

**PRICING SUPPLEMENT  
TRANCHE A**

**30 September 2004**

**VICTORIA PEAK INTERNATIONAL FINANCE  
LIMITED**

**PRICING SUPPLEMENT**

relating to  
Octave Notes Series 1

US Dollar Callable Credit-Linked Fixed Rate Notes due 2009  
 (“**Tranche A Notes**” and in this Pricing Supplement, the “**Notes**”)

pursuant to its Retail Note Programme  
arranged by

**MORGAN STANLEY & CO. INTERNATIONAL LIMITED**

The terms of the Tranche A Notes are as follows:

<b>1</b>	Issuer:	Victoria Peak International Finance Limited
<b>2</b>	Relevant Subscriber/Lead Manager:	Morgan Stanley & Co. International Limited as Relevant Subscriber
<b>3</b>	(i) Series No:	1
	(ii) Tranche:	A

**Terms of Series**

<b>4</b>	Relevant Currency (or Currencies in the case of Dual Currency Notes):	United States dollars (“ <b>US\$</b> ” or “ <b>USD</b> ”)
<b>5</b>	Principal Amount:	US\$3,665,000
<b>6</b>	Form of the Notes:	Registered Global Certificate
<b>7</b>	Status:	Secured and limited recourse obligations of the Issuer, secured as provided below
<b>8</b>	Denomination(s):	US\$5,000 per Note
<b>9</b>	Issue Date:	30 September 2004

- 10** Issue Price: 100 per cent. of the Principal Amount. Re-offered at 98 per cent. of the Principal Amount.
- 11** Maturity Date: 30 September 2009, subject to redemption at the option of the Issuer as provided in paragraph 13 below and the occurrence of a Company Credit Event or an Early Redemption Event as provided in the Conditions and paragraph 50 below.
- 12** Redemption Amount (including early redemption): Principal Amount of the Notes. If a Company Credit Event has occurred, the Company Credit Event Redemption Amount will be paid on the Company Credit Event Redemption Date (see Special Condition (B)(1) in Annex 1). If an Early Redemption Event has occurred, the Notes will be redeemed at the applicable Early Redemption Amount on the Early Redemption Date (see Special Condition (B)(2) in Annex 1).

### **Early Redemption**

- 13** Terms of redemption at the option of the Issuer or other Issuer's option (if applicable): The Issuer shall have the right, but not the obligation, to redeem the Notes in whole but not in part, at the Principal Amount plus accrued interest on any Interest Payment Date falling on or after the first anniversary of the Issue Date by giving five Business Days' prior written notice to the Noteholders.

**The Notes may also be redeemed early in the circumstances set out in the Conditions and paragraph 50 below.**

- 14** Issuer's Option Period: Not applicable
- 15** Terms of redemption at the option of the Noteholders or other Noteholders' Option (if applicable): Not applicable
- 16** Noteholders' Option Period: Not applicable
- 17** Interest Commencement Date (if different from Issue Date): Issue Date
- 18** Interest Basis: Fixed Rate
- 19** Interest Payment Date(s): Semi-annually on 30 March and 30 September, subject to Following Business Day Convention
- 20** Interest Period Date(s) (if applicable): Not applicable

### **Fixed Rate**

- 21** Interest Rate: 3.90 per cent. per annum.

**Upon receipt by the Issuer of a Company Credit Event Notice and a notice of Publicly Available Information confirming the occurrence of a Company Credit Event or, as the case may be, an Underlying Securities Event Notice confirming the occurrence of an Early Redemption Event,**

interest in respect of the Notes will be treated as having ceased to accrue from and including the Interest Payment Date falling on or immediately prior to the Company Credit Event Determination Date (being the date on which a Company Credit Event Notice and a notice of Publicly Available Information are effective) or, as the case may be, the date on which the Determination Agent delivers an Underlying Securities Event Notice to the Issuer.

22	Day Count Fraction:	30/360
23	Fixed Rate Interest Amount:	US\$97.50 per Note
24	Broken Amount:	Not applicable

**Floating Rate**

25	Interest Determination Date (if applicable):	Not applicable
26	Primary Source for Floating Rate:	Not applicable
27	Benchmark:	Not applicable
28	Reference Banks:	Not applicable
29	Margin:	Not applicable
30	Rate Multiplier (if applicable):	Not applicable
31	Minimum Interest Rate (if applicable):	Not applicable
32	Maximum Interest Rate (if applicable):	Not applicable
33	Representative Amount:	Not applicable
34	Specified Duration:	Not applicable
35	Relevant Time (if applicable):	Not applicable
36	Relevant Financial Centre:	Not applicable
37	Specified financial centres for definition of Relevant Business Day:	Not applicable

**Zero Coupon**

38	Amortisation Yield (Zero Coupon Note):	Not applicable
39	Reference Price (Zero Coupon Note):	Not applicable

**Other**

40	Redemption for Taxation Reasons permitted on days other than Interest Payment Dates:	Yes
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- 41** Index/Formula (Indexed Note): Not applicable
- 42** Calculation Agent: JPMorgan Chase Bank has been appointed as the Calculation Agent pursuant the Agency Agreement dated 30 August 2004.
- 43** Dual Currency Note: Not applicable
- 44** Partly-Paid Note: Not applicable
- 45** Instalment Date(s) (if applicable): Not applicable
- 46** Instalment Amount(s) (if applicable): Not applicable
- 47** Unmatured Coupons to become void upon early redemption: Not applicable
- 48** Talons to be attached to Notes and, if applicable, the number of Interest Payment Dates between the maturity of each Talon (Bearer Notes): No
- 49** Business Day Jurisdictions for Condition 8(h) (jurisdictions required to be open for payment): Hong Kong, New York City and London
- 50** Mandatory Redemption/Credit Event/Other Specified Event: Condition 7(b) and Condition 7(c) shall be amended as set out in this paragraph 50.  
(i) Conditions 7(b), 7(c)(i) and 7(c)(ii) will be deleted;  
(ii) "Credit Event" in Condition 7(c)(iii) means a "Company Credit Event" as set out in Special Condition (B)(1) in Annex 1; and  
(iii) "Other specified event" in Condition 7(c)(iv) means an "Early Redemption Event" as set out in Special Condition (B)(2) in Annex 1.
- 51** Variation: Not applicable
- 52** Details of any other additions or variations to the Conditions: (i) Condition 6(a) "Interest Rate and Accrual" shall be amended as set out in Special Condition (A) in Annex 1.  
(ii) Condition 10 "Events of Default" shall be amended as set out in Special Condition (C) in Annex 1.  
(iii) Condition 16 "Notices" shall be amended as set out in Special Condition (D) in Annex 1.
- 53** Mortgaged Property:  
(a) Securities: US\$3,665,000 in principal amount of Floating Rate Notes due 28 September 2009 issued by Landesbank Berlin, London Branch (the

“**Underlying Securities**”).

The International Securities Identification Number (“**ISIN**”) for the Underlying Securities is XS0200605813 and the Common Code for the Underlying Securities is 020060581.

- (b) Security (order of priorities): The Trustee shall apply all moneys received by it under the Trust Deed in connection with the realisation or enforcement of the security constituted by or pursuant to the Trust Deed in accordance with the following:

**Derivatives Counterparty Priority**

In accordance with the Supplemental Trust Deed, the Security for the Notes shall comprise all of the following:

- (i) a first fixed charge in favour of the Trustee over the Underlying Securities and all of the Issuer’s rights attaching to or relating to the Underlying Securities and all sums derived therefrom;
- (ii) an assignment by way of first fixed charge in favour of the Trustee of all of the Issuer’s rights, title and interest against the Custodian, to the extent they relate to the Underlying Securities;
- (iii) an assignment by way of first fixed charge in favour of the Trustee of all of the Issuer’s rights, title and interest under each of the Swap Agreement, the Swap Guarantee, the Forward Agreement and the Forward Guarantee and any sums received thereunder;
- (iv) a first fixed charge in favour of the Trustee over all sums (i) received under the Swap Agreement, the Swap Guarantee, the Forward Agreement and the Forward Guarantee; and (ii) held by the Agent and/or the Custodian and/or the Registrar to meet payments due in respect of the Notes; and
- (v) an assignment by way of first fixed charge in favour of the Trustee of the Issuer’s rights, title and interest under the Agency Agreement in respect of the Notes and the Underlying Securities, including all sums derived therefrom in respect of the Notes and all rights against the Custodian with respect to the Underlying Securities, including without limitation all rights to the delivery of such Underlying Securities against the Custodian under the Agency Agreement or any applicable clearing system or the operator thereof or against any bank, broker or other intermediary and including all sums and other rights derived from such Underlying Securities.

The claims of the Trustee, the Custodian, the Principal Paying Agent and the Derivatives Counterparties against the Issuer shall rank prior to the claims of the Noteholders under the Notes in the application of

all moneys received in connection with the realisation or enforcement of the Security. In realising the Security, in certain circumstances the Trustee is obliged to act in accordance with the directions of the Derivatives Counterparties (provided that sums are due to the Derivatives Counterparties).

- (c) Underlying Agreement (if applicable): Not applicable
- Counterparty(ies): Not applicable

(d) Derivatives Contract

(i) Swap Agreement (including the Credit Default Swap Transaction and the Asset Swap Transaction) and the Swap Guarantee:

In connection with the issue of the Notes, the Issuer has entered into, amongst other things, an ISDA Master Agreement (the “**ISDA Master Agreement**”) dated as of 30 September 2004 between the Issuer and the Swap Counterparty which ISDA Master Agreement benefits from a guarantee (the “**Swap Guarantee**”) of the Swap Guarantor dated 30 September 2004. Under the ISDA Master Agreement the Issuer has executed certain confirmations thereto which incorporate the terms of the ISDA Master Agreement. The confirmations to the ISDA Master Agreement which relate to the Notes comprise a credit default swap transaction (the “**Credit Default Swap Transaction**”) and an interest rate swap transaction (the “**Asset Swap Transaction**”). The ISDA Master Agreement together with the confirmations thereto which relate to the Notes are together referred to herein as the “**Swap Agreement**”.

Pursuant to the terms of the Credit Default Swap Transaction the Issuer has agreed to sell credit protection to the Swap Counterparty in relation to the Company in a notional amount equal to the Principal Amount of the Notes for a certain protection premium (the “**Credit Default Swap Premium**”) and the Issuer has agreed that following the occurrence of a Company Credit Event, it will pay to the Swap Counterparty an amount equal to the notional amount of the Credit Default Swap Transaction in exchange for an amount equal to the Company Credit Event Redemption Amount (after certain adjustments have been made by the Swap Counterparty as described under the definition of Company Credit Event Redemption Amount set out in Annex 2 below).

Furthermore, in connection with the issue of the Notes the Issuer has entered into the Asset Swap Transaction in a notional amount equal to the Principal Amount of the Notes pursuant to which (A) the Issuer has agreed to pay to the Swap Counterparty (i) an amount equal to all distributions in respect of interest or income receivable by the Issuer in respect of the Underlying Securities and (ii) an amount equal to the product of the Credit Default Swap Premium and the Principal Amount of the Notes and (B) the Swap Counterparty has agreed to pay to the Issuer an amount equal to all amounts of interest due in respect of the Notes.

(ii) Forward Agreement and Forward Guarantee In connection with the issue of the Notes, the Issuer has also entered into a contingent forward agreement (the “**Forward Agreement**”) with the Forward Counterparty pursuant to which the Issuer has agreed that following the occurrence of a Company Credit Event, it will deliver to the Forward Counterparty the Underlying Securities and the Forward Counterparty will pay to the Issuer an amount equal to the par value of the Underlying Securities which amount will be paid by the Issuer to the Swap Counterparty in satisfaction of the Issuer’s obligations to the Swap Counterparty under the Credit Default Swap Transaction. The Forward Agreement has been entered into pursuant to a confirmation to, and incorporates the terms of, an ISDA Master Agreement dated as of 30 September 2004 between the Issuer and the Forward Counterparty and benefits from a guarantee (the “**Forward Guarantee**”) of the Forward Guarantor dated 30 September 2004

Each of the Swap Agreement and the Forward Agreement may be terminated early, among other circumstances:

- (a) at the election of the non-defaulting party upon an Event of Default under the Swap Agreement or the Forward Agreement, as the case may be, including:
  - (i) the failure of the other party to pay any amount due and payable under the Swap Agreement or the Forward Agreement, as the case may be and such failure continues for one Business Day (as defined in the Swap Agreement);
  - (ii) non-compliance by the Swap Guarantor with any of its obligations under the Swap Guarantee or the Forward Guarantee, as the case may be or the ceasing of the Swap Guarantee or the Forward Guarantee, as the case may be, to be in full force and effect;
  - (iii) the merger of either party or the Swap Guarantor or the Forward Guarantor, as the case may be, with another entity and such entity fails to assume all of the relevant party’s obligations under the Swap Agreement or the Forward Agreement, as the case may be or the Swap Guarantee or the Forward Guarantee (as applicable); and
- (b) on the occurrence of certain Termination Events, including:
  - (i) it becoming illegal for either party to perform its obligations under the Swap Agreement or the Forward Agreement, as the case may be, or for the Swap Guarantor or the Forward Guarantor, as the case may be, to perform its obligations under the Swap Guarantee or the Forward Guarantee, respectively;

- (ii) if (subject as provided in the Swap Agreement or the Forward Agreement, as the case may be) withholding taxes are imposed on payments made by the Issuer, the Swap Counterparty or the Forward Counterparty under the Swap Agreement and/or the Forward Agreement, as the case may be, which is not avoided by a transfer by the Affected Party (as defined in the Swap Agreement or the Forward Agreement, as the case may be) of its rights and obligations on terms provided in the Swap Agreement or the Forward Agreement, respectively;
- (iii) when the Notes become due and payable (in whole but not in part) prior to the Maturity Date (including, without limitation, following the occurrence of a Company Credit Event);
- (c) in part upon exercise on one or more occasions by Morgan Stanley & Co. International Limited of the Morgan Stanley Exchange Option referred to in the Issue Prospectus dated 30 August 2004 and published by the Issuer in connection with the offering of the Notes in Hong Kong; and
- (d) in whole upon exercise by the Issuer of the Issuer Call Option referred to in paragraph 13 above.

Consequences of Early Termination:

Upon any such early termination of the Swap Agreement (in whole or in part) or the Forward Agreement, as the case may be, save following the exercise of the Morgan Stanley Exchange Option referred to in (c) above and/or exercise by the Issuer of the Issuer's Call Option referred to in (d) above, the Notes will become repayable and the Issuer or the Swap Counterparty may (subject as set out below and provided, in the case of certain tax events that the Issuer may first be obliged to use all reasonable endeavours to transfer its obligations) be liable to make a termination payment to the other in respect of the Swap Agreement (regardless, if applicable, of which of such parties may have caused such termination).

Where such a termination payment is payable, it will be based on the replacement cost or gain for a replacement transaction that would have the effect of preserving for the party making the determination the economic equivalent of the relevant transaction(s) under the Swap Agreement. In all cases of early termination occurring other than by reason of a default by the Swap Counterparty (in which case the determination will be made by the Issuer) or illegality (in which case the party which is not the Affected Party (as defined in the Swap Agreement) will make the determination (or, if there are two Affected Parties, each party will make a determination which will be averaged)), the termination payment will be determined by the Swap Counterparty on the basis of quotations received from four market-makers (failing which, by the Swap Counterparty or the Issuer, as aforesaid, based upon loss).

**Regardless of which party makes the determination of the termination payment (if any), there is no assurance that the proceeds from the sale of the Underlying Securities plus or minus, as the case may be, the amount payable by the Swap Counterparty or the Issuer, as the case may be, due to the termination of the Swap Agreement, will be sufficient to repay the principal amount due to be paid in respect of the Notes and any other amounts in respect thereof that are due.**

Upon (i) an early termination in part of the Swap Agreement upon exercise of the Morgan Stanley Exchange Option a *pro rata* amount of the Swap Agreement and Forward Agreement corresponding in each case to that proportion of the Notes to be exchanged will be terminated or (ii) exercise of the Issuer's Call Option, the Swap Agreement will terminate in whole, without, in either case, any termination payment being due from either party to the other thereunder.

Derivatives Counterparty(ies): Morgan Stanley Capital Services Inc. (the "**Swap Counterparty**") in respect of the Swap Agreement and MS Remora Ltd. (the "**Forward Counterparty**", and together with the Swap Counterparty, the "**Derivatives Counterparties**") in respect of the Forward Agreement.

(e) Contract (if applicable) Not applicable

Derivatives Guarantor (if applicable): Morgan Stanley acts in the capacity as (i) the swap guarantor (the "**Swap Guarantor**") in relation to the Swap Counterparty's obligations under the Swap Agreement; and (ii) the forward guarantor (the "**Forward Guarantor**") in relation to the Forward Counterparty's obligations under the Forward Agreement.

(f) Details of Credit Support Document (if applicable): Not applicable

(g) Credit Support Provider: Not applicable

(h) Details of Stock Borrowing Agreement (if applicable): Not applicable

(i) Stock Borrower: Not applicable

(j) Specify any other Mortgaged Property: Not applicable

(k) Custodian: JPMorgan Chase Bank has been appointed as the Custodian pursuant to the Agency Agreement dated 30 August 2004.

(l) Entitlement to procure Counterparty B Direction realisation of security:

- 54 Investment Management Agreement: Not applicable
- 55 Exchange: Global Note/Global Certificate exchangeable for Definitive Bearer/Registered Notes: Yes, but only in the limited circumstances set out in the Global Certificate
- 56 Details of any additions or variations to the Programme Agreement: The Issuer, and Morgan Stanley & Co. International Limited entered into a First Supplemental Programme Agreement (the “**First Supplemental Programme Agreement**”) dated the Issue Date pursuant to which Morgan Stanley & Co. International Limited was appointed as the Arranger in respect of the Notes.
- 57 Net Price payable to Issuer: US\$3,665,000
- 58 Common Code: 020223090
- 59 ISIN Code: XS0202230909
- 60 Registrar: JPMorgan Chase Bank  
Trinity Tower  
9 Thomas More Street  
London E1W 1YT  
United Kingdom  
Fax: +44 1202 347601/7945  
Attention: The Manager, Issuer Services and Operations
- 61 Principal Paying Agent, Transfer Agent and Calculation Agent: JPMorgan Chase Bank  
Trinity Tower  
9 Thomas More Street  
London E1W 1YT  
United Kingdom  
Fax: +44 1202 347601/7945  
Attention: The Manager, Issuer Services and Operations

- 62** Determination Agent: Morgan Stanley & Co. International Limited  
25 Cabot Square  
Canary Wharf  
London E14 4QA  
United Kingdom  
Fax: +44 (0) 20 7677 7990  
Attention: Structured Credit Group  
With copies to:  
Morgan Stanley & Co. International Limited  
c/o Morgan Stanley Dean Witter Asia Limited  
30/F, Three Exchange Square, Central  
Hong Kong  
Fax: +852 2848-5986  
Attention: Structured Credit Group  
and  
Morgan Stanley & Co. International Limited  
c/o Morgan Stanley Japan Limited  
Yebisu Garden Place Tower  
4-20-3 Ebisu, Shibuya-ku,  
Tokyo 150-6008, Japan  
Fax: +81 3 5424 7894  
Attention: Structured Credit Group
- 63** Market Agent: Morgan Stanley & Co. International Limited  
25 Cabot Square  
Canary Wharf  
London E14 4QA  
United Kingdom  
Fax: +44 (0) 20 7677 7990  
Attention: Structured Credit Group  
With copies to:  
Morgan Stanley & Co. International Limited  
c/o Morgan Stanley Dean Witter Asia Limited  
30/F, Three Exchange Square, Central  
Hong Kong  
Fax: +852 2848-5986  
Attention: Structured Credit Group  
and  
Morgan Stanley & Co. International Limited  
c/o Morgan Stanley Japan Limited  
Yebisu Garden Place Tower  
4-20-3 Ebisu, Shibuya-ku,  
Tokyo 150-6008, Japan  
Fax: +81 3 5424 7894  
Attention: Structured Credit Group

**ANNEX 1**  
**SPECIAL CONDITIONS**

*The Conditions shall be supplemented and modified by the following Special Conditions. In the event of any inconsistency between the Conditions and such Special Conditions, such Special Conditions shall prevail and the Conditions shall be amended accordingly.*

(A) *Interest Rate and Accrual*

The following sentence shall be added to the first paragraph of Condition 6(a) “Interest Rate and Accrual”:

“If a Company Credit Event or an Early Redemption Event occurs, upon receipt by the Issuer of a Company Credit Event Notice and a Notice of Publicly Available Information confirming the occurrence of a Company Credit Event or, as the case may be, an Underlying Securities Event Notice confirming the occurrence of an Early Redemption Event, interest in respect of the Notes will be treated as having ceased to accrue from and including the Interest Payment Date falling on or immediately prior to the Company Credit Event Determination Date or, as the case may be, the date on which the Determination Agent delivers an Underlying Securities Event Notice to the Issuer.”

(B) *Redemption for Taxation and Other Reasons*

**(1) Redemption following a Company Credit Event**

A “Credit Event” in Condition 7(c)(iii) means a “Company Credit Event”.

*Definition of Company Credit Event*

“**Company Credit Event**” means the Determination Agent in its sole and absolute discretion acting in good faith having the right (but not the obligation) to declare the occurrence of a Company Credit Event upon the occurrence of any one or more of the following events or conditions with respect to the Company or Obligations of the Company, which event or condition occurs on or after the Issue Date:

- (i) Bankruptcy
- (ii) Failure to Pay
- (iii) Restructuring

If an occurrence would otherwise constitute a Company Credit Event, such occurrence will constitute a Company Credit Event whether or not such occurrence arises directly or indirectly from, or is subject to a defence based upon: (a) any lack or alleged lack of authority or capacity of the Company to enter into any Obligation, or as applicable, an Underlying Obligor to enter into any Underlying Obligation, (b) any actual or alleged unenforceability, illegality, impossibility or invalidity with respect to any Obligation or, as applicable, any Underlying Obligation, however described, (c) any applicable law, order, regulation, decree or notice, however described, or the promulgation of, or any change in, the interpretation by any court, tribunal, regulatory authority or similar administrative or judicial body with competent or apparent jurisdiction of any applicable law, order, regulation, decree or notice, however described, or (d) the imposition of, or any change in, any exchange controls, capital restrictions or any other similar restrictions imposed by any monetary or other authority, however described.

*Occurrence of a Company Credit Event*

Upon the occurrence of a Company Credit Event:

- (i) the Determination Agent shall be entitled to deliver to the Issuer during the Notice Delivery Period a Company Credit Event Notice and a notice of Publicly Available Information;
- (ii) upon receipt of such notices, the Issuer shall notify the Trustee, the Principal Paying Agent, the Custodian, the Derivatives Counterparties and the Noteholders via Euroclear or Clearstream International of the relevant Company Credit Event (including reasonable details of the Publicly Available Information confirming such Company Credit Event) promptly after the Company Credit Event Determination Date;
- (iii) the Notes shall cease to bear interest and no further payment will be made in respect of interest accrued from the preceding Interest Payment Date (or if no interest payment has yet been paid, since the Issue Date);
- (iv) the Deliverable Obligations shall be identified by the Swap Counterparty (in its sole and absolute discretion) in the Initial Principal Amount and listed in a Deliverable Obligation Notice;
- (v) the Issuer will, pursuant to the Forward Agreement, deliver to the Forward Counterparty the Underlying Securities and in return, receive a cash amount equal to the par value of the Underlying Securities. The Issuer will pay to the Swap Counterparty such cash amount it receives from the Forward Counterparty, and the Swap Counterparty will pay to the Issuer the Company Credit Event Redemption Amount (after making certain adjustments as described under the definition of Company Credit Event Redemption Amount below) to enable the Issuer to meet its obligations under the Notes; and
- (vi) the Issuer will redeem each Note by payment of the Company Credit Event Redemption Amount attributable on a pro-rata basis to one Note on the Company Credit Event Redemption Date.

The notice (the “**Company Credit Event Notice**”) setting out the occurrence of a Company Credit Event shall include a brief description of the relevant event and the Public Source of such information, and an explanation of how it fits the definition of a Company Credit Event.

**(2) Redemption following an Early Redemption Event**

“Other specified event” in Condition 7(c)(iv) means an “Early Redemption Event”.

*Definition of Early Redemption Event*

The Notes will be subject to early redemption at the Underlying Securities Default Redemption Amount or the relevant Early Redemption Amount, as the case may be, following the occurrence of any of the following events (each an “**Early Redemption Event**”):

(i) *An Underlying Securities Default Event*

If there has been a payment default in respect of the Underlying Securities (without regard to any grace period applicable with respect to such payments), or if the Underlying Securities becoming repayable, in whole or in part, prior to their scheduled maturity date for any reason whatsoever (other than as described in (iii) and (iv) below), or if the outstanding principal amount of the Underlying Securities is reduced in accordance with their terms (each an “**Underlying Securities Default Event**”), the Notes will be redeemed at the Underlying Securities Redemption Amount.

The “**Underlying Securities Default Redemption Amount**” means the sale proceeds and/or amounts received as a direct result of the reduction in the principal amount of and/or any proceeds received in respect of the Underlying Securities on or prior to the Early Redemption Date plus or minus (as the case may be) the Swap Settlement Amount due to the termination of the Swap Agreement. Such proceeds will be subject to certain deductions relating to the costs associated with the sale of the Underlying Securities.

(ii) *A Tax Event*

If the Issuer:

- (A) on the occasion of the next payment due in respect of the Notes would be required by law to withhold or account for tax or would suffer tax in respect of its income (including but not limited to its income in respect of the Underlying Securities) or payments made to it under the Swap Agreement and/or Forward Agreement or would receive net of tax any payments in respect of the Underlying Securities or payments made to it under the Swap Agreement and/or Forward Agreement, so that it would be unable to make payment of the full amount due on the Notes (and it is unable to arrange for the substitution of a company incorporated in another jurisdiction which would not impose such requirement as the principal obligor in respect of the Notes);
- (B) or any exchange controls or other currency exchange or transfer restrictions are imposed on the Issuer or any payments to be made to or by the Issuer or for any reason the cost to the Issuer of complying with its obligations under or in connection with the Notes or the Trust Deed would (in the sole opinion of the Issuer) be materially increased, the Trustee having required the Issuer to use its best endeavours to procure the substitution of a company incorporated in another jurisdiction (in which jurisdiction the relevant tax, exchange control or currency exchange or transfer restrictions does not apply) approved in writing by the Trustee as the principal obligor in respect of the Notes, or the establishment of a branch office in another jurisdiction (in which jurisdiction the relevant exchange control, or currency exchange or transfer restrictions does not apply) approved in writing by the Trustee (in each case subject to the satisfaction of certain conditions as more fully specified in the Trust Deed) from which it may continue to carry out its functions under the Notes and the Swap Agreement and/or the Forward Agreement, and the Issuer, having used its best endeavours is unable to arrange the substitution of a company incorporated in another jurisdiction in which the relevant exchange control or currency exchange or transfer restrictions do not apply before the next payment is due in respect of the Notes (each a “**Tax Event**”), the Notes will be redeemed at the Early Redemption Amount specified below.

Prior to publication of any notice of redemption in respect of the circumstance set out in this sub-paragraph (ii), the Issuer shall deliver to the Trustee a certificate signed by a director of the Issuer demonstrating that the conditions precedent to the obligations of the Issuer to redeem have occurred and, in the case of a redemption of Notes under (A) above an opinion to the Issuer (in form and substance satisfactory to the Trustee) of legal advisers of recognised standing (previously approved by the Trustee) in the relevant jurisdiction to the effect that the Issuer has or will become obliged to withhold, account for or suffer such

tax. The Trustee may rely on the aforementioned certificate and/or opinion without further enquiry.

The Early Redemption Amount following a Tax Event shall be the Liquidation Proceeds of the Underlying Securities plus or minus (as the case may be) the Swap Settlement Amount due to the termination of the Swap Agreement. Such proceeds will be subject to certain deductions relating to the costs associated with the sale of the Underlying Securities.

(iii) *An Underlying Securities Tax Event Redemption*

If the Underlying Securities are redeemed early by the issuer(s) of the Underlying Securities on the basis that the issuer(s) of the Underlying Securities determine(s) that, as a result of any change in the laws, regulations or rulings of the country in which the issuer(s) of the Underlying Securities is (are) organised affecting taxation and the issuer(s) of the Underlying Securities would become obligated to pay additional amounts on the Underlying Securities (an “**Underlying Securities Tax Event Redemption**”), the Notes will be redeemed at the Early Redemption Amount specified below.

The Early Redemption Amount following an Underlying Securities Tax Event Redemption shall be the redemption proceeds received by the Issuer in respect of the Underlying Securities, plus or minus (as the case may be) the Swap Settlement Amount due to the termination of the Swap Agreement plus interest accrued from the last preceding Interest Payment Date or, if no interest has yet been paid, since the Issue Date.

(iv) *Termination of the Swap Agreement and/or the Forward Agreement*

If the Swap Agreement and/or Forward Agreement is/are terminated (in whole or in part) for any reason (other than following an exercise by the Issuer of the Issuer’s Call Option and/or by Morgan Stanley & Co International Limited of the Morgan Stanley Exchange Option) and is not replaced on or prior to such termination, the Notes will be redeemed at the Early Redemption Amount specified below.

The Early Redemption Amount following termination of the Swap Agreement and/or the Forward Agreement shall be the Liquidation Proceeds of the Underlying Securities in a principal amount equal to the Principal Amount of the Notes, plus or minus (as the case may be) the Swap Settlement Amount due to the termination of the Swap Agreement. Such proceeds will be subject to certain deductions relating to the costs associated with the sale of the Underlying Securities.

(v) *An Underlying Issuer Redemption Event*

If the Underlying Securities are redeemed pursuant to the exercise of an option to redeem such Underlying Securities (other than pursuant to the Underlying Securities Tax Event Redemption as described above) (an “**Underlying Issuer Redemption Event**”), the Notes will be redeemed at the Early Redemption Amount specified below.

The Early Redemption Amount following an Underlying Issuer Redemption Event shall be the redemption proceeds received by the Issuer in respect of the Underlying Securities, plus or minus (as the case may be) the Swap Settlement Amount due to the termination of the Swap Agreement plus interest accrued from the last preceding Interest Payment Date or, if none, the Issue Date.

(vi) *A Restructuring of Underlying Securities Event*

If the terms and conditions of the Underlying Securities are amended such that the issuer(s) of the Underlying Securities shall no longer be obliged to pay the same amounts on the same days as contemplated in the terms and conditions of the Underlying Securities as of the Issue Date of the Notes (a “**Restructuring of Underlying Securities Event**”), the Notes will be redeemed at the Early Redemption Amount specified below.

The Early Redemption Amount following a Restructuring of Underlying Securities Event means the Liquidation Proceeds of the Underlying Securities plus or minus (as the case may be) the Swap Settlement Amount due to the termination of the Swap Agreement. Such proceeds will be subject to certain deductions relating to the costs associated with the sale of the Underlying Securities.

Upon the occurrence of an Early Redemption Event:

- (i) the Determination Agent shall give prompt notice thereof to the Issuer, the Custodian, the Derivatives Counterparties and the Trustee (the “**Underlying Securities Event Notice**”) and the Issuer shall notify the Trustee and the Noteholders via Euroclear and/or Clearstream International of the relevant Early Redemption Event promptly after receipt of the Underlying Securities Event Notice. The Determination Agent shall thereafter acting in good faith in its sole discretion proceed to arrange for and administer the sale of the Underlying Securities as agent of the Issuer by seeking, to the extent reasonably practicable, firm bid quotes on the day (the “**Underlying Securities Sale Date**”) being 10 Business Days following the day on which the Underlying Securities Event Notice is delivered as aforesaid from five market makers (one of whom may be Morgan Stanley & Co. International Limited or any of its Affiliates) in the Underlying Securities and selling the Underlying Securities to the highest bidder. If, on the Underlying Securities Sale Date, the Determination Agent has not received a firm bid quotation in respect of the Underlying Securities then on the next Business Day (and, if necessary, on each Business Day thereafter for up to a total of 10 Business Days) the Determination Agent shall attempt to obtain firm bid quotes, as aforesaid, for the Underlying Securities and sell the Underlying Securities to the highest bidder (if any) on that day. If no quote is received on or prior to that 10th Business Day, the sale price thereof shall be deemed to be nil. Notwithstanding the foregoing, the Underlying Securities may only be sold to Morgan Stanley & Co. International Limited or any of its Affiliates as the highest bidder if a bid was also received in respect of the Underlying Securities from a party not affiliated to Morgan Stanley & Co. International Limited or one of its Affiliates;
- (ii) upon receipt of the sale proceeds of the Underlying Securities (or determination that the sale price is zero), the Issuer shall apply the net sale proceeds (if any) thereof (having deducted all costs, expenses and disbursements in connection with such sale) together with the termination payment (if any) payable to the Issuer under the Swap Agreement to redeem the Notes by payment of the applicable Early Redemption Amount (as described below) on or prior to the 10th Business Day after receipt of such sale proceeds (or determination that the sale price is zero) and the termination payment (if any) (the “**Early Redemption Date**”); and
- (iii) the Notes so redeemed shall cease to bear interest and no further payment will be made in respect of interest accrued from the preceding Interest Payment Date (or if no interest has yet been paid, since the Issue Date).

Upon the occurrence of an Early Redemption Event, the relevant Early Redemption Amount or the Underlying Securities Default Redemption Amount (as the case may be) will be paid to the Noteholders *pro rata* to their holdings of Notes. Following application of such net sale proceeds together with the termination payment (if any) under the Swap Agreement, no further amounts will be available to meet any remaining claims of the Noteholders and any such claims will be extinguished.

(C) Condition 10 “Events of Default” shall be amended as follows:

(i) Condition 10(a) shall be deleted and replaced with the following:

“default is made by the Issuer for a period of 14 days or more in the case of interest payments or 7 days or more in the case of principal payment due in respect of the Notes or any of them; or”

(ii) Condition 10(c) shall be deleted and replaced with the following:

“any order shall be made by any competent court or any resolution passed for the winding-up or dissolution of the Issuer or an order is made for the Issuer’s bankruptcy (or any analogous proceedings) save for the purposes of amalgamation, merger, consolidation, reorganisation or other similar arrangement on terms previously approved in writing by the Trustee; or”

(iii) The following paragraphs shall be added to Condition 10 as Condition 10(d), Condition 10(e) and Condition 10(f):

“(d) if (i) any other proceedings are initiated against the Issuer under any applicable liquidation, bankruptcy, insolvency, composition, reorganisation, readjustment or other similar laws (but excluding the presentation of any application for an administration order) and such proceedings are not being disputed in good faith, or (ii) an administrative receiver or other receiver, administrator or other similar official (not being an administrative receiver or other receiver or manager appointed by the Trustee pursuant to the Principal Trust Deed) is appointed in relation to the Issuer or in relation to the whole or any substantial part (in the opinion of the Trustee) of the undertaking or assets of the Issuer or (iii) an encumbrance (not being the Trustee or any receiver or manager appointed by the Trustee) shall take possession of the whole or any substantial part (in the opinion of the Trustee) of the undertaking or assets of the Issuer or (iv) a distress or execution or other process shall be levied or enforced upon or sued out against the whole or any substantial part (in the opinion of the Trustee) of the undertaking or assets of the Issuer (other than, in any such case, by the Trustee) and in any of the foregoing cases (other than in relation to the circumstances described in (ii) where no grace period shall apply) such order, appointment, possession or process (as the case may be) is not discharged or stayed or does not cease to apply within 14 days; or

(e) if the Issuer initiates or consents to judicial proceedings relating to itself (except in accordance with the proviso in paragraph (c) above) under any applicable liquidation, bankruptcy, insolvency, composition, reorganisation, readjustment or other similar laws or makes a conveyance or assignment for the benefit of its creditors generally; or

(f) if the Issuer becomes insolvent or is adjudicated or found bankrupt.”

(D) Condition 16 “Notices” shall be amended as follows:

The following paragraph shall be added to the last paragraph of Condition 16:

“So long as the Notes are represented by a Global Certificate which is held on behalf of Euroclear and/or Clearstream International, notices required to be given to Noteholders may be given by their being delivered to the relevant clearing system for communication by it to entitled accountholders.”

## ANNEX 2 DEFINITIONS

“**Affiliate**” means, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, “control” of any entity or person means ownership of a majority of the voting power of the entity or person.

“**Bankruptcy**” means the Company (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (b) becomes insolvent or is unable to pay its debts or fails or admits in writing in a judicial, regulatory or administrative proceeding or filing its inability generally to pay its debts as they become due; (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (d) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights, or a petition is presented for its winding up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding up or liquidation or (ii) is not dismissed, discharged, stayed or restrained in each case within thirty calendar days of the institution or presentation thereof; (e) has a resolution passed for its winding up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (f) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (g) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within thirty calendar days thereafter or; (h) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (a) to (g) (inclusive).

“**Best Available Information**” means the unconsolidated, pro forma financial information which assumes that the relevant Succession Event has occurred or which provides such information to its shareholders, creditors or other persons whose approval of the Succession Event is required and, if provided subsequently to the provision of unconsolidated, pro forma financial information but before the Calculation Agent makes its determination for the purposes of the definition of “Successor”, other relevant information that is contained in any written communication provided by the Company to its primary securities regulator, primary stock exchange, shareholders, creditors or other persons whose approval of the Succession Event is required. Information which is made available more than fourteen calendar days after the legally effective date of the Succession Event shall not constitute Best Available Information.

“**Bond**” means Borrowed Money that is in the form of, or represented by, a bond, note (other than notes delivered pursuant to Loans), certified debt security or other debt security and shall not include any other type of Borrowed Money.

“**Borrowed Money**” means, any obligation (excluding an obligation under a revolving credit arrangement for which there are no outstanding, unpaid drawings in respect of principal) for the payment or repayment of borrowed money (which term shall include, without limitation, deposits and reimbursement obligations arising from drawings pursuant to letters of credit).

**“Collateral Appreciation Amount”** means an amount equal to the amount by which the market value of the Underlying Securities, as determined by the Determination Agent on or prior to the Company Credit Event Redemption Date in a commercially reasonable manner in consultation with at least one unaffiliated dealer (selected by the Determination Agent in its sole discretion), is greater than 100% of the par amount of the Underlying Securities.

**“Collateral Depreciation Amount”** means an amount equal to the amount by which 100% of the par amount of the Underlying Securities exceeds the market value of the Underlying Securities, as determined by the Determination Agent on or prior to the Company Credit Event Redemption Date in a commercially reasonable manner in consultation with at least one unaffiliated dealer (selected by the Determination Agent in its sole discretion).

**“Company”** means Hutchison Whampoa Limited and each of its Successors. For the avoidance of doubt, if following a Succession Event there is more than one Successor, the occurrence of a Company Credit Event in respect of any one Successor or the Obligations of any one Successor shall constitute a Company Credit Event for all purposes and in respect of the outstanding Principal Amount of the Notes.

**“Company Credit Event Determination Date”** means any date on which the Determination Agent determines in its sole and absolute discretion acting in good faith that a Company Credit Event has occurred as a result of the delivery of a Credit Event Notice and a notice of Publicly Available Information to the Issuer.

The **“Company Credit Event Redemption Amount”** shall be the Liquidation Proceeds of the Deliverable Obligations as determined by the Swap Counterparty.

The Company Credit Event Redemption Amount shall be adjusted:

- (A) by adding any Swap Settlement Amount due to the Issuer from the Swap Counterparty; or as the case may be, by deducting any Swap Settlement Amount due from the Issuer to the Swap Counterparty; and
- (B) to reflect the market value of the Underlying Securities as determined by the Determination Agent on or prior to the Company Credit Event Redemption Date in a commercially reasonable manner in consultation with at least one unaffiliated dealer (selected by the Determination Agent in its sole discretion). If the market value of the Underlying Securities is less than 100% of the par amount of the Underlying Securities, an amount (a **“Collateral Depreciation Amount”**) equal to the difference between 100% of the par amount and such market value will be due from the Issuer to the Swap Counterparty. If the market value of the Underlying Securities is greater than 100% of the par amount of the Underlying Securities, an amount (a **“Collateral Appreciation Amount”**) equal to the amount by which such market value is greater than 100% of the par amount will be due from the Swap Counterparty to the Issuer.

**“Company Credit Event Redemption Date”** means the day which is 2 Business Days after the Valuation Date.

**“Dealers”** means dealers in Bonds or Loans of the Company for which quotations on the market value of the Bonds or Loans are to be obtained or dealers in the Underlying Securities.

**“Deliverable Obligations”** means (a) the Specified Reference Obligation or (b) any Bond or Loan of the Company (as defined herein) (either directly or as provider of any Qualifying Guarantee) which falls within the Deliverable Obligation Category and has the Deliverable Obligation Characteristics and that otherwise falls within the definition of “Deliverable Obligations” set out in the Credit Default Swap Transaction in relation to the Notes.

**“Deliverable Obligations Characteristics”** means any one or more of Not Subordinated, Specified Currency, Not Sovereign Lender, Not Domestic Law, Not Contingent, Not Domestic Issuance, Assignable Loan, Transferable, Maximum Maturity and Not Bearer; and

**“Not Subordinated”** means an obligation that is not Subordinated to any unsubordinated Borrowed Money obligations of the Company.

**“Specified Currency”** meaning an obligation that is payable in any of the lawful currencies of Canada, Japan, Switzerland, Hong Kong, Singapore, United Kingdom and the United States of America and the euro (and any successor currency to any of the aforementioned currencies, which currencies may be referred to collectively as the **“Specified Currencies”**).

**“Not Sovereign Lender”** means any obligation that is not primarily owed to a Sovereign or Supranational Organisation, including, without limitation, obligations generally referred to as “Paris Club debt”;

**“Not Domestic Law”** means any obligation that is not governed by the laws of the jurisdiction of organization of the Company.

**“Not Contingent”** means any obligation having as of the Company Credit Event Redemption Date and all times thereafter an outstanding principal balance that pursuant to the terms of such obligation may not be reduced as a result of the occurrence or nonoccurrence of an event or circumstance (other than payment).

**“Not Domestic Issuance”** means any obligation other than an obligation that was, at the time the relevant obligation was issued (or reissued, as the case may be) or incurred, intended to be offered for sale primarily in the domestic market of the Company. Any obligation that is registered or qualified for sale outside the domestic market of the Company (regardless of whether such obligation is also registered or qualified for sale within the domestic market of the Company) shall be deemed not to be intended for sale primarily in the domestic market of the Company.

**“Assignable Loan”** means a Loan that is capable of being assigned or novated to, at a minimum, commercial banks or financial institutions (irrespective of their jurisdiction of organization) that are not then a lender or a member of the relevant lending syndicate, without the consent of the Company or the guarantor, if any, of such Loan (or the consent of the applicable borrower if the Company is guaranteeing such Loan) or any agent.

**“Transferable”** means an obligation that is transferable to institutional investors without any contractual, statutory or regulatory restriction, provided that none of the following shall be considered contractual, statutory or regulatory restrictions:

(A) contractual, statutory or regulatory restrictions that provide for eligibility for resale pursuant to Rule 144A or Regulation S promulgated under the United States Securities Act of

1933, as amended (and any contractual, statutory or regulatory restrictions promulgated under the laws of any jurisdiction having a similar effect in relation to the eligibility for resale of an obligation); or

(B) restrictions on permitted investments such as statutory or regulatory investment restrictions on insurance companies and pension funds.

“**Maximum Maturity**” means an obligation that has a remaining maturity from the Company Credit Event Redemption Date of not greater than 30 years.

“**Not Bearer**” means any obligation that is not a bearer instrument unless interests with respect to such bearer instrument are cleared via the Euroclear system, Clearstream International or any other internationally recognized clearing system.

“**Deliverable Obligation Notice**” means a written notice to be given by the Swap Counterparty to the Issuer on or before the 30<sup>th</sup> calendar day after the Company Credit Event Determination Date, specifying details of the Deliverable Obligations which the Swap Counterparty reasonably expects to be included in the Deliverable Obligation Portfolio as at the Valuation Date, provided that the Swap Counterparty may change one or more Deliverable Obligations to be included in the Deliverable Obligation Portfolio by giving a written notice to the Issuer on or before the Valuation Date. Notwithstanding the foregoing, the Swap Counterparty may correct any errors or inconsistencies in the detailed description of the Deliverable Obligations by written notice to the Issuer on or prior to the Valuation Date.

“**Deliverable Obligation Portfolio**” means one or more different Deliverable Obligations of the Company, as selected by the Swap Counterparty in its sole discretion as specified in the related Deliverable Obligation Notice, each of which has outstanding principal balance (excluding accrued but unpaid interest) which in aggregate (after conversion into US dollars, if applicable) equals to the Principal Amount of the Notes.

“**Domestic Currency**” means the currency specified as such in the Swap Agreement and any successor currency. If no currency is so specified, the Domestic Currency shall be the lawful currency and any successor currency of the jurisdiction in which the Company is organised. In no event shall Domestic Currency include any successor currency if such successor currency is the lawful currency of any of Canada, Japan, Switzerland, the United Kingdom or the United States of America or the euro (or any successor currency to any such currency).

“**Failure to Pay**” means after the expiration of any applicable Grace Period (after the satisfaction of any conditions precedent to the commencement of such Grace Period), the failure by the Company to make, when and where due, any payments in an aggregate amount of not less than US\$1,000,000 (or its equivalent in the relevant currency or currencies in which an Obligation is denominated), as of the occurrence of the relevant Failure to Pay, under one or more Obligations, in accordance with the terms of such Obligations at the time of such failure.

“**Governmental Authority**” means any de facto or de jure government (or any agency, instrumentality, ministry or department thereof), court, tribunal, administrative or other governmental authority or any other entity (private or public) charged with the regulation of the financial markets (including the central bank) of the Company or of the jurisdiction of organization of the Company.

“**Grace Period**” means the applicable grace period with respect to payments under the relevant Obligation under the terms of such Obligation in effect as of the later of the Issue Date and the date as

of which such Obligation is issued or incurred. Any Obligation with no grace period specified or a grace period of less than 3 Grace Period Business Days shall be deemed to have a grace period of 3 Grace Period Business Days provided that the deemed Grace Period shall expire no later than the second Business Day prior to the Maturity Date.

**“Grace Period Business Day”** means a day on which commercial banks and foreign exchange markets are generally open to settle payments in the place or places and on the days specified for that purpose in the relevant Obligation and if a place or places are not so specified, in the jurisdiction of the currency or currencies in which an Obligation is denominated.

**“Initial Principal Amount”** means a principal or nominal amount of Deliverable Obligations identified by the Swap Counterparty after the Company Credit Event Determination Date equal to the Principal Amount of the Notes outstanding on the Company Credit Event Determination Date.

**“Liquidation Proceeds”** means the US dollar amount calculated by reference to the market valuation of the Deliverable Obligation(s) or realisable upon the sale of the Underlying Securities, at the highest clean firm bid price, obtained by the Swap Counterparty on the Valuation Date in the case of a Company Credit Event or the relevant date on which the Underlying Securities have been sold or realised in the case of an Early Redemption Event, upon the solicitation of five unaffiliated Dealers selected by the Swap Counterparty, less the costs and expenses, as determined by the Swap Counterparty, of effecting the relevant market valuation and/or sale. If bid prices from five unaffiliated Dealers cannot be obtained, the Swap Counterparty will determine such bid price for the purchase of the Deliverable Obligations at its sole and absolute discretion.

**“Loan”** means any Borrowed Money that is documented by a term loan agreement, revolving loan agreement or other similar credit agreement and shall not include any other type of Borrowed Money obligation.

**“Notice Delivery Period”** means the period from and including the Issue Date to and including the second Business Day prior to the Maturity Date.

**“Obligation”** means (a) the Specified Reference Obligation and (b) any Bond or Loan of the Company (as defined herein) (either directly or as provider of any Qualifying Guarantee) which falls within the Obligation Category and has the Obligation Characteristics and that otherwise falls within the definition of “Obligations” set out in the Credit Default Swap Transaction in relation to the Notes.

**“Obligation Characteristics”** means any one or more of Not Subordinated, Not Sovereign Lender, Not Domestic Currency, Not Domestic Law and Not Domestic Issuance; and

**“Not Subordinated”** means an obligation that is not Subordinated to any unsubordinated Borrowed Money obligations of the Company.

**“Not Sovereign Lender”** means any obligation that is not primarily owed to a Sovereign or Supranational Organisation, including, without limitation, obligations generally referred to as “Paris Club debt”;

**“Not Domestic Currency”** means any obligation that is payable in any currency other than the Domestic Currency.

**“Not Domestic Law”** means any obligation that is not governed by the laws of the jurisdiction of organization of the Company.

**“Not Domestic Issuance”** means any obligation other than an obligation that was, at the time the relevant obligation was issued (or reissued, as the case may be) or incurred, intended to be offered for sale primarily in the domestic market of the Company. Any obligation that is registered or qualified for sale outside the domestic market of the Company (regardless of whether such obligation is also registered or qualified for sale within the domestic market of the Company) shall be deemed not to be intended for sale primarily in the domestic market of the Company.

**“Permitted Currency”** means (i) the legal tender of any Group of 7 country (or any country that becomes a member of the Group of 7 if such Group of 7 expands its membership); or (ii) the legal tender of any country which, as of the date of such change, is a member of the Organization for Economic Cooperation and Development and has a local currency long-term debt rating of either AAA or higher assigned to it by Standard & Poor’s, a division of The McGraw-Hill Companies, Inc. or any successor to the rating business thereof, Aaa or higher assigned to it by Moody’s Investors Service, Inc. or any successor to the rating business thereof or AAA or higher assigned to it by Fitch Ratings or any successor to the rating business thereof.

(b) Notwithstanding the provisions of (a) above, none of the following shall constitute a Restructuring:

- (i) the payment in euros of interest or principal in relation to an Obligation denominated in a currency of a Member State of the European Union that adopts or has adopted the single currency in accordance with the Treaty establishing the European Community, as amended by the Treaty on European Union;
- (ii) the occurrence of, agreement to or announcement of any of the events described in (a)(i) to (v) above due to an administrative adjustment, accounting adjustment or tax adjustment or other technical adjustment occurring in the ordinary course of business; and
- (iii) the occurrence of, agreement to or announcement of any of the events described in (a)(i) to (v) above in circumstances where such event does not directly or indirectly result from a deterioration in the creditworthiness or financial condition of the Company.

(c) For purposes of paragraphs (a) and (b) above, the term “Obligation” shall be deemed to include Underlying Obligations for which the Company is acting as provider of any Qualifying Guarantee. In the case of a Qualifying Guarantee and an Underlying Obligation, references to the Company in paragraph (a) of this definition shall be deemed to refer to the Underlying Obligor and the reference to the Company in paragraph (b) of this definition shall continue to refer to the Company.

**“Public Source”** means each of Bloomberg Service, Dow Jones Telerate Service, Reuter Monitor Money Rates Services, Dow Jones News Wire, Wall Street Journal, New York Times, Nihon Keizai Shinbun, Asahi Shinbun, Yomiuri Shinbun, Financial Times, La Tribune, Les Echos and the Australian Financial Review (and successor publications), the main source(s) of business news in the country in which the Company is organised and any other internationally recognised published or electronically displayed news sources.

**“Publicly Available Information”** means (a) information that reasonably confirms any of the facts relevant to the determination that the Company Credit Event has occurred and which (i) has been published in or on not less than the number of Public Sources specified in the Swap Agreement (as defined herein) (or, if a number is not so specified, two), regardless of whether the reader or user thereof pays a fee to obtain such information; provided that, if any of the Derivatives Counterparties or

its Affiliates is cited as the sole source of such information, then such information shall not be deemed to be Publicly Available Information unless any of the Derivatives Counterparties or its Affiliate is acting in its capacity as trustee, fiscal agent, administrative agent, clearing agent or paying agent for an Obligation; (ii) is information received from or published by a trustee, fiscal agent, administrative agent, clearing agent or paying agent for an Obligation, (iii) is information contained in any petition or filing instituting a proceeding described in paragraph (d) in the definition of “Bankruptcy” above against or by the Company or (iv) is information contained in any order, decree, notice or filing, however described, of or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body.

(b) In relation to any information of the type described in paragraphs (a)(ii), (iii), and (iv) above, the party receiving such information may assume that such information has been disclosed to it without violating any law, agreement or understanding regarding the confidentiality of such information and that the party delivering such information has not taken any action or entered into any agreement or understanding with the Company or any Affiliate of the Company that would be breached by, or would prevent, the disclosure of such information to third parties.

(c) Publicly Available Information need not state that such occurrence (A) has met the requirement of being an aggregate amount of not less than US\$1,000,000 (or its equivalent in the relevant currency or currencies in which an Obligation is denominated) in the case of a “Failure to Pay” or US\$10,000,000 (or its equivalent in the relevant currency or currencies in which an Obligation is denominated) in the case of a “Restructuring”, (B) is the result of exceeding any applicable Grace Period or (C) has met the subjective criteria specified in certain Company Credit Events.

**“Qualifying Guarantee”** means an arrangement evidenced by a written instrument pursuant to which the Company irrevocably agrees (by guarantee of payment or equivalent legal arrangement) to pay all amounts due under an obligation (the “Underlying Obligation”) for which another party is the obligor (the “**Underlying Obligor**”). Qualifying Guarantees shall exclude any arrangement (i) structured as a surety bond, financial guarantee insurance policy, letter of credit or equivalent legal arrangement; or (ii) pursuant to the terms of which the payment obligations of the Company can be discharged, reduced, assigned or otherwise altered (other than by operation of law) as a result of the occurrence or non-occurrence of an event or circumstance (other than payment). The benefit of a Qualifying Guarantee must be capable of being delivered together with the Delivery of the Underlying Obligation.

**“Relevant Obligation”** means the Obligation constituting any Bond or Loan of the Company outstanding immediately prior to the effective date of the Succession Event, excluding any debt obligations outstanding between the Company and any of its Affiliates, as determined by the Determination Agent. The Determination Agent will determine the entity which succeeds to such Relevant Obligations on the basis of the Best Available Information. If the date on which the Best Available Information becomes available or is filed precedes the legally effective date of the relevant Succession Event, any assumptions as to the allocation of obligations between or among entities contained in the Best Available Information will be deemed to have been fulfilled as of the legally effective date of the Succession Event, whether or not this is in fact the case.

**“Restructuring”** (a) means that, with respect to one or more Obligations and in relation to an aggregate amount of not less than US\$10,000,000 (or its equivalent in the relevant currency or currencies in which an Obligation is denominated), any one or more of the following events occurs in a form that binds all holders of such Obligation, is agreed between the Company or a Governmental Authority and a sufficient number of holders of such Obligation to bind all holders of the Obligation or

is announced (or otherwise decreed) by the Company or a Governmental Authority in a form that binds all holders of such Obligation, and such event is not expressly provided for under the terms of such Obligation in effect as of the later of the Issue Date and the date as of which such Obligation is issued or incurred:

- (i) a reduction in the rate or amount of interest payable or the amount of scheduled interest accruals;
- (ii) a reduction in the amount of principal or premium payable at maturity or at scheduled redemption dates;
- (iii) a postponement or other deferral of a date or dates for either (A) the payment or accrual of interest or (B) the payment of principal or premium;
- (iv) a change in the ranking in priority of payment of any Obligation, causing the Subordination of such Obligation to any other Obligation; or
- (v) any change in the currency or composition of any payment of interest or principal to any currency which is not a Permitted Currency.

“**Sovereign**” means any state, political subdivision or government, or any agency, instrumentality, ministry, department or other authority (including, without limiting the foregoing, the central bank) thereof.

“**Sovereign Agency**” means any agency, instrumentality, ministry, department or other authority (including, without limiting the foregoing, the central bank) of a Sovereign.

“**Specified Reference Obligation**” means Hutchison Whampoa International (03/33) Limited US Dollar 5.45% Bonds due 24 November 2010 guaranteed by Hutchison Whampoa Limited (ISIN: USG4672CAA39).

“**Subordination**” means, with respect to an obligation (the “**Subordinated Obligation**”) and another obligation of the Company to which such obligation is being compared (the “**Senior Obligation**”), a contractual, trust or similar arrangement providing that (i) upon the liquidation, dissolution, reorganization or winding up of a Company, claims of the holders of the Senior Obligation will be satisfied prior to the claims to the holders of the Subordinated Obligation or (ii) the holders of the Subordinated Obligation will not be entitled to receive or retain payments in respect of their claims against the Company at any time that the Company is in payment arrears or is otherwise in default under the Senior Obligation. “**Subordinated**” will be construed accordingly. For purposes of determining whether Subordination exists or whether an obligation is Subordinated with respect to another obligation to which it is being compared, the existence of preferred creditors arising by operation of law or of collateral, credit support or other credit enhancement arrangements shall not be taken into account.

“**Succession Event**” means an event such as a merger, consolidation, amalgamation, transfer of assets or liabilities, demerger, spin-off or other similar event in which one entity succeeds to the obligations of another entity, whether by operation of law or pursuant to any agreement. Notwithstanding the foregoing, “**Succession Event**” shall not include an event in which the holders of obligations of the Company exchange such obligations for the obligations of another entity, unless such exchange occurs in connection with a merger, consolidation, amalgamation, transfer of assets or liabilities, demerger, spin-off or other similar event.

“**Successor**” means in relation to the Company, the entity or entities, if any, determined as set forth below:

- (a) If an entity directly or indirectly succeeds to 75 per cent. or more of the Deliverable Obligations of the Company by way of a Succession Event, that entity will be the sole Successor.
- (b) If one entity directly or indirectly succeeds to more than 25 per cent. (but less than 75 per cent.) of the Deliverable Obligations of the Company by way of a Succession Event and not more than 25 per cent. of the Deliverable Obligations of the Company remains with the Company, the entity that succeeds to more than 25 per cent. will be the sole Successor.
- (c) If more than one entity each directly or indirectly succeed to more than 25 per cent. of the Deliverable Obligations of the Company by way of a Succession Event, and not more than 25 per cent. of the Deliverable Obligations of the Company remains with the Company, the entities that succeed to more than 25 per cent. of the Deliverable Obligations will be Successors.
- (d) If one or more entities directly or indirectly succeed to more than 25 per cent. of the Deliverable Obligations of the Company by way of a Succession Event and more than 25 per cent. of the Deliverable Obligations of the Company remains with the Company, each such entity and the Company will be Successors.
- (e) If one or more entities directly or indirectly succeed to a part of the Bonds and Loans of the Company by way of a Succession Event, but no entity succeeds to more than 25 per cent. of the Deliverable Obligations of the Company and the Company continues to exist, there will be no Successor.
- (f) If one or more entities directly or indirectly succeed to a part of the Bonds and Loans of the Company by way of a Succession Event, but no entity succeeds to more than 25 per cent. of the Deliverable Obligations of the Company and the Company ceases to exist, the entity which succeeds to the greatest percentage of Bonds and Loans (or, if two or more entities succeed to an equal percentage of Bonds and Loans, the entity from among those entities which succeeds to the greatest percentage of obligations) of the Company will be the sole Successor.

The Determination Agent will be responsible for determining as soon as reasonably practicable after it becomes aware of the relevant Succession Event (but no earlier than 14 days after the legally effective date of the Succession Event) and with effect from the legally effective date of the Succession Event whether the relevant thresholds set forth above have been met, or which entity qualifies under (f) above, as applicable. In calculating the percentages used to determine whether the relevant thresholds set forth above have been met, or which entity qualifies under (f) above, as applicable, the Determination Agent shall use in respect of each Relevant Obligation included in such calculation, the amount of the liability in respect of such relevant Obligation listed in the Best Available Information.

For the purposes of this definition of “**Successor**”, “**succeed**” means, with respect to the Company and its Deliverable Obligations (or, as applicable, obligations), that a party other than the Company (a) assumes or becomes liable for such Deliverable Obligations (or, as applicable, obligations) whether by operation of law or pursuant to any agreement or (b) issues Bonds that are exchanged for Deliverable Obligations (or, as applicable, obligations), and in either case the Company is no longer an obligor (primarily or secondarily) or guarantor with respect to such Deliverable

Obligations (or, as applicable, obligations). The determinations required pursuant to the above shall be made, in the case of an exchange offer, on the basis of the outstanding principal balance of Deliverable Obligations tendered and accepted in the exchange and not on the basis of the outstanding principal balance of Bonds for which Deliverable Obligations have been exchanged.

**“Supranational Organisation”** means any entity or organisation established by treaty or other arrangement between two or more Sovereigns or the Sovereign Agencies of two or more Sovereigns and includes, without limiting the foregoing, the International Monetary Fund, European Central Bank, International Bank for Reconstruction and Development and European Bank for Reconstruction and Development.

**“Swap Settlement Amount”** means the amount (as determined by the Swap Counterparty) of any early termination amount or close out payment receivable or payable (expressed as a negative amount) in respect of the Swap Agreement and which Swap Agreement terminated early or otherwise closed out in connection with the occurrence of a Company Credit Event and/or an Early Redemption Event.

**“Valuation Date”** means any date falling on or after the 52<sup>nd</sup> Business Day and to and including the 125<sup>th</sup> Business Day following the Company Credit Event Determination Date, as selected by the Swap Counterparty as its sole and absolute discretion.