



The Directors  
Hang Seng Bank Limited  
83 Des Voeux Road Central  
Hong Kong SAR

19 December 2014

Dear Sirs

**HANG SENG BANK LIMITED  
PERPETUAL CAPITAL LOAN**

This loan agreement sets out the terms of a loan (the “**Loan**”) to be made by The Hongkong and Shanghai Banking Corporation Limited (“**HBAP**”) to Hang Seng Bank Limited (“**HASE**”).

The terms of the Loan will be:

- Amount and Purpose** : USD 900,000,000 (United States Dollars Nine Hundred Million) perpetual capital term loan to be used for the purpose of constituting Additional Tier 1 capital of HASE.
- Drawdown Date** : The whole amount of the Loan will be drawn down in one utilisation on a Business Day during the Availability Period.
- Availability Period** : The Loan will be available for drawing from the date of this loan agreement to 22 December 2014.
- Interest Rate** : USD LIBOR (as defined below) for each Interest Period (as defined below), calculated in accordance with the interest rate fixing mechanism described below, plus a margin of 384 bps.
- Accrual and Payment of Interest** : The Loan will bear interest on its outstanding principal amount, payable in arrears on each Interest Payment Date (subject to the terms set out below).
- Repayment** : This loan is perpetual and has no fixed maturity or fixed repayment date. HASE has the option to repay the Loan, all or part only (together with accrued interest thereon), on any Interest Payment Date falling on or after 22 December 2019, but subject in all cases to the prior consent of the “Monetary Authority” as appointed under section 5A of the Exchange Fund Ordinance (Cap. 66) of Hong Kong or any successor thereto or such other authority having primary bank supervisory authority with respect of HBAP (the “**Monetary Authority**”).



- Status : (i) Claims against HASE in respect of the Loan shall be subordinated to the claims of all Senior Creditors of HASE; and
- (ii) HASE's obligations to make any repayment of principal, payment of interest or any other amounts in respect of the Loan are conditional upon its being able to make such repayment or payment and HASE remaining Solvent immediately thereafter.
- (iii) For these purposes:
- "Senior Creditors"** means any depositors, general creditors of HASE and any subordinated creditors of HASE (including any holders of Tier 2 Instruments) other than those whose claims are expressed to rank *pari passu* or junior to the claims of HBAP under the Loan; and **"Tier 2 Instruments"** means any instruments issued by HASE or subordinated loans entered into by HASE as borrower which constitute Tier 2 capital under the capital requirement rules from time to time as applied by the Monetary Authority; and **"capital requirement rules"** means the capital requirement rules from time to time applicable to the regulatory capital of "authorized institutions" (as defined in the Banking Ordinance (Cap. 155) of Hong Kong) incorporated in Hong Kong as published by the Monetary Authority.
- "Solvent"** means in relation to HASE that:
- (A) it is able to pay its debts as they fall due; and
- (B) its Assets exceed its Liabilities (excluding its liabilities to creditors who are not Senior Creditors and excluding also (for the avoidance of doubt) its liabilities in respect of principal and interest in respect of the Loan), and for this purpose, **"Assets"** means HASE's unconsolidated gross assets (including contingencies) and **"Liabilities"** means HASE's unconsolidated gross liabilities (including contingencies), all as shown in the latest published balance sheet having the benefit of an unqualified auditors' report, but with such adjustments as the auditors shall determine.
- Security : No security is required to be provided by HASE in respect of any of its assets or undertakings in connection with its liability under the Loan.



Set-Off : HBAP hereby waives, to the fullest extent permitted by applicable law, any right to set-off any amount of interest, principal or any other amounts due under this loan agreement against any amounts owed to HASE by HBAP and waives, to the fullest extent permitted by applicable law, any right to counterclaim for any amount of interest, principal or any other amounts due under this loan agreement in any action by HASE against HBAP in respect of any amount owed to HASE by HBAP. In the event that HBAP recovers any amount in respect of principal, interest or any other amounts due on the Loan (the “**original debt**”) by virtue of the application of any relevant rules of mandatory set-off applicable under Hong Kong Special Administrative Region (“**Hong Kong**”) law in circumstances where the claims of any Senior Creditors remain outstanding, HBAP shall pay an amount equal to whichever is the lesser of the amount so recovered and the aggregate amount of the claims of Senior Creditors then remaining outstanding to the liquidator of HASE upon trust for such Senior Creditors. HBAP may rely upon a certificate of the liquidator for the purpose of determining whether or not any claims of Senior Creditors remain outstanding and if so their amount or aggregate amount. HBAP shall not be obliged to concern itself with the distribution by the liquidator of any payment so made to the liquidator. To the extent of any payment so made, the original debt shall be treated as if it had not been discharged.

Non-Viability : Upon the occurrence of a Non-Viability Event, HASE shall irrevocably (without the need for the consent of HBAP) reduce, upon the provision of a Non-Viability Event Notice, the then prevailing principal amount and any accrued but unpaid interest of the Loan to nil (such reduction being referred to herein as the “**Write-off**”, and “**Written-off**” shall be construed accordingly).

Once the principal amount of, and any accrued but unpaid interest under, the Loan has been Written-off, it will not be restored in any circumstances, including where the relevant Non-Viability Event ceases to continue. Following any Write-off, HBAP will have no right to any repayment or payment of any amount of principal or (as the case may be) interest under the Loan which has been so Written-off and HASE shall have no obligation to pay or repay any such amount of principal or (as the case may be) interest.

In this section:

“**Non-Viability Event**” means the earlier of:



- (a) the Monetary Authority notifying HASE in writing that the Monetary Authority is of the opinion that a Write-off is necessary, without which HASE would become non-viable; and
- (b) the Monetary Authority notifying HASE in writing that a decision has been made by the government body, a government officer or other relevant regulatory body with the authority to make such a decision, that a public sector injection of capital or equivalent support is necessary, without which HASE would have become non-viable;

**“Non-Viability Event Notice”** means the notice referred to in this document, which shall be given by HASE not more than two (2) Business Days after the occurrence of a Non-Viability Event to HBAP which shall state with reasonable detail the nature of the relevant Non-Viability Event and the Write-off; and

Default : The only events that shall constitute an **“event of default”** applicable to the Loan shall be the occurrence of (i) a Winding-up Event or (ii) a Non-payment Event (but shall, for the avoidance of doubt, exclude a Non-Viability Event).

**“Winding-up Event”** will result if (i) a court of competent jurisdiction in Hong Kong makes an order for HASE’s winding-up which is not successfully appealed within 30 calendar days of the making of such order, or (ii) HASE’s ordinary shareholders adopt an effective resolution for its winding-up (other than, in the case of either (i) or (ii) above, under or in connection with a scheme of reconstruction, merger or amalgamation not involving a bankruptcy or insolvency).

**“Non-payment Event”** will result if HASE fails to pay any amount that has become due and payable under this loan agreement unless payment is made within 14 calendar days of its due date. For the avoidance of doubt, no interest will be due and payable if such interest has been cancelled or deemed to be cancelled (in each case, in whole or in part) in accordance with the terms of this loan agreement (and no Non-payment Event will occur or be deemed to have occurred as a result of such cancellation or deemed cancellation (in each case, in whole or in part)).

On the occurrence of a Winding-Up Event (otherwise than in connection with a solvent reconstruction or amalgamation) or a Non-payment Event, HBAP may declare the principal of the Loan due and repayable immediately (and such principal shall thereby become so due and repayable) together with accrued interest.



On the occurrence of a Winding-up Event, HBAP's sole remedy shall be to prove in the winding-up of HASE and/or claim in the liquidation of HASE for payment of the principal amount of the Loan and any other amounts due under this loan agreement. On the occurrence of a Non-payment Event, HBAP's sole remedy shall be to petition for the winding-up of HASE, and to prove in the winding-up of HASE and/or claim in the liquidation of HASE, in Hong Kong and HBAP waives all other remedies, including without limitation, any right to institute any other proceedings, in respect of any interest or principal or any other amounts due under this loan agreement or in respect of any breach by HASE of any obligation, condition or provision of this loan agreement.

Interest Payment Dates : 22 December in each year, commencing on 22 December 2015; *provided, however, that*, if any Interest Payment Date would otherwise fall on a date which is not a Business Day (as defined below), it will be postponed to the next Business Day unless it would thereby fall into the next calendar month, in which case it will be brought forward to the preceding Business Day.

Discretionary Interest Payments : HASE may elect at its full discretion at all times and for any reason to cancel (in whole or in part) the interest otherwise scheduled to be paid on an Interest Payment Date, specified Interest Payment Dates or for an unlimited period.

If the payment of interest scheduled on an Interest Payment Date is so cancelled, HASE shall not have any obligation to make such interest payment on such Interest Payment Date and the failure to pay such amount of interest or part thereof shall not constitute an event of default of HASE for any purpose. Any such interest will not accumulate or be payable at any time thereafter (or be due) and HBAP shall have no right thereto whether in a winding up of HASE or otherwise.

Restriction on Interest Payments : Except to the extent permitted in the following paragraph in respect of partial interest payments, HASE shall not be required to make (and shall not make) an interest payment on any Interest Payment Date (and such interest payment will therefore be deemed to have been cancelled and thus will not be due and payable on such Interest Payment Date) if HASE does not have sufficient Distributable Items on such Interest Payment Date or the Monetary Authority directs HASE to cancel such interest payment (in whole or in part) or applicable Hong Kong banking regulations or other requirements of the Monetary Authority prevent the payment in full of such interest payment when due.



HASE may, in its sole discretion, elect to make a partial interest payment on the Loan on any Interest Payment Date, only to the extent that such partial interest payment may be made from any Distributable Items on such Interest Payment Date. For the avoidance of doubt, the portion of interest not paid on the relevant Interest Payment Date will be deemed to have been cancelled and thus will not be due and payable on such Interest Payment Date.

“**Distributable Items**” means the amounts for the time being available to HASE for distribution as a distribution in compliance with section 297 of the Companies Ordinance (Cap. 622) of Hong Kong, as amended or modified from time to time, as at the date of HASE’s audited balance sheet last preceding the relevant Interest Payment Date, and subject to the Monetary Authority’s then current capital conservation requirements as applicable to HASE on the relevant Interest Payment Date (the “**Available Amount**”); *provided that* if HASE reasonably determines that the Available Amount as at any Interest Payment Date is lower than the Available Amount as at the date of HASE’s audited balance sheet last preceding the relevant Interest Payment Date and is insufficient to pay the interest payment on the relevant Interest Payment Date, then on certification by two Directors and the auditors of such revised amount, the Distributable Items shall for the purposes of such interest payment mean the Available Amount as set forth in such certificate .

As at the date hereof, pursuant to section 297(1) of the Companies Ordinance (Cap. 622) of Hong Kong, HASE may only make a distribution out of profits available for distribution. For the purposes of section 297 of the Companies Ordinance (Cap. 622) of Hong Kong, HASE’s profits available for distribution are its accumulated realized profits, so far as not previously utilized by distribution or capitalization, less its accumulated realized losses, so far as not previously written off in a reduction or reorganization of capital.

- Interest Period : Each period beginning on (and including) the Drawdown Date or any Interest Payment Date and ending on (but excluding) the next Interest Payment Date is herein called an “**Interest Period**”.
- USD LIBOR : Means, in relation to any Interest Period, the rate for 12-month deposits in United States Dollars which appears on the display page designated LIBOR01 on Reuters (or such other page as may replace that page on that service, or such other service as may be nominated as the information vendor, for the purpose of displaying comparable rates) as of 11.00 a.m. (London time) on the second London Banking Day (as defined below)



before the first day of the relevant Interest Period; *provided, however, that* if such rate does not appear, then USD LIBOR for the relevant Interest Period shall be determined on such other basis as HASE and HBAP shall agree.

- Accrual and Calculation of Interest : Interest on the Loan shall accrue from day to day and be calculated on the basis of the actual days elapsed and a 360 day year.
- London Banking Day : Means a day on which commercial banks are open for general business (including dealings in foreign exchange and foreign currency deposits) in London.
- Business Day : Means a day on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealings in foreign exchange and foreign currency deposits) in London, New York City, and Hong Kong.
- Alteration : The terms of the Loan may be altered at any time by mutual agreement between HBAP and HASE, but subject to the prior consent of the Monetary Authority to any changes to the provisions relating to repayment (including date of repayment) and other material changes.
- Tax Gross-up : All payments to be made by HASE will be free and clear of all present and future taxes, unless required by law. If any deduction is required, HASE will pay an additional amount necessary to ensure that HBAP receives an amount that would otherwise have been received had no such deduction been required.

This loan agreement will be governed by the laws of Hong Kong. The courts of Hong Kong shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this loan agreement.

This loan agreement may be executed and delivered in any number of counterparts, each of which is an original and which, together, have the same effect as if each party had signed the same document.



If you agree to the terms set out in this loan agreement, please sign and return the enclosed copy of this loan agreement on which is endorsed a memorandum of acceptance.

Yours sincerely

For and on behalf of  
The Hongkong and Shanghai Banking Corporation Limited





**MEMORANDUM OF ACCEPTANCE**

To: The Hongkong and Shanghai Banking Corporation Limited

We hereby agree to the terms of the Loan set out above.

For and on behalf of  
Hang Seng Bank Limited

Date: 19 December 2014