and (b) any issue of Shares falling within Condition 6.3(e) shall be disregarded;

"**Early Redemption Price**" means for each HK\$100,000 principal amount of the Notes, an amount in Hong Kong dollars determined in the manner as described below which represents for the Noteholder a gross yield of 13% per annum calculated on a semi-annual basis. The applicable Early Redemption Amount for each HK\$100,000 principal amount of the Notes shall be calculated on an annual basis in accordance with the following formula, rounded (if necessary) to two decimal places with 0.005 being rounded upwards (*provided that* if the date fixed for redemption is the Semi-Annual Date, such Early Redemption Amount shall be as set out in the table below in respect of such Semi-Annual Date):

$$\text{Early Redemption Amount} = \text{Previous Redemption Amount} \times (1+r/2)^{d/p} - AI$$

Previous Redemption Amount = the Early Redemption Amount for each HK\$100,000 principal amount on the Semi-Annual Date immediately preceding the date fixed for redemption as set out below (or if the Notes are to be redeemed prior to [•] 2007, HK\$100,000)

Semi-Annual Date	Early Redemption Amount (HK\$)
[•]	105,000.00
[•]	110,325.00
[•]	115,996.13
[•]	122,035.87
[•]	128,468.20
[•]	135,318.64

r = 13% expressed as a fraction.

d = number of days from and including the immediately preceding Semi-Annual Date (or if the Notes are to be redeemed on or before [•], from and including the Issue Date) to, but excluding, the date fixed for redemption, calculated on the basis of a 360-day year consisting of 12 months of 30 days each and, in the case of an incomplete month, the number of days elapsed;

p = 180;

AI = accrued and unpaid interest for each HK\$100,000 in the outstanding principal amount of the Notes from and including the immediately preceding Semi-Annual Date to but excluding the date fixed for redemption.

**"Encumbrance"** means a mortgage, charge, pledge, lien, option, restriction, right of first refusal, right of pre-emption, license, right to an assignment, any other third party right or interest, or other encumbrance or security interest of any kind, or another type of preferential arrangement (including, without limitation, a title transfer or retention arrangement) affecting, influencing or otherwise inhibiting the title, right or interest to any exclusive use or ownership;

**"Equity"** means the aggregate amount of the Issuer's outstanding share capital and reserves minus goodwill, in accordance with the Accounting Principles;

**"Euroclear"** means Euroclear Bank S.A./N.V., as operator of the Euroclear System;

**"Event of Default"** means any event listed in Condition 10 that has occurred and is continuing;

**"Extraordinary Dividend"** occurs if, at the relevant date of determination, the total amount of:

- (a) any cash Dividends paid or declared by the Issuer on the Shares; and
- (b) all other cash Dividends paid or declared on the Shares in the period beginning on the day immediately after the prior anniversary of the relevant date of determination (other than any cash Dividend or portion thereof previously deemed to be an Extraordinary Dividend in respect of which an adjustment had already been made to the Conversion Price) (the **"previous dividends"**), except that where the date of announcement or payment for cash Dividends for two different fiscal years has occurred in such period, such cash Dividends relating to the earlier fiscal year will be disregarded for the purpose of determining the previous dividends

exceeds on a per Share basis 1.5 per cent. of the Average Closing Price of the Shares during the Relevant Period. For the avoidance of doubt, all amounts are on a per Share basis. For the purposes of this Condition, **"Average Closing Price"** means the arithmetic average of the closing price per Share for each Trading Day during the Relevant Period;

**"Fair Market Value"** means the price that would be paid in an arm's-length transaction between an informed and willing seller under no compulsion to sell and an informed and willing buyer under no compulsion to buy, as determined in good faith by the Issuer and certified by a valuer of good repute (acting as expert) selected by the Issuer and approved by the Trustee in writing;

**"Group"** means the Issuer and its subsidiaries and each a "Group Company";

**"Hong Kong"** means the Hong Kong Special Administrative Region of the PRC;

**"HK\$" means Hong Kong dollars, the lawful currency of Hong Kong;**

**"Incur"** means, with respect to any Indebtedness or Capital Stock, to incur, create, issue, assume, guarantee or otherwise become liable for the payment of, contingently or otherwise, such Indebtedness or Capital Stock; and the terms Incurrence, Incurred and Incurring shall have corresponding meanings;

**"Indebtedness"** means, with respect to any Person, all obligations (without duplication), whether or not contingent, of such Person: (a) for borrowed money (including any premium); (b) evidenced by a note, debenture, bond or other written instrument; (c) in respect of letters of credit, bank guarantees, bankers' acceptances or other similar instruments (including reimbursement obligations with respect to any of the foregoing); (d) in respect of balance of deferred and unpaid purchase price of any property or assets; (e) under a lease required to be capitalised on the balance sheet of the lessee under the Accounting Principles or under any lease or related documents (including a purchase agreement) that provides that the lessee is contractually obligated to purchase or cause a third party to purchase and thereby guarantee a minimum residual value of the lease property to the lessor (whether or not such lease transaction is characterized by the Issuer as an operating lease or a capitalised lease); (f) in respect of Indebtedness secured by a mortgage, pledge, lien, encumbrance, charge or adverse claim affecting title or resulting in an encumbrance to which the property or assets of such Person are subject, whether or not the obligation secured thereby shall have been assumed by or shall otherwise be such Person's legal liability; (g) under interest rate or currency swap agreements, cap, floor and collar agreements, spot and forward contracts and similar agreements and arrangements; (h) in respect of any Disqualified Stock issued by such Person valued at the greater of its voluntary or involuntary liquidation preference and its maximum fixed repurchase price plus accrued dividend; (i) with respect to all direct or indirect guarantees, agreements to be jointly liable or similar agreement by such Person in respect of, and obligations or liabilities of such Person to purchase or otherwise acquire or otherwise assure a creditor against loss in respect of, indebtedness, obligation or liability of another Person of the kind described in clauses (a) through (g); and (j) any and all deferrals, renewals, extensions, refinancings and refundings of, or amendments, modifications or supplements to, any indebtedness, obligation or liability of the kind described in clauses (a) through (i);

**"Investment Securities"** means bonds, debentures, notes or other investment securities, which are for the time being, or are intended to be, or capable of being quoted, listed, ordinarily dealt in or traded on any stock exchange, quotation system or over-the-counter market.

**"Issue Date"** means [•] 2007;

**"Leverage Ratio"** means the ratio of Consolidated Total Debt to Equity;

**"Lien"** means any mortgage, pledge, security interest, encumbrance, lien or charge of any kind (including, without limitation, any conditional sale or other title retention agreement or lease in the nature thereof or any agreement to create any mortgage, pledge, security interest, encumbrance, lien or charge of any kind);

**"Listing Rules"** means the relevant rules relating to the listing of Shares on the Stock Exchange, including, to the extent that The Stock Exchange of Hong Kong Limited constitutes the Stock Exchange hereunder, the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited;

**"Maturity Date"** means [•] 2010;

**"Notes"** means (a) to the extent that the Notes are represented by the Global Note (as defined in Condition 2(a)), the interest of the Accountholders expressed in units of HK\$122,000,000 in such Global Note, (b) the Definitive Notes and (c) the Global Note;

**"Paying and Conversion Agent"** means any paying and conversion agent appointed in accordance with the Agency Agreement from time to time;

**"Permitted Business"** means business conducted or proposed to be conducted (as disclosed in the public announcements and public filings in relation to the very substantial acquisition relating to the Issuer's acquisition of 100% equity interest in China Environmental Water Holding Limited and its subsidiary) by the Issuer on the Issue Date and any activities incidental to such business;

**"Person"** means any individual, corporation, partnership, limited liability company, joint venture, trust, unincorporated organisation or government or any agency or political subdivision thereof;

**"PRC"** means the People's Republic of China;

**"Redemption Date"** means the date specified in a notice of redemption on which the Notes may be redeemed in accordance with the terms of the Conditions;

**"Relevant Period"** means the period beginning on the 30<sup>th</sup> Trading Day prior to the Trading Day (the **"relevant Trading Day"**) immediately preceding the date on which the Shares are quoted ex-dividend on the Stock Exchange in respect of the cash Dividend which results in the adjustment of the Conversion Price pursuant to Condition 6.3(d) and ending on the relevant Trading Day;

**"Shares"** means the fully paid ordinary shares of HK\$0.01 of the Issuer;

**"Share Option Scheme"** means any share option scheme adopted by the Issuer in compliance with the Listing Rules;

**"Stated Maturity"** means (a) with respect to any Indebtedness, the date specified in such debt security as the fixed date on which the final instalment of principal of such Indebtedness is due and payable as set forth in the documentation governing such Indebtedness and (b) with respect to any scheduled instalment of principal of or interest on any Indebtedness, the date specified as the fixed date on which such instalment is due and payable as set forth in the documentation governing such Indebtedness;

**"Stock Exchange"** means The Stock Exchange of Hong Kong Limited

**"Trading Day"** means a day when the Stock Exchange or an Alternative Stock Exchange, as the case may be, is open for dealing business; *provided, that* if no closing price is reported in respect of the Shares on the Stock Exchange or the Alternative Stock Exchange, as the case may be, for one or more consecutive dealing days, such day or days will be disregarded in any relevant calculation and shall be deemed not to have existed when ascertaining any period of dealing days; and

**"Transaction Document"** means any of the Trust Deed or the Agency Agreement;

## 2. Form, Denomination and Status

### 2.1 Form and Denomination

- (a) The Notes will be registered instruments title to which will pass only by transfer and registration in the register of the Noteholders. The Notes will be initially issued as one global security in registered form (the "Global Note").
- (b) The Global Note will represent the Notes sold outside the United States to non-U.S. investors and will be registered in the name of a nominee of, and deposited with a common depository for, Euroclear and Clearstream, Luxembourg.
- (c) Interests in the Global Note will be exchangeable for Definitive Notes if (i) Euroclear or Clearstream, Luxembourg is closed for business for a continuous period of 14 days or more (other than by reason of legal holidays) or announces an intention to permanently cease business or does in fact do so, or notify the Issuer that they are unwilling or unable to act as a clearing system, and, in each case, a successor is not appointed by the Issuer within 90 days or (ii) in the event that an Event of Default under Condition 10 occurs and is continuing.
- (d) In no event will any Definitive Note in bearer form be issued. The Definitive Notes will be issued in registered form in denominations of HK\$100,000 and integral multiples thereof. The Definitive Notes will be registered in such name or names as the registrar shall instruct Euroclear and Clearstream, Luxembourg. It is expected that such instructions will be based upon directions received by Euroclear or Clearstream, Luxembourg from its participants reflecting the ownership of book-entry interests.
- (e) To the extent permitted by law, the Issuer, the Trustee and the Paying and Conversion Agent shall be entitled to treat the Person in whose name or names the Notes are registered in the register as the absolute owner thereof. The Agency Agreement contains provisions relating to the maintenance by the registrar of a register of the Noteholders reflecting ownership of the Notes and other provisions customary for a registered debt security.
- (f) Any Person receiving the Definitive Notes will not be obligated to pay or otherwise bear the cost of any tax or governmental charge or any cost or expense relating to insurance, postage, transportation or similar charge, which will be solely the responsibility of the Issuer. No service charge will be made for any registration of transfer or exchange of any Definitive Note.

### 2.2 Status

The Notes constitute direct, general and unconditional and unsecured obligations of the Issuer and rank and will rank *pari passu*, without any preference or priority of payment among themselves and with all other present and future unsecured, unconditional and unsubordinated obligations of the Issuer, except as may be required by law.

### **3. Transfer of Notes**

#### **(a) Transfer**

The Notes may, subject to the terms of the Agency Agreement and to Conditions 3(b) and 3(c), be transferred in whole or in part by lodging the relevant Notes (with the form of application for transfer in respect thereof duly executed and duly stamped, where applicable) at the specified office of the registrar or any Paying and Conversion Agent.

No transfer of a Note will be valid unless and until entered on the register of the Noteholders. A Note may be registered only in the name of, and transferred only to, a named Person or Persons.

Transfers of interests in the Notes evidenced by the Global Note will be effected in accordance with the rules of the relevant clearing systems.

The registrar will, within three Business Days of any duly made application for the transfer of a Note, deliver a new Note to the transferee (and, in the case of a transfer of part only of a Note, deliver a Note for the untransferred balance to the transferor), at the specified office of the registrar, or (at the risk and, if mailed at the request of the transferee or, as the case may be, the transferor otherwise than by ordinary mail, at the expense of the transferee or, as the case may be, the transferor) mail the Note by uninsured mail to such address as the transferee or, as the case may be, the transferor may request.

#### **(b) Formalities Free of Charge**

Such transfer will be effected without charge subject to (i) the Person making such application for transfer paying or procuring the payment of any taxes, duties and other governmental charges in connection therewith; (ii) the registrar being satisfied with the documents of title and/or identity of the Person making the application; and (iii) such reasonable regulations as the Issuer may from time to time agree with the registrar and the Trustee.

#### **(c) Closed Periods**

No Noteholder may require the transfer of a Note (or part thereof) to be registered (i) during the period of 15 calendar days ending on (and including) the dates for redemption pursuant to Condition 7.2 and Condition 7.3; (ii) after an Exercise Notice (as defined in Condition 5.1(a)) has been delivered in respect of such a Note; (iii) after a Put Option Notice (as defined in Condition 7.4(a)) has been delivered in respect of such a Note; (iv) after a Purchase Notice (as defined in Condition 7.4(b)) has been delivered in respect of such a Note; or (v) after a Relevant Event Put Exercise Notice (as defined in Condition 7.4(c)) has been delivered in respect of such a Note.

#### 4. Covenants

So long as the Notes are outstanding, the Issuer agrees to be bound by the covenants and undertakings provided herein.

- (a) *Share Capital.* The Issuer shall keep available for issue, free from pre-emptive rights, out of authorised but unissued share capital such number of Shares to satisfy in full the Conversion Rights described in Condition 6.
- (b) *Negative Pledge.* The Issuer shall not create or permit to subsist, and will procure that no subsidiary creates or permits to subsist, any Encumbrance upon the whole or any part of its undertaking, assets or revenues, present or future, to secure any Investment Securities, unless, at the same time or prior thereto, the Issuer's obligations under the Notes and the Transaction Documents (A) are secured equally or rateably therewith and (B) have the benefit of such other security, guarantee, indemnity or other arrangement.
- (c) *Limitation on Restricted Payments.* The Issuer shall not, directly or indirectly (the payments or any other actions described in this Condition 4(c) being collectively referred to as "**Restricted Payments**") make any voluntary or optional principal payment, or voluntary or optional redemption, repurchase, defeasance or other acquisition or retirement for value, of Indebtedness that is subordinated in right of payment to the Notes (excluding any intercompany Indebtedness between or among the Issuer and any of its wholly-owned subsidiaries).
- (d) *Restrictions Affecting Subsidiaries.* Except as provided below, the Issuer shall not, directly or indirectly, create or otherwise cause or permit to exist or become effective any Encumbrance or restriction on the ability of any of its subsidiaries to:
  - (i) pay Dividends or make any other distributions on any Capital Stock of such subsidiary owned by the Issuer;
  - (ii) pay any Indebtedness or other obligation owed to the Issuer;
  - (iii) make loans or advances to the Issuer; or
  - (iv) sell, lease or transfer any of its property or assets to the Issuer.

The provisions of this Condition 4(d) do not apply to any Encumbrances or restrictions:

- (A) existing in agreements as in effect on the Issue Date or in the Notes and any extensions, refinancings, renewals or replacements of any of the foregoing agreements; *provided, that* the Encumbrances and restrictions in any such extension, refinancing, renewal or replacement are no more restrictive than those Encumbrances or restrictions that are then in effect and that are being extended, refinanced, renewed or replaced;
- (B) existing under or by reason of applicable law (including any statute, rule, regulation or government order);

- (C) existing with respect to any Person or the property or assets of such Person acquired by the Issuer, existing at the time of such acquisition and not incurred in contemplation thereof, which Encumbrances or restrictions are not applicable to any Person or the property or assets of any Person other than such Person or the property or assets of such Person so acquired, and any extensions, refinancings, renewals or replacements thereof; *provided, that* the Encumbrances and restrictions in any such extension, refinancing, renewal or replacement are no more restrictive than those Encumbrances or restrictions that are then in effect and that are being extended, refinanced, renewed or replaced and remain applicable only to the Person or the property or assets of such Person acquired;
- (D) that otherwise would be prohibited by the provision described in Condition 4(d)(iv) above if they arise, or are agreed to as arising, in the ordinary course of business consistent with past practice; or
- (E) with respect to a subsidiary and imposed pursuant to an agreement that has been entered into for the sale or disposition of all or substantially all of the Capital Stock of, or property and assets of, such subsidiary that is permitted by Conditions 4(d), 4(g) and 4(h).

(e) *Limitation on Transactions with Shareholders and Affiliates.* The Issuer shall not enter into, renew or extend or permit to exist any transaction or arrangement (including, without limitation, the purchase, sale, lease or exchange of property or assets, employee compensation arrangements or the rendering of any service) with (i) any holder (or any Affiliate of such holder) of 10% or more of any class of Capital Stock of the Issuer, or (ii) with any Affiliate of the Issuer or any of its subsidiaries (each an "Affiliate Transaction"), unless the Affiliate Transaction is made in compliance with the Listing Rules.

The foregoing limitation does not limit, and shall not apply to:

- (A) the payment of reasonable and customary regular fees to directors of the Issuer who are not employees of the Issuer;
  - (B) transactions between or among the Issuer and any of its wholly-owned subsidiaries, or between or among wholly-owned subsidiaries;
  - (C) any restricted payment of the type described in Condition 4(d)(i), 4(d)(ii) or 4(d)(iii) if permitted by that Condition;
  - (D) any sale of Capital Stock (other than Disqualified Stock) of the Issuer; and
  - (E) the payment of compensation or remuneration to officers and directors of the Issuer or any of its subsidiaries pursuant to a Share Option Scheme.
- (f) *Limitation on Sales.* Unless otherwise provided in these Conditions and subject to existing agreements and obligations as of the Issue Date, the Issuer shall not sell or dispose of all or a part of its or its subsidiaries' assets either in a single transaction or a series of transactions other than:



- (i) sales, transfers or other dispositions of inventory in the ordinary course of business; or
  - (ii) sales, transfers or other dispositions of obsolete equipment; or
  - (iii) sales, transfers or other dispositions of assets at Fair Market Value; or
  - (iv) sales, transfers or other dispositions of assets, the value of which, when aggregating with other sales, transfers and dispositions in the same financial year, does not exceed 7% of the consolidated net assets of the Issuer as shown in its audited consolidated accounts of the immediate preceding financial year or, if available, its published accounts in its interim report of the same financial year.
- (g) *Limitation on Sales and Issuances of Capital Stock in Subsidiaries.* Unless otherwise provided in these Conditions and subject to existing agreements and obligation as of the Issue Date, the Issuer shall not issue or sell, pledge or otherwise dispose of, directly or indirectly, any shares of the Capital Stock of a subsidiary (including options, warrants or other rights to purchase shares of such Capital Stock) except:
- (i) in the case of any shares of the Capital Stock of a subsidiary, to the Issuer or a wholly-owned subsidiary;
  - (ii) to the extent such Capital Stock represents director's qualifying shares or is required by applicable law to be held by a Person other than the Issuer or a wholly-owned subsidiary; or
  - (iii) the issuance or sale of Capital Stock of a subsidiary at Fair Market Value.
- (h) *Limitation on the Issuer's Business Activities.* The Issuer shall not engage in any business other than a Permitted Business.

## 5. Interest and Default Interest

- 5.1 The Notes will bear interest at 3% per annum, payable semi-annually in arrear on each [•] and [•], or if any such day is not a Business Day, on the next succeeding Business Day, commencing on [•] 2007. Each payment of interest on the Notes will include interest accrued for the period commencing on and including the immediately preceding interest payment date (or if no interest has been paid, the date the Notes are originally issued) through the day before the applicable interest payment date (or redemption date). The interest so payable will be paid to each Noteholder in whose name a Note is registered at the close of business on [•] or [•] (whether or not a Business Day) immediately preceding the applicable interest payment date. Interest will cease to accrue on a Note upon its maturity, conversion or redemption. Interest will be calculated on the basis of a 360-day year consisting of twelve 30-day months.
- 5.2 If the Issuer fails to pay any sum in respect of the Notes including, without limitation, principal, interest, premium or in connection with any Event of Default when the same becomes due and payable under these Conditions, interest will accrue on the overdue sum at the rate of 15% per annum from the due date up to and including the date of payment. Such default interest will be calculated on the basis of the actual number of days elapsed and a 360-day year.

## 6. Conversion

### 6.1 Conversion Price

The price at which Shares will be issued upon conversion will initially be set as HK\$1.43 per Share which will be subject to adjustment in the manner provided in Condition 6.3 herein.

### 6.2 Conversion Right

- (a) Subject to and upon compliance with the provision of this Condition, each Noteholder shall have the right (the "**Conversion Right**") to convert all or any part of the principal amount of the Notes ("**Conversion Amount**") for the Convertible Shares at the Conversion Price effective as of the date of the Conversion Date (as defined below) at any time following the issuance of the Notes until 10 Business Days prior to the Maturity Date (the "**Conversion Period**") by providing the Issuer a written notice to such effect (the "**Exercise Notice**"), substantially in the form as set out in Schedule [•] of the Agency Agreement. Subject to the requirements of Euroclear and Clearstream, Luxembourg, the Conversion Rights attaching to a Note represented by the Global Note may be exercised by delivery on any Business Day (the "**Conversion Date**") during the Conversion Period, to or to the order of the Paying and Conversion Agent, with a copy to the Issuer, the Trustee, Euroclear or Clearstream, Luxembourg, as appropriate, of an Exercise Notice duly completed by or on behalf of the relevant Noteholder or Accountholder together with any Conversion Expenses. Deposit of the Global Note with a Paying and Conversion Agent together with the relevant Exchange Notice shall not be required in such circumstance.

To exercise the Conversion Right in relation to a Definitive Note, a holder of a Definitive Note must deliver its Definitive Note to the Paying and Conversion Agent on any Business Day, together with a duly completed Exchange Notice and any payment in respect of the Conversion Expenses.

#### (b) Registration

- (i) As soon as practicable, and in any event not later than five Business Days after the Conversion Date, the Issuer will, in the case of Notes converted on exercise of the Conversion Right and in respect of which a duly completed Exercise Notice has been delivered, register the Person or Persons designated for the purpose in the Exercise Notice as holder(s) of the relevant number of Shares in the Issuer's share register and will, if the Noteholder has also requested in the Exercise Notice, take all necessary action to enable the Shares to be delivered through the CCASS for so long as the Shares are listed on the Stock Exchange, or will make such certificate or certificates available for collection at the office of the Issuer's share registrar in Hong Kong (currently Tricor Tengis Limited located at 26/F., Tesbury Centre, 28 Queen's Road East, Hong Kong notified to Noteholders in accordance with Condition 11 or, if so requested in the relevant Exercise Notice, cause its Hong Kong share registrar to mail (at the risk, and, if sent at the request of such Person otherwise than by ordinary mail, at the expense, of the Person to whom such certificate or certificates are sent) such certificate or certificates to the Person and at the place specified in the Exercise Notice, together (in either case) with any other securities, property or

cash required to be delivered upon conversion and such assignments and other documents (if any) as may be required by law to effect the transfer thereof.

- (ii) If the Conversion Date in relation to any Note shall be after the record date for any issue, distribution, grant, offer or other event as gives rise to the adjustment of the Conversion Price pursuant to Condition 6.3, but before the relevant adjustment becomes effective under the relevant Condition, upon the relevant adjustment becoming effective the Issuer shall procure the issue to the converting Noteholder (or in accordance with the instructions contained in the Conversion Notice (subject to applicable exchange control or other laws or other regulations)), such additional number of Shares as, together with the Shares issued or to be issued on conversion of the relevant Note, is equal to the number of Shares which would have been required to be issued on conversion of such Note if the relevant adjustment to the Conversion Price had been made and become effective immediately after the relevant record date.
  - (iii) The Person or Persons designated in the Exercise Notice will become the holder of record of the number of Shares issuable upon conversion with effect from the date it is or they are registered as such in the Issuer's register of members (the "**Registration Date**"). The Shares issued upon conversion of the Notes will in all respects rank *pari passu* with the Shares in issue on the relevant Registration Date. Except as set out in these Conditions, a holder of Shares issued on conversion of Notes shall not be entitled to any rights the record date for which precedes the relevant Registration Date.
  - (iv) If the record date for the payment of any dividend or other distribution in respect of the Shares is on or after the Conversion Date in respect of any Note, but before the Registration Date (disregarding any retroactive adjustment of the Conversion Price referred to in this Condition 6.2(b) prior to the time such retroactive adjustment shall have become effective), the Issuer will pay to the converting Noteholder or his designee an amount (the "**Equivalent Amount**") in Hong Kong dollars equal to the Fair Market Value of any such dividend or other distribution to which it would have been entitled had it on that record date been such a shareholder of record and will make the payment at the same time as it makes payment of the Dividend, or as soon as practicable thereafter, but, in any event, not later than seven Business Days thereafter. The Equivalent Amount shall be paid by means of a Hong Kong dollar cheque drawn on a bank in Hong Kong and sent to the address specified in the relevant Exercise Notice.
- (c) Fractional Shares will not be delivered on conversion of the Notes. In lieu of fractional Shares, the Issuer will, upon conversion of the Notes, pay in cash in HK\$ a sum equal to such portion of the principal amount of the Notes as corresponds to any fraction of a Share not delivered, *provided that* such sum exceeds HK\$100.
  - (d) The Person or Persons designated in the Exercise Notice shall be responsible for payment of its own taxes and stamp duty, registration duties (if any) and Stock Exchange levies and other levies and charges (if any) arising on any conversion.

### 6.3 Adjustments to Conversion Price

- (a) *Conversion Price Reset:* The Conversion Price shall be adjusted on each of the first and second anniversaries of the Issue Date (the "**Price Reset Dates**") if the volume weighted average trading price of the Shares over the preceding calendar month (the "**Reference Price**") is less than 85% of the Conversion Price then in effect. In such case, the Conversion Price will be adjusted to equal the Reference Price; *provided, that* any adjustment to the Conversion Price pursuant to the reset on a cumulative basis will be limited to 80% of the initial Conversion Price.
- (b) *Consolidation, Subdivision or Reclassification:* If and whenever there shall be an alteration to the nominal value of the Shares as a result of consolidation, subdivision or reclassification, the Conversion Price shall be adjusted by multiplying the Conversion Price in effect immediately before such alteration by the following fraction:

$$\frac{A}{B}$$

where:

A is the nominal amount of one Share immediately after such alteration; and

B is the nominal amount of one Share immediately before such alteration.

Such adjustment shall become effective on the date the alteration takes effect.

- (c) *Capitalization of Profits or Reserves:*
- (i) If and whenever any Shares shall be issued credited as fully paid to the shareholders by way of capitalization of profits or reserves (including any share premium account) including Shares paid up out of distributable profits or reserves and/or share premium account issued, the Conversion Price shall be adjusted by multiplying the Conversion Price in effect immediately before such issue by the following fraction:

$$\frac{A}{B}$$

where:

A is the aggregate nominal amount of the issued Shares immediately before such issue; and

B is the aggregate nominal amount of the issued Shares immediately after such issue.

Such adjustment shall become effective on the date of issue of such Shares or if a record date is fixed therefor, immediately after such record date.

- (ii) In the case of an issue of Shares in lieu of the whole or any part of a specifically declared cash dividend (the "**Relevant Cash Dividend**") which the shareholders would or could otherwise have received (a

"Scrip Dividend"), where the Current Market Price of such Shares exceeds the amount of the Relevant Cash Dividend or the relevant part thereof and which would not have constituted a Capital Distribution, the Conversion Price shall be adjusted by multiplying the Conversion Price in effect immediately before the issue of such Shares by the following fraction:

$$\frac{A + B}{A + C}$$

where:

A is the aggregate nominal amount of the issued Shares immediately before such issue;

B is the aggregate nominal amount of Shares issued by way of such Scrip Dividend multiplied by a fraction of which (i) the numerator is the amount of the whole, or the relevant part, of the Relevant Cash Dividend and (ii) the denominator is the Current Market Price of the Shares issued by way of Scrip Dividend in respect of each existing Share in lieu of the whole, or the relevant part, of the Relevant Cash Dividend; and

C is the aggregate nominal amount of Shares issued by way of such Scrip Dividend;

or

by making such other adjustment as two independent investment banks of good repute (acting as an expert), selected by the Issuer and approved by the Noteholders in writing, shall certify to the Noteholders as fair and reasonable.

Such adjustment shall become effective on the date of issue of such Shares or if a record date is fixed therefor, immediately after such record date.

- (d) *Capital Distribution:* If and whenever the Issuer shall pay or make any Capital Distribution, the Conversion Price shall be adjusted by multiplying the Conversion Price in effect immediately before such Capital Distribution by the following fraction:

$$\frac{A - B}{A}$$

where:

A is the Current Market Price of one Share on the last Trading Day preceding the date on which the Capital Distribution is publicly announced; and

B is the Fair Market Value on the date of such announcement of the portion of the Capital Distribution attributable to one Share.

Such adjustment shall become effective on the date that such Capital Distribution is made.

- (e) *Rights Issue of Shares or Options over Shares:* If and whenever any Shares shall be issued to all or substantially all shareholders as a class by way of rights, or issue or grant to all or substantially all shareholders as a class by way of rights or any options, warrants or other rights to subscribe for or purchase any Shares, in each case at less than the Current Market Price per Share on the Trading Day last preceding the date of the announcement of the terms of such issue or grant, the Conversion Price shall be adjusted by multiplying the Conversion Price in effect immediately before such issue or grant by the following fraction:

$$\frac{A+B}{A+C}$$

where:

A is the number of Shares in issue immediately before such announcement;

B is the number of Shares which the aggregate amount (if any) payable for the Shares issued by way of rights or for the options or warrants or other rights issued or granted by way of rights and for the total number of Shares comprised therein would purchase at such Current Market Price per Share; and

C is the aggregate number of Shares issued or, as the case may be, comprised in the issue or grant.

Such adjustment shall become effective on the date of issue of such Shares or issue or grant of such options, warrants or other rights (as the case may be).

- (f) *Rights Issue of Other Securities:* If and whenever any securities (other than Shares or options, warrants or other rights to subscribe for or purchase Shares) shall be issued to all or substantially all shareholders as a class by way of rights, or issue or grant to all or substantially all shareholders as a class by way of rights any options, warrants or other rights to subscribe for or purchase any securities (other than Shares or options, warrants or other rights to subscribe or purchase Shares), the Conversion Price shall be adjusted by multiplying the Conversion Price in effect immediately before such issue or grant by the following fraction:

$$\frac{A-B}{A}$$

where:

A is the Current Market Price of one Share on the last Trading Day preceding the date on which such issue or grant is publicly announced; and

B is the Fair Market Value on the date of such announcement of the portion of the rights attributable to one Share.

Such adjustment shall become effective on the date of issue of the securities or grant of such rights, options or warrants (as the case may be).

- (g) *Issues at less than Current Market Price:* If and whenever any Shares (other than Shares issued on the exercise of any other existing rights of conversion into, or exchange or subscription for, Shares) shall be issued (otherwise than as mentioned in Condition 6.3(e) above) wholly for cash or if and whenever options, warrants or other rights to subscribe or purchase Shares (including securities that are convertible or exchangeable into Shares) shall be issued or granted (otherwise as mentioned in Condition 6.3(e) above), in each case, at a price per Share or equivalent which is less than the Current Market Price on the last Trading Day preceding the day of announcement of the terms of such issue or grant, the Conversion Price shall be adjusted by multiplying the Conversion Price in effect immediately before such issue or grant by the following fraction:

$$\frac{A+B}{C}$$

where:

A is the number of Shares in issue immediately before the issue of such additional Shares or the grant of such options, warrants or other rights to subscribe for or purchase any Shares;

B is the number of Shares which the aggregate consideration receivable by the Issuer for the issue of such additional Shares would purchase at such Current Market Price per Share; and

C is the number of Shares in issue immediately after the issue of such additional Shares.

References to additional Shares in the above formula shall mean such Shares to be issued, or otherwise made available, assuming that such options, warrants or other rights are exercised in full at the initial exercise price (if applicable) on the date of issue or grant of such options, warrants or other rights.

Such adjustment shall become effective on the date of issue of such additional Shares or, as the case may be, the issue or grant of such options, warrants or other rights.

- (h) *Other Issues at less than Current Market Price:* Save in the case of an issue of securities arising from a conversion or exchange of other existing securities in accordance with the terms applicable to such existing securities themselves falling within the provisions of this Condition 6.3(h), in the event of the issue wholly for cash by the Issuer (otherwise than as mentioned in Conditions 6.3(e), (f) or (g) above) or (at the direction or request of or pursuant to any arrangements with the Issuer) by any other company, person or entity of any securities (other than the Notes) which by their terms of issue carry rights of conversion into, or exchange or subscription for, Shares to be issued upon conversion, exchange or subscription at a consideration per Share which is less than the Current Market Price on the last Trading Day immediately preceding the day of announcement of the terms of issue of such securities, the Conversion Price shall be adjusted by multiplying the Conversion Price in effect immediately before such issue by the following fraction:

$$\frac{A + B}{A + C}$$

where:

A is the number of Shares in issue immediately before such issue;

B is the number of Shares which the aggregate consideration receivable by the Issuer for the Shares to be issued on conversion or exchange or on exercise of the right of subscription attached to such securities would purchase at such Current Market Price per Share; and

C is the maximum number of Shares to be issued on conversion or exchange of such securities or on the exercise of such rights of subscription attached thereto at the initial conversion, exchange or subscription price or rate.

Such adjustment shall become effective on the date of issue of such securities.

- (i) *Modification of Rights of Conversion, etc:* If and whenever there shall be any modification of the rights of conversion, exchange or subscription attaching to any such securities as are mentioned in Condition 6.3(h) above (other than in accordance with the existing terms applicable to such securities) so that the consideration per Share (for the number of Shares available on conversion, exchange or subscription following the modification) is less than the Current Market Price on the last Trading Day immediately preceding the day of announcement of the proposals for such modification, the Conversion Price shall be adjusted by multiplying the Conversion Price in effect immediately before such modification by the following fraction:

$$\frac{A + B}{A + C}$$

where:

A is the number of Shares in issue immediately before such modification;

B is the number of Shares which the aggregate consideration (if any) paid for the Shares to be issued, or otherwise made available, on conversion or exchange or on exercise of the right of subscription attached to the securities, in each case so modified, would purchase at such Current Market Price per Share or, if lower, the existing conversion, exchange or subscription price of such securities; and

C is the maximum number of Shares to be issued, or otherwise made available, on conversion or exchange of such securities or on the exercise of such rights of subscription attached thereto at the modified conversion, exchange or subscription price or rate but giving credit in such manner as an independent investment bank of good repute (acting as an expert), selected by the Issuer and approved in writing by the Noteholders, considers appropriate (if at all) for any previous adjustment under this Condition 6.3(i) or Condition 6.3(h) above.

Such adjustment shall become effective on the date of modification of the rights of conversion, exchange or subscription attaching to such securities.



- (j) *Other Offers to Shareholders:* In the event, the issue, sale or distribution by or on behalf of the Issuer or any subsidiary or (at the direction or request of or pursuant to any arrangements with the Issuer or any subsidiary) any other company, person or entity of any securities in connection with an offer by or on behalf of the Issuer or any subsidiary or such other company, person or entity pursuant to which offer the shareholders of the Issuer generally (meaning for these purposes the holders of at least 60% of the Shares outstanding at the time such offer is made) are entitled to participate in arrangements whereby such securities may be acquired by them (except where the Conversion Price falls to be adjusted under Conditions 6.3(e), 6.3(f), 6.3(g) or 6.3(h) above), then the Conversion Price shall be adjusted by multiplying the Conversion Price in effect immediately before such issue by the following fraction:

$$\frac{A - B}{A}$$

where:

A is the Current Market Price of one Share on the last Trading Day preceding the date on which such issue is publicly announced; and

B is the Fair Market Value on the date of such announcement of the portion of the rights attributable to one Share.

Such adjustment shall become effective on the date of issue of the securities.

- (k) *Analogous Events and Other Events:* If (i) the rights of conversion, exchange, purchase or subscription attaching to any options, rights or warrants to subscribe for or purchase Shares or any securities convertible into or exchangeable for Shares or the rights carried by such securities to subscribe for or purchase Shares are modified (other than pursuant to and as provided in the existing terms and conditions of such options, rights, warrants or securities) or (ii) one or more events or circumstances not referred to in any other provisions of this Condition have occurred which have or would have a negative effect on the position of the Noteholders as a class compared with the position of the holders of all the securities (and options, rights and warrants relating thereto) of the Issuer, taken as a class, which is analogous to any of the events referred to in Conditions 6.3(b) to (j) (including any demerger, spin-off or similar arrangement in respect of any business of the Issuer), then, in any such case, the Issuer shall promptly (A) notify the Noteholders thereof, (B) consult with an independent investment bank of good repute selected by the Issuer and approved in writing by the Noteholders, as to what adjustment, if any, should be made to the Conversion Price to preserve the value of the Conversion Right of Noteholders and (C) make any such adjustment. All costs, charges, liabilities and expenses incurred in connection with the appointment, retention, consultation and remuneration of the independent investment bank of good repute appointed hereunder shall be borne by the Issuer.
- (l) The Issuer shall promptly give notice to the Noteholders of any change in the Conversion Price. Any such notice relating to a change in the Conversion Price shall set forth the event giving rise to the adjustment, the Conversion Price prior to such adjustment, the adjusted Conversion Price and the effective date of such adjustment.

- (m) No adjustment involving an increase in the Conversion Price will be made, except in the case of a consolidation of the Shares and as contemplated under (k) above.
- (n) Any adjustment to the Conversion Price shall be made to the nearest HK\$0.01 so that any amount under half a HK\$0.005 be rounded down and any amount equal to or over half a HK\$0.005 shall be rounded up.
- (o) Notwithstanding anything contained herein, no adjustment shall be made to the Conversion Price in any case in which the amount by which the same would be reduced in accordance with the foregoing provisions of this Condition would be less than the nominal value or par value being HK\$0.01 per Share.

The provisions of this Condition 6.3 shall not apply to any grant of options by the Issuer pursuant to the Share Option Scheme at any time after 22 October 2007 ("New Options") where the total number of Shares to be issued upon the exercise in full of the New Options does not exceed 27,681,250 Shares, being 5% of the total number of the issued Shares as at 22 October 2007 ("Relevant Percentage"). For the avoidance of doubt, if the total number of Shares so issued exceeds the Relevant Percentage, this Condition 6.3 shall apply to the fullest extent by taking into account the New Options in its totality.

## **7. Redemption**

### **7.1 Final Redemption**

Unless previously redeemed or converted and subject to these Conditions, the Issuer shall redeem the Notes at [•]% of the principal amount of the Notes redeemed on the Maturity Date. The Issuer may not redeem the Notes at its option prior to the Maturity Date, except as provided in Condition 7.2.

### **7.2 Early Redemption at the Option of the Issuer**

The Issuer, at its option, may redeem the Notes for HK\$:

- (a) in whole but not in part, at the Early Redemption Price (plus any accrued and unpaid interest and additional interest, if any) at any time after the 18th (eighteenth) month of the Issue Date in the event the volume weighted average price of the Shares on the Stock Exchange or the Alternative Stock Exchange, as the case may be, exceeds 130% of the Conversion Price for at least 30 consecutive Trading Days prior to such redemption; and
- (b) in whole but not in part, at a price equal to the Early Redemption Price (plus any accrued and unpaid interest and additional interest, if any) in the event at least 90% of the Notes issued and outstanding has been redeemed, converted, repurchased or cancelled.

At least [•] days before a Redemption Date, the Issuer shall provide each Noteholder with a notice in accordance with Condition 11. The notice shall identify the Notes to be redeemed (to the extent applicable) and shall state: (i) the Redemption Date; (ii) the price at which the Notes will be redeemed; (iii) the Conversion Price; (iv) the name and address of the Paying Agent; (v) that the Notes may be converted at any time prior to the Redemption Date; (vi) that the Notes called for redemption and not converted shall be redeemed on the Redemption Date; (vii) that the Noteholders who want to convert their Notes must satisfy the requirements of these Conditions; (viii) that the Notes

called for redemption must be surrendered to the Paying and Conversion Agent to collect the redemption price provided herein; (ix) if fewer than all the outstanding Notes are to be redeemed, the certificate number, if any, and principal amount of the particular Notes to be redeemed; and (x) that a redemption notice, once validly given, may not be withdrawn. Notwithstanding the foregoing, the Issuer may not redeem the Notes if it has failed to pay interest (of whatever nature specified these Conditions) on the Notes when due and such failure is continuing.

### 7.3 Redemption for Taxation Reasons

- (a) At any time the Issuer may, having given not less than 30 nor more than 60 days' notice to the Noteholders (which notice shall be irrevocable) redeem the Notes (in whole and not in part) at their Early Redemption Amount (plus any accrued and unpaid interest and additional interest, if any), if (i) the Issuer satisfies the Trustee immediately prior to the giving of such notice that the Issuer has or will become obliged to pay additional amounts as referred to in Condition 9 of more than a de minimis amount as a result of any change in, or amendment to, the laws or regulations of the Cayman Islands, Hong Kong or other relevant jurisdictions or any political subdivision or any authority thereof or therein having power to tax (any of the aforementioned being a "Tax Jurisdiction"), or any change in the general application or official interpretation of such laws or regulations, which change or amendment becomes effective on or after [•], and (ii) such obligation cannot be avoided by the Issuer taking reasonable measures available to it, *provided that* no such notice of redemption shall be given earlier than 90 days prior to the earliest date on which the Issuer would be obliged to pay such additional amounts were a payment in respect of the Notes then due. Prior to the publication of any notice of redemption pursuant to this Condition 7.3(a), the Issuer shall deliver to the Trustee (A) a certificate signed by two directors of the Issuer stating that the obligation referred to in (i) above cannot be avoided by the Issuer (taking reasonable measures available to it) and (B) an opinion of independent legal or tax advisors of good repute as approved by the Trustee standing to the effect that such change or amendment has occurred (irrespective of whether such amendment or change is then effective) and the Trustee shall be entitled to accept such certificate and opinion as sufficient evidence thereof in which event it shall be conclusive and binding on the Noteholders.
- (b) Upon the expiry of any such notice, the Issuer will be bound to redeem the Notes at their Early Redemption Amount (plus any accrued and unpaid interest and additional interest, if any) on the date specified in such notice (the "Tax Redemption Date").
- (c) If the Issuer gives a notice of redemption pursuant to this Condition 7.3, each Noteholder will have the right to elect that its Note(s) shall not be redeemed and that the provisions of Condition 9 shall not apply in respect of any payment to be made in respect of such Note(s) which falls due after the relevant Tax Redemption Date whereupon no addition amounts shall be payable in respect thereof pursuant to Condition 9 and payment of all amounts shall be made subject to the deduction or withholding of the taxation required to be withheld or deducted by the government of the Cayman Islands or Hong Kong or any other authority having power to tax. For the avoidance of doubt, any additional amounts which had been payable in respect of the Notes as a result of the laws or regulations of the government of the Cayman Islands, Hong Kong or other relevant jurisdictions or any authority thereof or therein having power to tax prior to [•], will continue to be payable to such Noteholders. To exercise such

right, the holder of the Notes must deliver at the specified office of any Paying Agent a notice of redemption, in the form for the time being current, obtainable from the specified office of any Paying and Conversion Agent on or before the day falling 10 days prior to the Tax Redemption Date.

#### 7.4 Redemption at the Option of the Noteholders

- (a) *Redemption.* The Issuer will, at the option of the Noteholder, redeem all or some of that Noteholder's Notes on a date falling after the second anniversary of the Issue Date (a "**Put Option Date**"), at the Early Redemption Price (plus any accrued and unpaid interest and additional interest, if any) of the Notes. To exercise its option pursuant to this Condition 7.4(a), the Noteholders must deliver to the Paying and Conversion Agent a written notice of redemption (the "**Put Option Notice**") not earlier than 60 days and not later than 30 days prior to the relevant Put Option Date. It shall provide the Paying and Conversion Agent with a [•] days prior written notice of redemption.

A Put Option Notice, once delivered, shall be irrevocable and may not be withdrawn unless the Issuer consents to such withdrawal), and the Issuer shall redeem the Notes the subject of a Put Option Notice delivered as aforesaid on the Put Option Date.

(b) *Redemption Right upon Delisting*

- (i) Notwithstanding Condition 7.4(a), in the event of a Delisting, each Noteholder shall have the right (the "**Delisting Put Right**"), at such Noteholder's option, to require the Issuer to redeem (in whole and not in part) such Noteholder's Notes on the [•] Business Day after notice has been given to the Noteholders regarding the Delisting referred to under Condition 7.4(b)(iii) below or, if such notice is not given, the [•] Business Day after the Delisting (the "**Delisting Put Date**") at the Early Redemption Price (plus any accrued and unpaid interest and additional interest, if any) (the "**Delisting Put Price**").
- (ii) Promptly after becoming aware of a Delisting; the Issuer shall give written notice to the Noteholders which notice shall include the following: (A) the Delisting Put Date; (B) the date of such Delisting and a brief description of the event causing such Delisting; (C) the date by which the Purchase Notice (as defined below) must be given; (D) the price at which the Notes will be redeemed (to the extent the Noteholders exercise their option to redeem) and the method by which such amount will be paid; (E) the Conversion Price; (F) the name and address of the Paying and Conversion Agent; (G) that the Notes may be converted at any time prior to the Delisting Put Date; (H) that the redemption price for the Notes shall be paid on the Delisting Put Date; (I) the procedures that the Noteholders must follow and the requirements that the Noteholders must satisfy in order to exercise its Delisting Put Rights; and (J) that a Purchase Notice, once validly given, may not be withdrawn.
- (iii) To exercise its rights to require the Issuer to purchase its Notes, a Noteholder must deliver a written irrevocable notice of the exercise of such right (a "**Purchase Notice**"), in the then current form obtainable from the specified office of the Paying and Conversion Agent, and deliver the same to the Paying and Conversion Agent on any Business

Day prior to the close of business at the location of such Paying and Conversion Agent on such day and which day is not less than 10 Business Days prior to the Delisting Put Date.

- (iv) A Purchase Notice, once delivered, shall be irrevocable and the Issuer shall redeem the Notes which form the subject of the Delisting Notice delivered as aforesaid on the Delisting Put Date.
  - (v) The Trustee shall not be required to take further steps to ascertain whether a Delisting or any event which could lead to the occurrence of a Delisting has occurred.
- (c) *Redemption Right upon Change of Control*
- (i) Change of Control. A "Change of Control" occurs when:
    - (A) any Person (other than China Water Affairs Group Limited (stock code 855 listed under the Stock Exchange) and Mr. Duan Chuan Liang (段傳良)) directly or indirectly, or as the beneficiary of a trust, acting individually or together or their Affiliates, executors, administrators, or successors, acquires control of the Issuer; or
    - (B) the Issuer consolidates with or merges into or sells or transfers all or substantially all of the Issuer's Shares or assets to any other Person, unless the consolidation, merger, sale or transfer will not result in such Person acquiring control over the Issuer or the successor entity.

For the purpose of this Clause 7.4(c)(i), "control" means the acquisition or control of more than 30% of the voting rights of the issued share capital of the Issuer or the right to appoint and/or remove majority of the members of the Issuer's Board of Directors or other governing body, whether obtained directly or indirectly, and whether obtained by ownership of share capital, the possession of voting rights, contract or otherwise.

Notwithstanding Condition 7.4(a), following the occurrence of a Change of Control, each Noteholder shall have the right, at its option, to require the Issuer to redeem in whole and not in part its Notes on the Relevant Event Put Date (as defined below) at the Early Redemption Price (plus any accrued and unpaid interest and additional interest, if any). To exercise such right, the Noteholder must deliver at the specified office of any Paying and Conversion Agent ("**Relevant Event Put Exercise Notice**") by not later than 30 days following a Change of Control, or, if later, 30 days following the date upon which notice thereof is given to the Noteholders by the Issuer in accordance with Condition 11. The "**Relevant Put Date**" shall be the 14<sup>th</sup> day after the expiry of such period of 30 days as referred to above. For the purpose of this Condition, A "**Relevant Event**" occurs when there is a Change of Control.

- (ii) A Relevant Event Put Exercise Notice, once delivered, shall be irrevocable and the Issuer shall redeem the Notes which form the subject of the Relevant Event Put Exercise Notices delivered as aforesaid on the Relevant Put Date.

(iii) The Trustee shall not be required to take any steps to ascertain whether a Relevant Event or any event which could lead to the occurrence of a Relevant Event has occurred.

(iv) Notice to the Noteholders

Not later than seven days after becoming aware of a Change of Control, the Issuer shall notify the Noteholders of a Change of Control, which notice shall include the following:

- (A) the Relevant Put Date;
- (B) a summary of the terms of the transaction and the identity of the counterparty to the transaction;
- (C) the date by which Relevant Event Put Exercise Notice must be given;
- (D) the price at which the Notes will be redeemed (to the extent the Noteholders exercise their option to redeem) and the method by which such amount will be paid;
- (E) briefly, the Conversion Right and the Conversion Price;
- (F) the name and address of the Paying and Conversion Agent;
- (G) the procedures that the Noteholders must follow and the requirements that the Noteholders must satisfy in order to exercise the Relevant Event Put Right or Conversion Right redemption right; and
- (H) a statement to the effect that the Relevant Event Put Exercise Notice, once validly given, may not be withdrawn.

#### **7.5 Open Market Purchase**

The Issuer or any of its Subsidiaries may at any time and from time to time purchase the Notes in the open market or otherwise.

#### **7.6 Cancellation**

All Notes which are redeemed or converted shall forthwith be cancelled. Certificates in respect of all Notes cancelled will be forwarded to or to the order of the registrar and such Notes may not be reissued or resold.

#### **8. Payments**

- (a) *Payments in respect of the Global Note.* Payments of principal and interest in respect of the Notes represented by the Global Note will be made in Hong Kong dollars against presentation and endorsement, and, if no further payment fails to be made in respect of the Notes, against surrender, of the Global Note to or to the order of the Paying and Conversion Agent outside the United States, subject in all cases to any fiscal or other laws and regulations or orders of courts of competent jurisdiction applicable in respect of such payment to (i) the Issuer, (ii) the Paying and Conversion Agent, (iii) the

holder of the Global Note or, as the case may be, or (iv) the Accountholder(s), but in each case without prejudice to the provisions of Condition 9 and the provisions of the Global Note. Each Accountholder must look solely to Euroclear or, as the case may be, Clearstream, Luxembourg for its share of each payment so made. A record of each payment so made will be endorsed on the appropriate part of the schedule to the Global Note by or on behalf of the Paying and Conversion Agent to which the Global Note is presented for the purpose of making such payment and shall be prima facie evidence that payment has been made.

- (b) *Payments in respect of Definitive Notes.* Payments of principal and interest on each Definitive Note will be made in Hong Kong dollars to the holder thereof appearing on the register at the close of business on the record date at its address shown on the register on the record date. In addition, interest on Definitive Notes may be paid by check mailed to the person entitled thereto as shown on the register for such Definitive Notes. Payments of principal and interest in respect of Definitive Notes are subject in all cases to any fiscal or other laws and regulations applicable thereto in the place of payment, but without prejudice to the provisions of Condition 11.
- (c) *Payment Dates.* If the due date for payment of any amount of principal or interest in respect of any Note is not a Business Day, the holder thereof shall not be entitled to payment of the amount due until the next following Business Day or to any further interest or other payment in respect of any such delay. If the due date for redemption (other than by reason of the exercise of Conversion Rights) of any Notes is not an interest payment date (an "Interest Payment Date"), or if payment of principal is improperly withheld or refused on or in respect of any Notes, interest accrued in respect of those Notes from and including the last preceding Interest Payment Date (or, where the due date for redemption falls prior to the first Interest Payment Date, the Issue Date) to but excluding the due date for redemption of the Notes will be paid against presentation and surrender of the Notes.
- (d) *Paying Agents.* The Issuer has initially appointed as paying agents the Paying and Conversion Agent. The Issuer reserves the right, with the prior written approval of the Trustee, to remove any paying agent or to appoint other or further paying agents, *provided that* it will at all times maintain a paying agent having a specified office in [•] approved by the Trustee so long as the Notes are outstanding.

## 9. Taxation

- 9.1 Save for income tax arising from the interests accrued on the Notes to be payable by the Noteholders, all payments of principal and interest in respect of the Notes and of any other amounts payable pursuant hereto or to the Trust Deed will be made without withholding or deduction for, or on account of any present or future taxes, duties, assessments or governmental charges of whatever nature imposed or levied by or on behalf of the Cayman Islands, Hong Kong, the PRC and British Virgin Islands or other relevant jurisdictions from and through which such payments are made, unless the withholding or deduction of such taxes, duties, assessments or governmental charges is required by law. In that event, the Issuer will pay such additional amounts as may be necessary in order that the net amounts received by the holders of the Notes after such withholding or deduction shall equal the respective amounts of principal and interest and of any other amounts payable pursuant hereto or to the Trust Deed which would have been receivable in respect of the Notes in the absence of such

withholding or deduction, except that no such additional amount shall be payable in respect of any Note:

- (a) to a holder (or to a third party on behalf of a holder) who is subject to such taxes, duties, assessments or governmental charges in respect of such Note by reason of his having some connection with the relevant jurisdiction otherwise than merely by holding the Note or by the receipt of amounts in respect of the Note or where the withholding or deduction could be avoided by the holder making a declaration of non-residence or other similar claim for exemption to the appropriate authority which such holder is legally capable and competent of making but fails to do so;
- (b) in the case of a payment of principal and interest in respect of the Notes, more than 30 days after the relevant date except to the extent that the holder thereof would have been entitled to such additional amount on presenting such Notes for payment on the last day of such period of 30 days;
- (c) where such withholding or deduction is imposed on a payment to an individual and is required to be made pursuant to any European Union Directive on the taxation of savings implementing the conclusions of the ECOFIN Council meeting of 26-27 November 2000 or any law implementing or complying with, or introduced in order to conform to, such Directive; or
- (d) presented for payment by or on behalf of a holder who would have been able to avoid such withholding or deduction by presenting the relevant Note to another Paying and Conversion Agent in a Member State of the European Union.

9.2 For the purposes of this Condition 9, "**relevant date**" means the date on which such payment first becomes due except that if the full amount payment has not been received by the Trustee or the Paying and Conversion Agent on or prior to such due date, the date on which, the full amount having been so received, notice to that effect shall have been given to the Noteholders in accordance with Condition 10.

## 10. Events of Default

The Issuer shall give notice to the Noteholders as soon as it becomes aware of the occurrence of any of the following events (each such event, whether or not such notice is provided, an "**Event of Default**"):

- (a) the Issuer or any of its Subsidiaries is in default of the performance or observance or compliance with any of its obligations under the Notes or the Transaction Documents (which default is incapable of remedy or, if capable of remedy, is not remedied within 10 Business Days after notice of such default shall have been given by any Noteholder); or
- (b) default is made in the payment of the principal amounts due in respect of any Note or default is made in the payment of interest due in respect of any such Note and such default is not cured within three Business Day; or
- (c) failure by the Issuer to deliver the Convertible Shares within three Business Days of conversion when such Convertible Shares are required to be delivered following conversion of a Note; or



- (d) an encumbrancer takes possession or a receiver, administrator, manager or other similar officer is appointed of the whole or any substantial part of the undertaking, property, assets or revenues of any Group Company; or
- (e) any Group Company becomes insolvent or is unable to pay its debts as they become mature or applies for or consents to or suffers the appointment of any administrator, liquidator or receiver over the whole or any substantial part of its undertaking, property, assets or revenues or takes any proceeding under any law for a readjustment or deferment of its obligations or any part of them or makes or enters into a general assignment or compromise with or for the benefit of its creditors; or
- (f) an order of a court of competent jurisdiction is made or an effective resolution passed for the winding-up of any Group Company except in the case of a subsidiary of the Issuer (i) for the purposes of or pursuant to and followed by a consolidation or amalgamation with or merger into the Issuer or any of its other subsidiaries; (ii) for the purposes of or pursuant to and followed by a consolidation, amalgamation, merger, reorganization or reconstruction (other than as described in (i) above) the terms of which shall have been previously approved by the Noteholders; or (iii) by way of a voluntary winding up or dissolution where there are surplus assets in a subsidiary of the Issuer and such surplus assets attributable to such subsidiary are distributed to the Issuer and/or any of its other subsidiaries; or
- (g) a moratorium is agreed or declared in respect of any Indebtedness of exceeding HK\$4,000,000 of any Group Company or any governmental authority or agency condemns, seizes, compulsorily purchases or expropriates all or a substantial part of the assets of any Group Company; or
- (h) the Issuer ceases or threatens to cease to carry on its business or any substantial part thereof or changes or threatens to change the nature or scope of its business from that carried on at the Issue Date or the Issuer disposes of, or threatens to dispose of, or any governmental or other authority expropriates or threatens to expropriate, all or any substantial part of its business or assets; or
- (i) any other present or future Indebtedness (whether actual or contingent) in the sum exceeding HK\$4,000,000 of any Group Company for or in respect of moneys borrowed or raised becomes, or becomes capable of being declared, due and payable prior to its stated maturity by reason of any actual or potential default, event of default or the like (howsoever described), or (ii) any such Indebtedness is not paid when due, or (iii) any Group Company fails to pay when due any amount payable by it under any present or fixture guarantee for, or indemnity in respect of, any moneys borrowed or raised; or
- (j) any money judgment, writ or warrant of attachment or similar process involving (i) in an individual case an amount in excess of HK\$2,000,000 or (ii) in the aggregate at any time an amount in excess of HK\$4,000,000, in either case to the extent not adequately covered by insurance as to which a solvent and unaffiliated insurance company has acknowledged coverage, shall be entered or filed against any Group Company or any of its assets and shall remain undischarged, unvacated, unbonded or unstayed for a period of 30 Business Days (or in any event later than five days prior to the date of any proposed sale thereunder); or

- (k) the closing of the sale, transfer or other disposition of all or a substantial part of the Issuer's assets, the consummation of the merger or consolidation of the Issuer with or into another entity; or
- (l) it is or becomes unlawful for the Issuer to perform or comply with any of its material obligations under or in respect of the Notes; or
- (m) any event occurs which under the laws of any relevant jurisdiction has an analogous effect to any of the events referred to in any of the foregoing paragraphs; or
- (n) any material disciplinary action or similar action or proceedings being taken by the Stock Exchange or an Alternative Stock Exchange, the Securities and Futures Commission or other regulatory authority against any member of the Group or any of their officers in respect of any matter which relates to the Group.

Upon the occurrence of an Event of Default, the Trustee (pursuant to the Trust Deed) or the Noteholders holding 25% or more of the outstanding principal amount of the Notes may, upon written notice to the Issuer, declare the Notes, and the Notes held by all of the Noteholders shall forthwith become, immediately due and payable at the Early Redemption Price (plus any accrued and unpaid interest and additional interest, if any), without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by the Issuer.

Notwithstanding receipt of any payment after the acceleration of the Notes, a Noteholder may exercise its Conversion Right by delivering an Exercise Notice to the Issuer during the period from and including the date of a default notice with respect to an event specified in Condition 10(c) (at which time the Issuer will notify the Noteholders of the number of Convertible Shares per Note to be delivered upon conversion, assuming all the then outstanding Notes are converted) to and including the 30th Business Day after such payment.

## **11. Notices**

All notices to the Noteholders shall be validly given if mailed to them at their respective addresses in the register of Noteholders maintained by the registrar and, so long as the rules of the Stock Exchange or an Alternative Stock Exchange so require, published in a leading newspaper having general circulation in Hong Kong or, if such publication shall not be practicable, in an English language newspaper of general circulation in Asia. Any such notices shall be deemed to have been given on the later of the date of such publications, or if mailed, the seventh day after being so mailed, as the case may be.

## **12. Replacement of the Notes**

Should any Note be lost, stolen, mutilated, defaced or destroyed, it may be replaced, subject to applicable laws and stock exchange requirements, at the specified office of the Paying and Conversion Agent upon payment by the claimant of the expenses incurred in connection with the replacement and upon such terms as to evidence and indemnity as the Issuer and/or such Paying and Conversion Agent may reasonably require. Mutilated or defaced Notes must be surrendered before replacements will be issued.

### 13. Meetings of Noteholders; Modifications, Waivers and Authorizations

- (a) *Meetings.* The Trust Deed contains provisions for convening meetings of the Noteholders to consider any matter affecting their interests, including the modification or abrogation by Extraordinary Resolution of these Conditions or the provisions of the Trust Deed. The quorum at any such meeting for passing an Extraordinary Resolution will be one or more persons present holding or representing not less than 75% in principal amount of the Notes for the time being outstanding, or at any adjourned such meeting one or more persons present being or representing Noteholders whatever the principal amount of the Notes so held or represented except that at any meeting the business of which includes the modification of certain terms, conditions and provisions (including modifying the date of maturity of the Notes or any date for payment of interest thereon, reducing or cancelling the amount of principal or the rate of interest payable in respect of the Notes, altering the currency of payment of the Notes or modifying or cancelling the Conversion Rights) the quorum will be one or more persons present holding or representing not less than three-quarters, or at any adjourned such meeting not less than one quarter, in principal amount of the Notes for the time being outstanding. An Extraordinary Resolution passed at any meeting of Noteholders will be binding on all Noteholders, whether or not they are present at the meeting.

For the purpose of this Condition, "**Extraordinary Resolution**" means a resolution passed at a meeting of Noteholders duly convened and held in accordance with these provisions by a majority consisting of not less than three-quarters of the outstanding principal amount of the Notes

- (b) *Modifications.* The Trustee may agree, without the consent of the Noteholders, to any modification of, or to the waiver or authorisation of any breach or proposed breach of, any of these Conditions or any of the provisions of the Trust Deed which, in its opinion, is not materially prejudicial to the interests of the, Noteholders or to any modification which is of a formal, minor or technical nature or is made to correct a manifest error. Any such modification, waiver or authorisation shall be binding on the Noteholders and, unless the Trustee agrees otherwise, any such modification shall be notified to the Noteholders as soon as practicable thereafter in accordance with Condition 11.

### 14. Duties and Indemnification of the Trustee

- (a) *Interests of Noteholders.* In connection with the exercise by it of any of its trusts, powers, authorities and discretions (including, without limitation, any modification, waiver or authorisation), the Trustee shall have regard to the general interests of the Noteholders as a class but shall not have regard to any interests arising from circumstances particular to individual Noteholders (whatever their number) and, in particular, but without limitation, shall not have regard to the consequences of the exercise of its trusts, powers, authorities and discretions for individual Noteholders (whatever their number) resulting from their being for any purpose domiciled or resident in, or otherwise connected with, or subject to the jurisdiction of, any particular territory or any political subdivision thereof and the Trustee shall not be entitled to require, nor shall any Noteholder be entitled to claim, from the Issuer, the Trustee or any other person any indemnification or payment in respect of any tax consequence of any such exercise upon individual Noteholders except to the extent already provided for

in Condition 9 and/or any undertaking given in addition to, or in substitution for, Condition 9 pursuant to the Trust Deed.

- (b) *Indemnification.* The Trust Deed contains provisions for the indemnification of the Trustee and for its relief from responsibility, including provisions relieving it from taking action unless indemnified to its satisfaction.

**15. Governing Law and Submission to Jurisdiction**

- (a) *Governing Law.* The Trust Deed and the Notes are governed by, and shall be construed in accordance with the laws of Hong Kong.
- (b) *Submission.* The Issuer has in the Trust Deed unconditionally and irrevocably agreed for the exclusive benefit of the Noteholders and the Trustee that the courts of Hong Kong are to have jurisdiction to settle any disputes which may arise out of or in connection with the Trust Deed and the Notes and that accordingly any suit, action or proceedings arising out of or in connection with the Trust Deed or the Notes (together referred to as "Proceedings") may be brought in the courts of Hong Kong.
- (c) *Waiver.* The Issuer has in the Trust Deed irrevocably and unconditionally waived any objection which it may have now or hereafter to the laying of the venue of any Proceedings in the courts of Hong Kong and any claim that any Proceedings have been brought in an inconvenient forum and has further irrevocably and unconditionally agreed that a judgement in any Proceedings brought in the courts of Hong Kong shall be conclusive and binding upon the Issuer, and may be enforced in the courts of any other jurisdiction.
- (d) *Non-Exclusive.* Nothing contained in this Condition 15 shall limit any right to take Proceedings against the Issuer 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.

**16. Prescription**

Claims in respect of amounts due in respect of the Notes will become prescribed unless made within 10 years from the relevant date (as defined in Condition 9) in respect thereof.

# Placing Agreement

## Signing page

This Agreement has been entered into on the date stated at the beginning.

**The Issuer**

**WAH YUEN HOLDINGS LIMITED**

By:

*For and on behalf of*  
**WAH YUEN HOLDINGS LIMITED**

  
.....  
*Authorized Signature*

**The Placing Agent**

**BOCI ASIA LIMITED**

By:

# Placing Agreement

## Signing page

This Agreement has been entered into on the date stated at the beginning.

### The Issuer

**WAH YUEN HOLDINGS LIMITED**

By:

### The Placing Agent

**BOCI ASIA LIMITED**

By:

