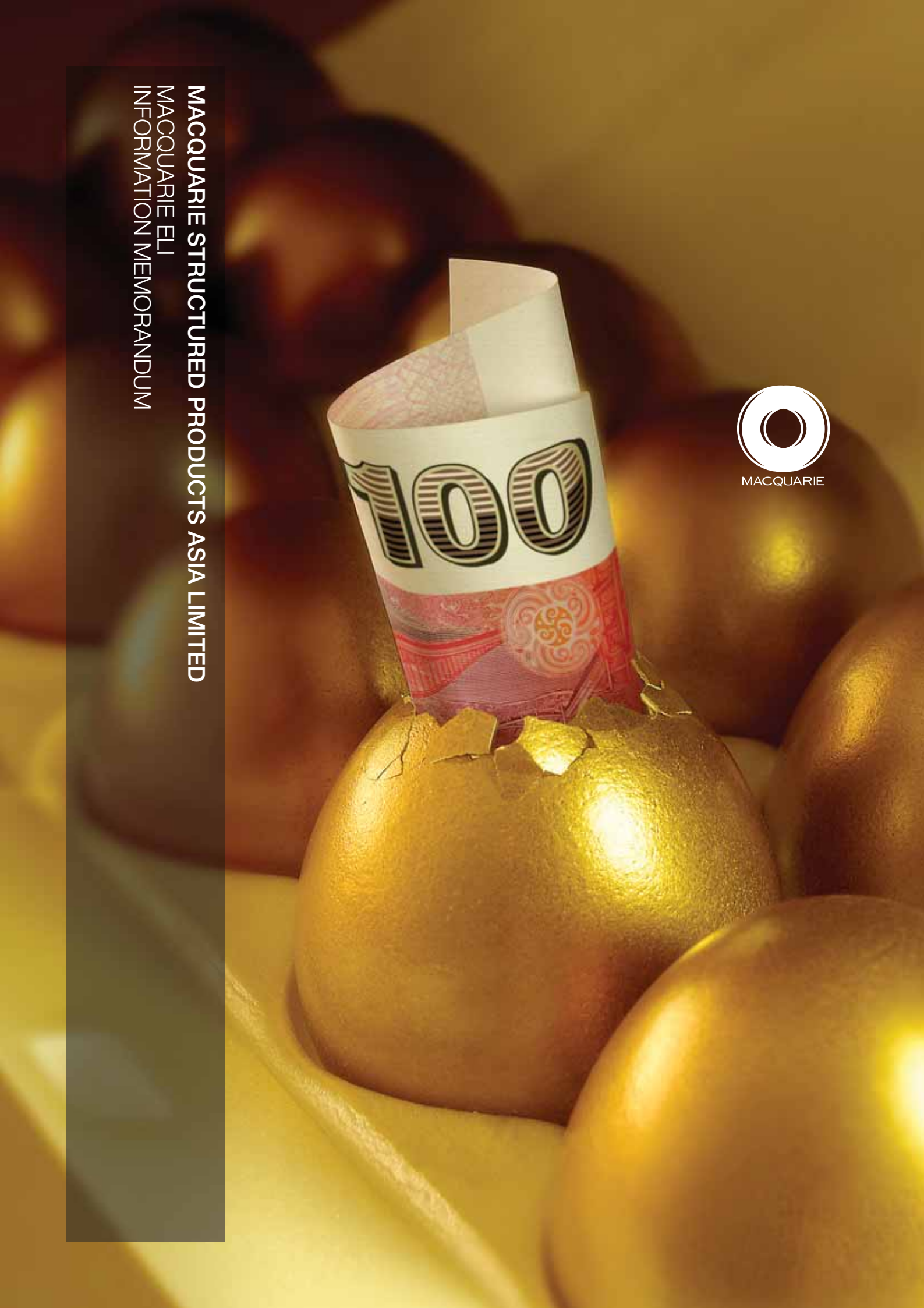




**MACQUARIE STRUCTURED PRODUCTS ASIA LIMITED**  
MACQUARIE ELI  
INFORMATION MEMORANDUM



# INFORMATION MEMORANDUM

If you are in any doubt as to any aspect of this Information Memorandum, you should consult your stockbroker or other licensed dealer in securities, bank manager, solicitor, professional accountant or other professional advisor.

## MACQUARIE STRUCTURED PRODUCTS ASIA LIMITED

*(incorporated as an international business company with limited liability in the British Virgin Islands)*

### Programme for unlisted Equity, Index and other Asset Linked Investment Contracts unconditionally guaranteed by



MACQUARIE

## MACQUARIE BANK LIMITED

(ABN 46 008 583 542)

*(incorporated with limited liability in the Commonwealth of Australia)*

This Information Memorandum is published in respect of bull equity linked investments on single securities ("**Bull ELIs**"), callable equity linked investments on single securities ("**Single Callable ELIs**"), callable equity linked investments over a basket of securities ("**Basket Callable ELIs**") (the Single Callable ELIs and the Basket Callable ELIs are together referred to as the "**Callable ELIs**" in this Information Memorandum unless the context otherwise requires), bear equity linked investments on single securities ("**Bear ELIs**"), range equity linked investments on single securities ("**Range ELIs**"), Knock-Out Discount Accumulation equity linked investments on single securities ("**KODA ELIs**"), or other equity, index or other asset linked investment products identified from time to time (together the "**ELI Products**") save that, where the context requires, references to the "ELI Products" shall mean the Bull ELIs, the Single Callable ELIs, the Basket Callable ELIs, the Bear ELIs, the Range ELIs, the KODA ELIs or such other equity, index or other asset linked investment products (as the case may be) to be issued from time to time by Macquarie Structured Products Asia Limited (the "**Issuer**") pursuant to the Issuer's programme for unlisted equity, index and other asset linked investment contracts ("**Programme**") and guaranteed by Macquarie Bank Limited ("**Guarantor**"). This Information Memorandum (as supplemented by any applicable addendum to be issued by the Issuer from time to time) (the "**Information Memorandum**") contains particulars for the purpose of giving information with regard to the Issuer, the Guarantor and the ELI Products and is supplemented by and should be read in conjunction with the Financial Statements (as defined on page 4 of this Information Memorandum), the applicable product booklet (as supplemented by any applicable addendum to be issued by the Issuer from time to time) (the "**Product Booklet**") and the relevant term sheet (a "**Term Sheet**"). This Information Memorandum, the Financial Statements, the applicable Product Booklet together with any addenda and/or supplemental documents to any of these documents and the relevant term sheet are collectively referred to as the "**Disclosure Documents**".

The Issuer may issue ELI Products on the terms of the relevant Terms and Conditions (as defined on page 2 of this Information Memorandum) described in this Information Memorandum as amended, varied and/or supplemented by the applicable Product Booklet to be issued by the Issuer in connection with each type of ELI Product and, in respect of each Series (as defined on page 19 of this Information Memorandum) of ELI Product, a Term Sheet. In respect of each Series of ELI Products, investors should read the Disclosure Documents before making an investment decision. Please refer to "Term Sheet and Product Booklet" on page 3 of this Information Memorandum for a more detailed description of these documents.

The Issuer and the Guarantor accept full responsibility for the information contained in the Disclosure Documents. The Issuer and the Guarantor confirm, having made all reasonable enquiries, that to the best of their knowledge and belief, the Disclosure Documents, when read together, will contain no untrue statement (including a statement which is misleading in the form and context in which it is included and including a material omission). The Issuer and the Guarantor have made all reasonable enquiries to ascertain such facts and to verify the accuracy of such statements.

**Investors are warned that the value of ELI Products may fall as rapidly as they may rise and holders may sustain a total loss of their investment. Prospective investors in ELI Products should therefore ensure that they understand the nature of the relevant ELI Products and should carefully study the matters set out in each of the Disclosure Documents (and in particular, the section headed "Risk Factors" on page 9 of this Information Memorandum) before they invest in any ELI Products.**

**ELI Products constitute general unsecured and unsubordinated contractual obligations of the Issuer (and of no other person) and the guarantee executed by the Guarantor dated 14 November 2006 (the "Guarantee") constitutes general unsecured and unsubordinated contractual obligations of the Guarantor (and of no other person) which will rank equally with all other unsecured and unsubordinated contractual obligations of the Issuer and the Guarantor respectively other than liabilities preferred by mandatory provisions of law. No certificate of title or similar instrument will be issued to ELI holders. If investors purchase any ELI Products they are relying upon the creditworthiness of the Guarantor and have no rights under such ELI Products with respect to the security, index or other asset underlying such ELI Products or against any entity which issues the underlying security, the index compiler of the underlying index or any entity the securities of which comprise the underlying index.**

**ELI Products will not be listed on any stock exchange.** The Issuer will generally not make active markets in ELI Products and prospective investors should only invest in an ELI Product if they intend to hold that ELI Product to maturity. ELI holders are prohibited from transferring an ELI Product without the consent of the Issuer. Prospective investors in ELI Products should refer to the section headed "Risk Factors" on page 9 of this Information Memorandum and to the arrangements to be implemented in connection with each issue of ELI Products described in the section headed "Realising Your Investment Early" on page 40 of this Information Memorandum. Prospective investors are therefore advised to read those particular sections for details of the circumstances in which they may be able to realise their ELI Products prior to the relevant Maturity Date (as defined in the relevant Term Sheet).

The Issuer is a thinly capitalised special purpose vehicle with limited assets. As at the date of this Information Memorandum, the Guarantor has short-term and long-term credit ratings of, respectively, A1 and A by Standard and Poor's Ratings Group; P- 1 and A2 by Moody's Investors Service Inc.; F- 1 and A+ by Fitch Ratings Ltd. Neither the Issuer nor the Guarantor carries on banking business in Hong Kong. Neither the Issuer nor the Guarantor is an authorised institution as defined in the Banking Ordinance (Cap. 155 of the Laws of Hong Kong) and therefore are not subject to the supervision of the Hong Kong Monetary Authority. The Guarantor is regulated as an Authorised Deposit Taking Institution in Australia by the Australian Prudential Regulation Authority.

ELI Products will not be rated by any credit rating agency.

The Securities and Futures Commission (the "**SFC**") has, pursuant to Section 105(1) of the Securities and Futures Ordinance (Cap. 571, Laws of Hong Kong) ("**SFO**") authorised, subject to certain conditions, the issue of this Information Memorandum and the issue of the standard format of the Financial Statements for the purposes of the issue of ELI Products under the Programme. The SFC takes no responsibility as to the contents of such documents. SFC authorisation does not imply the SFC's endorsement or recommendation of the ELI Products and any underlying securities, indices and/or other assets referred to in this Information Memorandum.

*Arranger for the Programme*  
**Macquarie Equities (Asia) Limited**  
20 November 2006

## IMPORTANT INFORMATION

The delivery of the Disclosure Documents does not at any time imply that the information contained in the Disclosure Documents is correct at any time subsequent to the date of such documents or that any other information supplied in connection with each Series of ELI Products is correct as of any time subsequent to the date indicated in the document containing such information. At the time of offer of any Series of ELI Products, the Disclosure Documents and any other information supplied in connection with the relevant Series of ELI Products will be reviewed, and where necessary, updated, to ensure that such information is accurate and not misleading at that date.

ELI Products are issued by the Issuer. Any other parties distributing ELI Products are only doing so as a distributor for the Issuer. Macquarie Equities (Asia) Limited ("**ME(A)L**") will provide administrative services to the Issuer.

Neither the Issuer nor ME(A)L is an authorised deposit-taking institution for the purposes of the Banking Act 1959 (Commonwealth of Australia) ("**Banking Act**"), and ME(A)L's obligations do not represent deposits or other liabilities of the Guarantor. The Issuer and the Guarantor do not guarantee or otherwise provide assurance in respect of the obligations of ME(A)L. ME(A)L has no capacity to accept Applications (as defined in the Terms and Conditions) or otherwise enter into transactions for and on behalf of the Issuer. ME(A)L will receive Applications and pass them on to the Issuer for acceptance or rejection. ME(A)L is licensed by the SFC as a licensed corporation under the SFO.

The ELI Products are offered solely on the basis of the information contained in the Disclosure Documents. No action has been taken to permit a public offering of ELI Products or the distribution of this Information Memorandum, the applicable Product Booklet or any Term Sheet in any jurisdiction (other than Hong Kong) where action would be required for such purposes. The distribution of the Disclosure Documents and the offering of any ELI Products may, in certain jurisdictions, be restricted by law. The Issuer will require persons into whose possession this Information Memorandum, any Product Booklet or any Term Sheet comes to inform themselves of and observe all such restrictions. In particular, ELI Products have not been and will not be registered under the United States Securities Act of 1933, as amended (the "**Securities Act**") and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons (as defined in the Securities Act) unless the ELI Products are registered under the Securities Act or any exemption from registration is available. Subject to certain exceptions, ELI Products, or interests therein, may not at any time be offered, sold, resold or delivered within the United States or to, or for the account or benefit of, U.S. persons.

This Information Memorandum includes the terms and conditions of Bull ELIs (Physical Delivery with Cash Settlement Option), the terms and conditions of Callable ELIs (Physical Delivery with Cash Settlement Option), the terms and conditions of Bear ELIs (Physical Delivery with Cash Settlement Option), the terms and conditions of Range ELIs (Physical Delivery with Cash Settlement Option); the terms and conditions of KODA ELIs (Physical Delivery) (these terms and conditions, together with the terms and conditions of other equity, index or other asset linked investment products set out in any other Disclosure Documents, the "**Terms and Conditions**", save that where the context requires, references to the Terms and Conditions shall mean the terms and conditions of the relevant ELI Product as set out in this Information Memorandum or the terms and conditions of other equity, index or other asset linked investment products set out in any other Disclosure Documents).

The Disclosure Documents and other information supplied in connection with the ELI Products should not be considered as a recommendation by the Issuer or the Guarantor that any recipient of such documents should purchase any ELI Products. Each investor contemplating purchasing or holding any of the ELI Products should make its own analysis of the financial condition and affairs and its own appraisal of the creditworthiness, of the Guarantor and the nature of the relevant ELI Products so as to evaluate the merits and risks of purchasing or holding or dealing in the ELI Products.

All references herein to “**Hong Kong**” are to the Hong Kong Special Administrative Region of the People’s Republic of China.

Capitalised terms used and not defined in this Information Memorandum will have the meanings given to them in the Terms and Conditions, the applicable Product Booklet and/or the relevant Term Sheet.

#### **REFERENCES TO “INVESTORS”, “YOU” AND “ELI HOLDER”**

References in this Information Memorandum, the relevant Product Booklet and relevant Term Sheet to “**investors**” or to “**you**” are references to investors who have made an application through one of the Distributors (as defined under the section headed “Summary of the Programme” on page 19 of this Information Memorandum), notwithstanding that the registered holder of an ELI Product is the Distributor or a nominee company utilised by that Distributor.

References in this Information Memorandum, the relevant Product Booklet and the relevant Term Sheet to the term “**ELI holder**” shall mean the Distributor or a nominee company utilised by the Distributor as the registered holder of the ELI.

#### **TERM SHEET AND PRODUCT BOOKLET**

In respect of each Series of ELI Products, the Issuer will prepare a Term Sheet setting out a summary of all the terms and conditions applicable to such Series (constituted by the applicable Product Booklet and the relevant Term Sheet together with the relevant Terms and Conditions - see the description of a Product Booklet below). A Product Booklet and a Term Sheet are part of the offering documents which must be read in conjunction with this Information Memorandum and the Financial Statements. The Disclosure Documents will be available free of charge during the Offer Period (as defined on page 24 of this Information Memorandum) and for so long as the relevant ELI Product remains outstanding from the Distributors as described under “Where to Obtain Copies of the Disclosure Documents” on page 5 of this Information Memorandum.

The Issuer will also prepare a Product Booklet applicable in respect of each of Bull ELIs, Callable ELIs, Bear ELIs, Range ELIs, KODA ELIs and such other types of ELI Products that may be issued by the Issuer from time to time. A Term Sheet, when read in conjunction with the applicable Product Booklet and the relevant Terms and Conditions applicable to such Series, constitutes the full set of terms and conditions applicable to the relevant Series. The applicable Product Booklet and the relevant Term Sheet are contractual documents which amend, vary and/or supplement the relevant Terms and Conditions and set out, for the purposes of the relevant type of ELI Products, the definitions of certain capitalised terms in the relevant Terms and Conditions which are not otherwise defined in the Terms and Conditions. The applicable Product Booklet and the relevant Term Sheet may also specify additional terms and conditions which shall, to the extent so specified or to the extent inconsistent with the relevant Terms and Conditions, replace or modify the relevant Terms and Conditions for the purpose of such type of ELI Products. The applicable Product Booklet and the relevant Term Sheet will be issued on or prior to the commencement date of the Offer Period (as defined on page 24 of this Information Memorandum).

## **ADDENDA TO THIS INFORMATION MEMORANDUM AND ANY OF THE PRODUCT BOOKLETS**

The Issuer may from time to time after the date of this Information Memorandum issue one or more addenda to this Information Memorandum. All such addenda to this Information Memorandum shall be read in conjunction with this Information Memorandum, and all references to the Information Memorandum in a Disclosure Document shall be deemed to include all such addenda. The Issuer may also from time to time after the date of a Product Booklet issue one or more addenda to the relevant Product Booklet. All such addenda to the Product Booklet shall be read in conjunction with the Product Booklet, and all references to Product Booklets in the Disclosure Documents shall be deemed to include all such addenda. Each Term Sheet will indicate whether any addendum or addenda to this Information Memorandum and/or to any of the Product Booklets have been published as of the date of that Term Sheet and identify and briefly indicate the content of such addendum or addenda. Copies of such addenda will be available free of charge for so long as the ELI Products remain outstanding as described under “Where to Obtain Copies of the Disclosure Documents” on page 5 of this Information Memorandum.

### **FINANCIAL STATEMENTS OF THE ISSUER AND GUARANTOR**

Copies of the following documents (the “**Financial Statements**”) will be provided free of charge together with this Information Memorandum, the applicable Product Booklet and the relevant Term Sheet as described under “Where to Obtain Copies of the Disclosure Documents” on page 5 of this Information Memorandum:

- (1) the latest publicly available financial report of the Guarantor (containing audited financial statements and the risk management report of the Guarantor); and
- (2) the latest publicly available unaudited interim financial information (if any) of the Guarantor.

Such documents may also be viewed on the website operated by the Arranger at [http://www.macquarie.com.au/au/about\\_macquarie/financial\\_information.htm](http://www.macquarie.com.au/au/about_macquarie/financial_information.htm) or such other website as specified in the relevant Term Sheet.

***Please refer to “References to Websites” on page 7 of this Information Memorandum for a warning statement and disclaimer relating to the usage of information contained in the website referred to above.***

On the basis that the Issuer is a special purpose vehicle incorporated on 25 February 2004 and has no assets other than its paid-up share capital and such fees (as agreed) payable to it in connection with the issue of ELI Products and other financial products, the financial statements (if published) in respect of the Issuer will only contain very limited information and exclusion of the financial statements of the Issuer from the Disclosure Documents is immaterial in the context of the investors’ decision as to whether to invest in the ELI Products.

Particulars of the Financial Statements available from time to time will be set out in the relevant Term Sheet. The Financial Statements form part of the Disclosure Documents provided to prospective investors in ELI Products. If investors have not received a copy of the Financial Statements, they should contact their Distributors immediately and in any event prior to making an application for ELI Products.

## WHERE TO OBTAIN COPIES OF THE DISCLOSURE DOCUMENTS

In respect of any Series of ELI Products, hard copies of each of the Disclosure Documents (each available in separate English and Chinese language versions) may be obtained free of charge from the Distributors during usual business hours on any weekdays (Saturdays, Sundays and public holidays excepted) during the Offer Period. The names and contact details of the Distributors are available on the website operated by the Arranger at <http://www.eli.hk> or such other website as specified in the relevant Term Sheet, or may be obtained for free upon request from the Arranger during usual business hours on any weekdays (Saturdays, Sundays and public holidays excepted) at the address below.

The Issuer will, for so long as the ELI Products remain outstanding, make available information about the identities and contact details of the Distributors through which ELI Products can be purchased. The Issuer will make this information available on the website operated by the Arranger at <http://www.eli.hk> or such other website as specified in the relevant Term Sheet. Investors may also obtain such information free of charge upon request from the Arranger.

Electronic versions of the Disclosure Documents (each available in separate English and Chinese language versions) can be viewed and printed from the website operated by the Arranger for the ELI Products at <http://www.eli.hk> or such other website as specified in the relevant Term Sheet.

***Please refer to “References to Websites” on page 7 of this Information Memorandum for a warning statement and disclaimer relating to the usage of information contained in the websites referred to above.***

After the Offer Period for the relevant ELI Products and for so long as any ELI Products remain outstanding, hard copies of the Disclosure Documents may be obtained free of charge on request from the Arranger during usual business hours on any weekdays (Saturdays, Sundays and public holidays excepted) at the following location.

**Macquarie Equities (Asia) Limited**  
19th Floor, CITIC Tower  
1 Tim Mei Avenue Central  
Hong Kong

## APPLICATIONS FOR ELI PRODUCTS

Applications for ELI Products by investors can only be made through the Distributors, not the Issuer or the Guarantor. If investors wish to purchase any ELI Product, they must contact any one of the Distributors, who will make an Application in its own name with the Issuer on their behalf. The Issuer may waive the Minimum Application Amount (as defined in the Terms and Conditions), reject an Application, close the Offer Period for a Series or part of a Series, or withdraw invitations made under this Information Memorandum and the applicable Product Booklet at its absolute discretion at any time.

If investors wish to apply for ELI Products through a Distributor, they must already have, or they must open a cash account and an investment account (“**Designated Account**”) with one of the Distributors in the same currency as the Settlement Currency (as defined in the Terms and Conditions) of the ELI Products. The Distributors may charge a fee for the opening and maintenance of the Designated Account.

For further details in relation to the application procedures in respect of ELI Products, see the section headed “Procedures for Application” on page 24 of this Information Memorandum, the applicable Product Booklet and the relevant Term Sheet.

## NOT A PROSPECTUS

None of the Disclosure Documents constitute a prospectus under the Companies Ordinance (Cap. 32, Laws of Hong Kong). Except as contemplated under “Undertakings by Distributors” on page 27 of this Information Memorandum, no such document has been or will be lodged or registered under the securities laws of any jurisdiction outside Hong Kong and no registration with, or approval of, any regulatory authority outside Hong Kong will be sought. Investors in those jurisdictions are required to inform themselves of, and observe, any applicable restrictions in making applications for ELI Products.

## OBLIGATIONS OF THE ISSUER AND THE GUARANTOR

The obligation of the Issuer under ELI Products is not a deposit liability of the Issuer nor a debt of any kind, and is not guaranteed by any other parties other than the Guarantor. It is an unsecured and unsubordinated contractual obligation of the Issuer which will rank equally with the Issuer’s other unsecured and unsubordinated contractual obligations and behind preferred liabilities including those mandatorily preferred by law.

The obligations of the Guarantor under the Guarantee are not a deposit liability of the Guarantor nor a debt of any kind, and are not guaranteed by any other parties. They are unsecured and unsubordinated contractual obligations of the Guarantor which will rank equally with the Guarantor’s other unsecured and unsubordinated contractual obligations and behind preferred liabilities including those mandatorily preferred by law. The Guarantor may at any time by notice to the Beneficiaries (as defined in the Guarantee) revoke the Guarantee with effect from the date specified (“**Revocation Date**”) in the notice, which date shall not be less than 30 days after the date on which such notice is given to the Beneficiaries. Such revocation will not affect the Guarantee with respect to any Guaranteed Obligations (as defined in the Guarantee) as at the close of business on the Revocation Date. The text of the Guarantee is reproduced in full in the section headed “Text of Guarantee of Macquarie Bank Limited” on page 41 of this Information Memorandum.

In this regards, section 13A(3) of the Banking Act provides that in the event of the Guarantor becoming unable to meet its obligations, the assets of the Guarantor in Australia shall be available to meet its deposit liabilities in Australia in priority to all other liabilities of the Guarantor (which other liabilities include the obligations of the Guarantor under the Guarantee).

The Issuer will give notice to the ELI holders of any information relating to itself or the Guarantor which is necessary to avoid the establishment of a false market in the ELI Products, or which may significantly affect the Issuer's ability to perform its obligations under the ELI Products (or the Guarantor's ability to perform its obligations under the Guarantee).

### **ADVERTISING MATERIALS**

Advertising or promotional materials relating to ELI Products (the "**marketing materials**") may be issued and/or distributed by persons other than the Issuer. Any such marketing materials must be issued in full compliance with all relevant laws, regulations, guidelines and/or codes (among other things, the laws in Hong Kong requires that any marketing materials must be true, accurate and not misleading or deceptive) and should state clearly who takes full responsibility for the issue and content of such marketing materials. The Issuer, the Guarantor and ME(A)L do not make any representation whatsoever that the contents of any such marketing materials (other than marketing materials issued by the Issuer, the Guarantor or the Arranger) are complete, not misleading, accurate and/or true and no responsibility whatsoever is accepted in relation to any such marketing materials (other than marketing materials issued by the Issuer, the Guarantor or the Arranger) by any person who is responsible for this Information Memorandum.

### **REFERENCES TO WEBSITES**

References in this Information Memorandum to websites where further information may be obtained are intended as guides as to where further public information of the Issuer, the Guarantor or ELI Products may be obtained. Information appearing on these websites (other than the electronic versions of the Disclosure Documents appearing on the website(s) operated by the Arranger and/or the Distributors) does not form part of the Disclosure Documents. Prospective investors should conduct such web searches as they deem appropriate and ensure they are viewing the most up-to-date information. Such information if available should not form the sole basis of any investment decision by an investor to purchase or deal in ELI Products.

The offer of ELI Products is made solely on the basis of the information contained in the Disclosure Documents. Accordingly, prospective investors should exercise an appropriate degree of caution when assessing the value of information which may appear on such websites relating to the Issuer, the Guarantor or ELI Products.

### **COMMISSIONS**

The Issuer may pay commissions by way of a placement fee of up to 3% of the Nominal Value (or in the case of KODA ELIs, of the Purchase Price) (or such other amount as specified in the Term Sheet) of the ELI Products to the Distributors.

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## RISK FACTORS

The following risk factors are relevant to any person considering investing in the ELI Products. The applicable Product Booklet and relevant Term Sheet may contain additional risk factors which investors should consider prior to making an investment decision in the relevant Series of ELI Products. Investors should check the applicable Product Booklet and the relevant Term Sheet to see if it contains any such additional risk factors.

The information set out below, in the applicable Product Booklet and/or in the Term Sheet is included for the purpose of enabling prospective investors and their advisers to make an informed assessment of the terms and conditions of the ELI Products, general risks of investing in the ELI Products, the capacity of the Issuer to fulfil its obligations under the ELI Products and the capacity of the Guarantor to fulfil its obligations under the Guarantee. The risk factors set out in this document, in the applicable Product Booklet and in the Term Sheet (if applicable) cannot disclose or foresee all risks of the ELI Products. Investors should not rely on the information set out below, in the applicable Product Booklet and/or in the Term Sheet as the sole basis for any investment decision in relation to the ELI Products but should seek appropriate and relevant advice concerning the appropriateness of an investment in the ELI Products in their particular circumstances. Under the Code of Conduct for Persons Licensed by or Registered with the SFC ("**SFC Code of Conduct**"), Distributors of the ELI Products are required to ensure that the suitability of the ELI Products to a prospective investor is reasonable in all circumstances and to ensure that the prospective investor understands the nature and risks of investing in the ELI Products.

### General

An investment in ELI Products involves substantial risks including market risk, liquidity risk and the risk that the Issuer and the Guarantor will be unable to satisfy their respective obligations under the ELI Products and the Guarantee. Investors should ensure that they understand the nature of all of these risks before making a decision to invest in ELI Products. Investors should consider carefully whether ELI Products are suitable for them in light of their experience, objectives, financial position and other relevant circumstances. ELI Products are not suitable for inexperienced investors.

**Prospective investors should recognise that their ELI Products may mature worthless.**

### Market Risk

Investing in ELI Products involves market risk. Changes in the price, level or value of the underlying security, index or other asset ("**Underlying Assets**") can be unpredictable, sudden and large. Such changes may result in the price, level or value of the Underlying Assets moving adversely to the interests of the investors in the ELI Products and negatively impacting upon the return on the ELI Products. In respect of Bull ELIs, Callable ELIs, Range ELIs and Bear ELIs linked to an underlying security, the number of the underlying security to be delivered to the ELI holders on the maturity of the ELI Products or, if the Issuer elects to pay cash equivalent of that number of the underlying security, the amount of cash to be paid to the ELI holders on maturity, will depend on the Closing Price of the underlying security on the Fixing Date. In respect of Basket Callable ELIs linked to a basket of underlying securities, the securities to be delivered to the ELI holders at maturity will be such number of the Worst Performing Security in the Basket as of the Fixing Date calculated by reference to its Closing Price on the Fixing Date. Investors are therefore exposed to changes in the market price or prevailing level or value of the Underlying Assets (and, in respect of the Basket Callable ELIs, each security in the relevant Basket) between the time they make their investment and the time that their investment is due to mature.

In extreme circumstances, investors may lose all, or a significant proportion of, their initial investment.

Prospective investors in any ELI Products should be experienced with dealing in these types of transactions and should understand the risks associated with dealing in such products. Prospective investors should reach an investment decision only after careful consideration, with their advisers, of the suitability of any ELI Products in light of their particular financial circumstances, the information regarding the relevant ELI Products, the particular Underlying Asset(s) to which an ELI Product may relate, any related transaction costs, and the creditworthiness of the Guarantor.

### **Liquidity Risk and non-transferability of ELI Products**

ELI Products are not listed on any stock exchange. Unlike a direct holding in listed securities, there will not be a liquid secondary market in ELI Products. ELI Products are investments intended to be held to maturity. ELI Products are not a trading instrument and are not issued with a certificate of title. ELI Products are a contractual arrangement constituted by the Terms and Conditions (as may be amended by the applicable Product Booklet and/or the relevant Term Sheet), the relevant Term Sheet and an Application between the Issuer and the relevant Distributor as the ELI holder and no certificate of title or similar instrument will be issued to either the ELI holders or investors. ELI holders are prohibited from transferring or assigning the benefit of an ELI Product without the written consent of the Issuer. If investors do not intend to invest in an ELI Product for the full term of the ELI Product they should not make an investment in an ELI Product, because they will not, except with the Issuer's consent, be able to transfer or assign the ELI Product. Investors will not ordinarily be able to realise the value of an ELI Product if, for example, the investor's view on the Underlying Assets to which a particular ELI Product relates changes after the purchase of such ELI Product but before the Settlement Date. Investors must therefore note that the inability to realise the value of an ELI Product prior to maturity is a significant risk of investing in an ELI Product.

On request from a Distributor (acting on behalf of an investor), the Issuer, or an entity appointed by the Issuer may, but is not bound to, make a price at which it will cancel or purchase (as the case may be) an ELI Product before its Settlement Date. There is no guarantee that such a price will be available, nor that it will be any particular amount. As a result, investors could incur significant losses by requesting a cancellation of an ELI Product prior to the Settlement Date. In the event that a price is made to cancel or purchase (as the case may be) an ELI Product, the price that the Issuer, or an entity appointed by the Issuer, will pay will generally be affected by the market price or the prevailing level of the Underlying Assets to which the relevant ELI Product relates more than any other single factor. Other factors that may be relevant in determining the price paid by the Issuer include:

- the expected volatility of the price, level or value of the Underlying Assets;
- the expected dividends or distributions on the Underlying Assets (if applicable);
- interest rates; and
- time remaining to maturity of the ELI Product.

### **Unsecured nature of ELI Products and of the Guarantee, revocability of the Guarantee and creditworthiness of the Guarantor**

If investors purchase ELI Products they are relying upon the creditworthiness of the Guarantor.

The Issuer has the obligation to deliver to the relevant Distributor registered as the ELI holder the Security Amount (in respect of physically delivered ELI Products) or, at the Issuer's

election in accordance with the Terms and Conditions, to pay cash in lieu on the Settlement Date. The Issuer is a thinly capitalised special purpose vehicle whose only assets are its issued capital and such fees (as agreed) payable to it in connection with the issue of ELI Products and other financial products.

ELI Products constitute general, unsecured and unsubordinated contractual obligations of the Issuer and of no other person and will rank at least equally with the Issuer's other unsecured and unsubordinated contractual obligations and with the Issuer's unsecured liabilities (other than liabilities preferred by mandatory provisions of law).

The Guarantee constitutes unsecured and unsubordinated contractual obligations of the Guarantor and of no other person. It is not a deposit liability of the Guarantor nor a debt of any kind. It is an unsecured and unsubordinated contractual obligation of the Guarantor which will rank equally with the Guarantor's other unsecured and unsubordinated contractual obligations other than preferred liabilities including those mandatorily preferred by law.

Clause 11 of the Guarantee provides that the Guarantee may be revoked by notice given by the Guarantor (although such revocation will not affect Guaranteed Obligations (as defined in the Guarantee) incurred prior to such revocation). Outstanding ELI Products issued by the Issuer prior to revocation will therefore not be affected. The obligations of the Guarantor under the Guarantee are therefore revocable to that extent only.

Section 13A(3) of the Banking Act provides that, in the event of the Guarantor becoming unable to meet its obligations, the assets of the Guarantor in Australia shall be available to meet its deposit liabilities in Australia in priority to all other liabilities of the Guarantor (including the obligations of the Guarantor under the Guarantee).

Investors must make their own assessment of the ability of the Guarantor to meet its obligations under the Guarantee. The Issuer and the Guarantor do not carry on banking business in Hong Kong, neither of them is an authorised institution under the provisions of the Banking Ordinance (Cap.155, Laws of Hong Kong) and therefore are not subject to the supervision of the Hong Kong Monetary Authority.

### **De-listing or Suspension of Securities**

Subject to any delay in settlements, de-listing or suspension from trading of the Securities on The Stock Exchange of Hong Kong Limited during the term of the ELI Product will not affect the obligations of the Issuer under the ELI Product. However in these circumstances, the investor may receive Securities which are unlisted or listed but suspended and therefore illiquid and you may not be able to realise the value of your investment easily. Alternatively, in the case of cash settlement, the investor may receive a Cash Settlement Amount calculated by multiplying the Security Amount with the Security Value of such unlisted or illiquid Securities. Investors' returns may therefore be adversely affected. If the relevant Listed Entity becomes insolvent or is subject to similar proceedings and is wound up or ceases to exist as a legal entity during the term of the ELI Product, the ELI Product will mature worthless and investors will lose their entire initial investment. The Issuer has the sole and absolute discretion to make or not to adjust the terms and conditions of the ELI Products when the Securities are de-listed in accordance with the Terms and Conditions.

### **Disruption on Settlement and Settlement Delays**

If delivery or payment through the Settlement Account is not reasonably practicable, delivery or payment may be effected by whatever means the Issuer reasonably determines is the most practicable in the circumstances.

Subject to the Issuer's election to pay cash in lieu of the Security Amount in respect of ELI Products (Physical Delivery with Cash Settlement Option), an ELI Product over a security or a basket of securities is an agreement to purchase the Securities. The number of Securities to be delivered will be determined on the Fixing Date. In certain events, the Issuer's ability to deliver certificates of ownership in relation to the Securities or to effect electronic settlement of the Securities may be restricted. This could result in delays for Distributors (registered as the ELI holders) who are entitled to receive the Security Amount. Where such a delay occurs, movements in the price of the Securities could affect the value of the Security Amount delivered on the Settlement Date compared to the value of those Securities on the Fixing Date.

**The Issuer can postpone the Fixing Date and, in respect of KODA ELIs, a Determination Date and, in respect of Callable ELIs, the Call Date and the Distribution Valuation Date**

If the Issuer determines that, on the Fixing Date or, in respect of KODA ELIs, a Determination Date or, in respect of Callable ELIs, the relevant Call Date or Distribution Valuation Date, a Market Disruption Event has occurred or is continuing, the Fixing Date, the Determination Date, the Call Date or Distribution Valuation Date (as the case may be) will be postponed until the first Business Day on which no Market Disruption Event occurs. If the Market Disruption Event exists for five Business Days or longer:

- (a) that fifth Business Day shall be deemed to be the Fixing Date, the Determination Date, the Call Date or the Distribution Valuation Date (as the case may be) despite the Market Disruption Event, and
- (b) in respect of ELI Products over Securities, the Issuer will determine the Closing Price of the Securities by reference to its good faith estimate of the bid price prevailing on that fifth Business Day (notwithstanding the Market Disruption Event continuing to subsist); in respect of any other ELI Products, the Issuer will make the relevant determination as described in the applicable Terms and Conditions.

As a result, the Settlement Date (or the Call Settlement Date or the Distribution Date, as the case may be) for the ELI Product will also be postponed, although in no circumstances will the Fixing Date, the Determination Date, the Call Date or the Distribution Valuation Date (as the case may be) be postponed by more than five Business Days (see the Terms and Conditions for further details). If the Fixing Date, the Determination Date, the Call Date or the Distribution Valuation Date (as the case may be) is postponed, the Securities or any Cash Settlement Amount will not be delivered until after the originally scheduled Settlement Date, Call Settlement Date or Distribution Date (as the case may be).

**The Issuer can elect to settle in cash in respect of ELI Products (Physical Delivery with Cash Settlement Option)**

ELI Products over Hong Kong listed Securities are agreements to purchase such Securities. However, in accordance with the Terms and Conditions in respect of ELI Products (Physical Delivery with Cash Settlement Option) other than KODA ELIs, the Issuer has the sole discretion to settle the ELI Products in cash instead of delivering the Security Amount. Neither the ELI holder nor the investor has a discretion to elect to receive cash instead of Security Amount. If the Issuer exercises its discretion to deliver cash in lieu of Securities, neither the ELI holder nor the investor will have a right to require the delivery of Securities. Instead a cash amount with a value equal to the product of the Security Amount and the Closing Price on the Call Date or the Fixing Date (as the case may be) will be delivered to the ELI holder in accordance with the Terms and Conditions. If, in the period between the Fixing Date (or in the case of a Series of Callable ELIs, the relevant Call Date) and the Settlement Date (or in the

case of a Series of Callable ELIs, the relevant Call Settlement Date), there has been any movement in the price of the Securities, the Cash Settlement Amount paid to the ELI holder by the Issuer may be less than the value of the Security Amount on the Settlement Date or, in respect of Callable ELIs, the Call Settlement Date.

### **Potential Conflicts of Interest**

The Issuer, the Guarantor and/or the affiliates and controlled entities of the Guarantor (“**Macquarie Group**”) may buy and sell the Underlying Assets or derivatives of the Underlying Assets, and may issue other instruments the value of which is linked to the value of the Underlying Assets. These activities may affect the market value or prevailing level of the Underlying Assets, or could result in the Macquarie Group having interests which conflict with those of the investors’ in relation to the market value or prevailing level of the Underlying Assets. Any member of the Macquarie Group may also act as underwriter in connection with future offerings of shares or other securities or may act as financial adviser to the issuer, or sponsor, as the case may be, of any such share or other securities or in a commercial banking capacity for the issuer of any such share or other securities. Such activities could present certain conflicts of interest and may affect the value of the ELI Products.

The Issuer, the Guarantor and/or their respective affiliates may engage in trading or hedging transactions involving ELI Products, the Underlying Assets or other derivative products that may affect the value of the relevant ELI Products.

### **Adjustment to the ELI Products/Amendments to the Terms and Conditions following certain events**

Following a Potential Adjustment Event on or after the Issue Date as specified in the Schedule to the Terms and Conditions on page 106 of this Information Memorandum, the Issuer will in its sole and absolute discretion determine whether adjustment should be made to the Terms and Conditions to account for the diluting or concentrative effect of the Potential Adjustment Event or otherwise necessary to preserve the economic equivalent of the rights of the investors under the relevant ELI Product immediately prior to the Potential Adjustment Event.

If an Extraordinary Event specified in the Schedule to the Terms and Conditions on page 106 of the Information Memorandum (such as corporate actions or merger events) occurs on or prior to the Fixing Date (or, in respect of Callable ELIs, the Call Date or the Distribution Valuation Date) or, in respect of KODA ELIs, the Final Accumulation Date, the Issuer may, in its sole and absolute discretion, determine what amendments are to be made to the Terms and Conditions of the relevant ELI Product to take account of the occurrence of the Extraordinary Event as it considers appropriate.

An ELI holder and investor have only limited antidilution protection under the Terms and Conditions. The Issuer has the sole and absolute discretion as to whether any, if at all and what, adjustments, amendments and alterations that it makes following such events and the Issuer is not obliged to make an adjustment, amendment or alteration for every event that may affect the value or level of the Underlying Assets. The risks associated with the making of an adjustment are further described under “Discretion of the Issuer” below.

### **Investors have no rights in the Underlying Assets**

Owning an ELI Product is not the same as owning or investing directly in the security(ies), the index or other assets to which a particular ELI Product relates. Neither an ELI holder nor an investor in an ELI Product will be entitled to, in the case of securities, voting rights or rights

to receive dividends or other distributions or any other rights that a holder of the securities would normally be entitled to or, in the case of other assets, the benefit from any rights or benefits to which the owner of (or investor in) the Underlying Assets is entitled except as set out in the Terms and Conditions of the relevant ELI Product.

### **Risks related to ELI Products over newly listed Securities**

Where the underlying Security or any Security in the Basket (in the case of Basket Callable ELIs) is a security newly listed on the SEHK, there will be no public market for the Securities and an active public market for the Securities may not develop or be sustained in the future. You will not be able to analyse or compare the trading history of the Security, particularly in relation to either the volatility or liquidity which may have an impact on the return on your investment.

Although the Securities are listed on the SEHK, there is no guarantee that a trading market for the Securities will develop or, if a market does develop, the liquidity of that market. Also, the price and trading volume of the Securities may be highly volatile subject to the market sentiment, and may be more volatile than would generally be expected for a security that has a longer trading history.

### **Risks related to ELIs Products over unit trusts**

Where the underlying Security or a Security in the Basket (in the case of Basket Callable ELIs) is unit in a trust, neither we nor our affiliates have the ability to control or predict the actions of the manager and/or the trustee of such trust. The manager and/or the trustee are not involved in the offer of the ELIs Products in any way and have no obligation to consider the interests of the investors in taking any action that might affect the value of the Securities and the ELIs Products.

We have no role in the underlying assets of the trust(s) ("**Fund Assets**"). The manager is responsible for making strategic, investment and other trading decisions with respect to the management of the Fund Assets, consistent with its investment objectives and/or investment restrictions as set out in its constitutive documents. The performance of the Fund Assets is significantly dependent upon the capabilities of the management team of the manager. The manner in which the Fund Assets are managed and the timing of such decisions will have a significant impact on the performance of the Fund Assets, and hence, on the performance of the Securities.

There is also a risk that the investment objectives and/or investment restrictions as set out in the constitutive documents of the Listed Entity are materially changed, not complied with or the method of calculating the net asset value of the Fund Assets is materially changed. Such changes will impact on the performance of the Fund Assets and on the Securities. The applicable laws and regulations governing the trust(s) may restrict the operations of the trust and restrict its ability to achieve the investment objectives of the trust(s).

If the trust is terminated (see Schedule to this Information Memorandum contains technical definition for such term) or the liquidation or dissolution of the trustee of the trust (including any successor trustee appointed from time to time) (in its capacity as trustee of the trust) or the appointment of a liquidator, receiver or administrator or analogous person under any applicable law in respect of the whole or substantially the whole of the undertaking, property or assets of the trust, we may, in our sole and absolute discretion, make adjustment to the Terms and Conditions to take into account of the occurrence of such event, including but not limited to the determination of the Closing Price of the relevant Security. Upon the occurrence of such event, the assets of the Listed Entity may become worthless and the ELI Product may mature worthless, in which case, you may lose your entire initial investment.

### **Risk related to ELI Products over index**

In relation to ELIs Products over an index, the index level may be published by its index compiler at a time when one or more components comprising the index are not trading. As a result, the value of such components may not be included in the calculation of the closing level of the index. In addition, certain events relating to the index (including a material change in the formula or the method of calculating the index, a failure to publish the index by the index compiler, the discontinuation of the index or a suspension of the index) permits the Issuer to determine the closing level of the index on the basis of the formula or method last in effect prior to such events.

You should note that an investment in ELI Products over index involves valuation risks in relation to the index. The value of the index may vary over time and may increase or decrease by reference to various factors which may include changes in the formula for or the method of calculating the index. Certain (but not all) events relating to the index underlying the ELI Products require or, as the case may be, permit the Issuer to make certain adjustments or amendments to the Terms and Conditions (including, but not limited to, adjusting the closing level of the index). However, the Issuer is not required to make an adjustment for every event that can affect the index underlying the ELI Products. If an event occurs that does not require the Issuer to adjust the Terms and Conditions, the price of the ELI Products in the secondary market (if any) and the return of the ELI Products may be adversely affected by such event.

Neither the ELI holder nor yourself will have rights against the index compiler. The index compiler will not be liable to any person for any error in the index and the index compiler is under no obligation to advise you of any error therein.

### **Risk related to ELI Products over commodities**

The price of commodities may vary over time and may increase or decrease by reference to various factors which may include the expected supply and demand of the commodities, macro economic factors and market trends. Weather conditions, natural disaster, and world events such as terrorism, war, political and economic trends can all have influence on the supply and demand of commodities, and can have a significant impact on their market price, which may adversely affect the return on the relevant ELI Products.

### **Investment Decisions**

This Information Memorandum does not take into account the investment objectives or financial position of any particular investor. Accordingly, nothing in this Information Memorandum should be construed as a recommendation or advice by the Issuer, the Guarantor, ME(A)L, or any of their associates or any other person concerning investment in the ELI Products, the Underlying Assets (if applicable) or any other investment products.

Prospective investors should not rely on this Information Memorandum other than in respect of those matters referred to above, and should not rely on it as the sole basis for any investment decision in relation to ELI Products or the Underlying Assets (if applicable). Prospective investors should seek appropriate and relevant advice (including independent professional advice) concerning the Listed Entity and the appropriateness of an investment in the ELI Products for their particular circumstances.

### **ELI Products are not covered by the Investor Compensation Fund**

ELI Products are not traded on The Stock Exchange of Hong Kong Limited. Accordingly, following any default on the part of an investor's Distributor, such investor may not claim compensation from the Investor Compensation Fund established by the SFC.

## **Tax consequences of holding ELI Products**

Investors should consider the tax consequences of investing in ELI Products and consult their tax advisers about their own tax situations. See the section headed "Taxation" on page 35 of this Information Memorandum for details.

## **Reliance upon Distributors for payments and delivery**

ELI Products will be sold by the Issuer directly to Distributors and registered in the name of the relevant Distributor. Investors must invest in ELI Products through a Distributor. To purchase ELI Products, investors must already have, or must open, a Designated Account with any of the Distributors in the same currency as the Settlement Currency of the ELI Products, to which they give their application instructions. See the section headed "Procedures for Application" on page 24 of this Information Memorandum. No title document to an ELI Product will be issued by the Issuer. An investor's ability to pledge his interest in ELI Products to any person who is not a Distributor or otherwise to take action in respect of his interest, may be affected by the lack of direct title document issued by the Issuer in respect of his investment in ELI Products.

The standard terms and conditions of the Designated Account of any of the Distributors may permit it to take a security interest in, or to impose other restrictions on, ELI Products credited to the account or to exercise a lien, right of set off or similar claim against an investor in respect of monies held in any of his accounts maintained with it to secure any amounts which may be owing by such investor to it. See the section headed "Arrangements with Distributors" on page 33 of this Information Memorandum.

For the purposes of payments, delivery of the Underlying Assets (if applicable) and delivery of notices required under the Terms and Conditions to be made by the Issuer to ELI holders, an investor's Distributor, being the registered holder of ELI Products as recorded in the Register, will be treated as the holder and will be given direct contractual right of enforcement against the Issuer or the Guarantor (as the case may be) in respect of the ELI Product and the Guarantee. An investor will have to rely on the Distributor selected by him to distribute notices to him and to credit his accounts with payments and/or delivery of the Underlying Assets (if applicable) made by the Issuer.

An investor will have to rely on the Distributor selected by him to distribute notices to him which it receives from the Issuer and/or the Arranger. None of the Issuer, the Guarantor or their respective affiliates accepts responsibility for or liability arising out of or in connection with any failure or delay on the part of the Distributors in doing so.

Similarly, each investor will need to rely on his Distributor to send any notice to the Issuer and/or the Arranger under the Terms and Conditions. Investors will need to instruct their Distributors in accordance with the normal operational procedures of such Distributors to send such notices to the Issuer and/or the Arranger before any deadline stipulated in the relevant Terms and Conditions. None of the Issuer, the Guarantor or their respective affiliates accepts responsibility for any failure or delay on the part of any Distributor in such communications.

Investors will also have to rely on their Distributors to credit their accounts with payments or delivery of the Underlying Assets (if applicable) made by or on behalf of the Issuer and credited to it. As a result of having to rely on their Distributors in these circumstances, investors will be exposed to the credit risks and other default risks of their Distributors. None of the Issuer, the Guarantor or their respective affiliates accepts responsibility for or liability arising out of or in connection with any failure or delay on the part of the Distributors in performing their contractual duties to investors.

Any action investors may wish to take against the Issuer or the Guarantor in accordance with the Terms and Conditions of the ELI Products will require the cooperation of their Distributors. Investors have no right of direct action against the Issuer or the Guarantor and will need to rely on their Distributors to contact and/or take action against the Issuer or Guarantor on their behalf. The business terms of one Distributor to another may be very different and investors are advised to read carefully the terms of business of any party investors intend to engage in maintaining an account for their ELI Products, and ensure they understand the circumstances in which they may rely on such party to act on their behalf.

### **Information Memorandum must be read in conjunction with the applicable Product Booklet and the relevant Term Sheet**

Before investing in any Series of ELI Products, investors must read the Information Memorandum in conjunction with the applicable Product Booklet and the relevant Term Sheet which set out the full terms and conditions applicable to such Series. See the section headed “Documents on Display” on page 55 of this Information Memorandum for details of where these documents may be obtained.

### **Exchange rate risks**

The Nominal Value of each ELI Product may be issued in any currency or currencies as set out in the relevant Term Sheet as the Settlement Currency subject to any applicable legal or regulatory restrictions. Payment of the Purchase Price for a ELI Product must be made to a Distributor in the Settlement Currency. If investors make payment to a Distributor in any other currency, they will bear the exchange rate risk arising from the conversion of such other currency into the Settlement Currency. Investors should note that there may be an exchange rate risk in respect of ELI Products where the Security Amount is converted from one currency into another. Exchange rates between currencies are determined by forces of supply and demand in the foreign exchange markets. These forces are, in turn, affected by factors such as international balances of payments and other economic and financial conditions, government intervention in currency markets and currency trading speculation. Fluctuations in foreign exchange rates, foreign political and economic developments, and imposition of exchange controls or other foreign government laws or restrictions may affect the foreign currency market price and the exchange rate-adjusted equivalent price of the ELI Products. Fluctuations in the exchange rate of any one currency may be offset by fluctuations in the exchange rate of other relevant currencies. Where the Issuer must convert one currency into another currency, it will convert the currency at prevailing market rates as determined appropriate by the Issuer in its sole and absolute discretion, which may not be the best available rates.

### **Return on an investment in ELI Products will be affected by charges incurred by investors**

The total return on an investment in any ELI Product will also be affected by fees charged by your Distributor. Fees may be charged by the Distributor for the opening and operation of the Designated Account, transfers of an ELI Product, custody services and payments. You are therefore advised to consult with the Distributors to ascertain the basis on which fees will be charged by your Distributor.

## **Discretion of the Issuer**

The Issuer has the sole and absolute discretion to determine what the prevailing market rate is if it needs to convert one currency into another, whether a Market Disruption Event, a Potential Adjustment Event or an Extraordinary Event has occurred, in making any resulting adjustments to the Terms and Conditions and making calculations as described in this Information Memorandum, including but not limited to, the Closing Price of the underlying Securities, Security Amount, Reference Price, Upper Reference Price, Lower Reference Price, Call Strike, and/or Distribution Strike Price (if any). Any such discretion exercised by, or any calculation made by, the Issuer (in the absence of manifest error) shall be binding on the Issuer, the Distributors and all investors. Investors should note that the Issuer, when making any such adjustments or calculations, will not take into account individual investors' circumstances and/or tax or other consequences of such adjustments or calculations.

Prospective investors should review the Terms and Conditions for the relevant ELI Products in which they wish to invest and familiarise themselves with the specific circumstances in which adjustments may arise and the potential consequences.

## **Governing law**

The Guarantee is governed by the laws of New South Wales, Australia and the courts of New South Wales shall have non-exclusive jurisdiction in respect of disputes involving the Guarantee. New South Wales law may be materially different from the equivalent Hong Kong law in its application to the Guarantee. Investor should consult their solicitors or other professional advisers if they are in any doubt as to the implication of New South Wales law being the governing law in respect of the Guarantee and the courts of New South Wales having non-exclusive jurisdiction in respect of disputes involving the Guarantee.

## **Credit rating of the Guarantor**

The rating agencies (Standard & Poor's, Fitch Ratings and Moody's Investors Service) have not been consulted nor their consent sought for the inclusion of their ratings in this Information Memorandum. The rating agencies do not independently verify information provided to them by the Guarantor, and therefore, the rating agencies make no representation or warranty with respect to the accuracy of their ratings. The rating agencies have not been involved in the preparation, or authorised the circulation of, this Information Memorandum.

Prospective investors should note that credit ratings assigned by the rating agencies address only credit risk, which is only one element of any investment decision and should not be construed as relating to the ELI Products. Ratings are not recommendations to buy, hold or sell ELI Products. By publishing a rating, the rating agencies are not inducing or advising investors to take any action with respect to the ELI Product or any other security. Ratings and rating reports should not be construed as investment advice, personalised or other. Accordingly, investors should conduct their own evaluation of the ELI Product or consult their investment adviser.

Ratings are subject to change or withdrawal at any time, which change or withdrawal is within each ratings agency's sole discretion.

## SUMMARY OF THE PROGRAMME

*The following summary does not purport to be complete and is taken from, and is qualified in its entirety by, the remainder of this Information Memorandum and, in relation to the terms and conditions of any particular Series of ELI Products, the relevant Term Sheet and the applicable Product Booklet. To determine the terms and conditions which apply to any Series of ELI Products, it is necessary to read the relevant Terms and Conditions set out in this Information Memorandum together with the relevant Term Sheet and the applicable Product Booklet. Terms used in this summary are defined in the relevant set of Terms and Conditions.*

- Issuer: Macquarie Structured Products Asia Limited.
- Guarantor: Macquarie Bank Limited.
- Description: Programme for the issue of unlisted ELI Products relating to Underlying Assets as specified in the applicable Product Booklet and the relevant Term Sheet.
- Arranger and Paying Agent: Macquarie Equities (Asia) Limited, which arranged the establishment of the Programme and described in this Information Memorandum as the Arranger, will also arrange for the payment of cash and delivery of securities or other assets due under the terms of the ELI Products to the ELI holders on behalf of the Issuer.
- Distributors: The Arranger may enter into arrangements with one or more distributors from time to time or may act as a distributor itself (each, a “**Distributor**” and together, the “**Distributors**”) for the purpose of distributing the ELI Products to the public. It is possible that there may only be one Distributor for a Series of ELI Products.
- See the section headed “Procedures for Application” on page 24 of this Information Memorandum for further details. The identities and contact details of the relevant Distributors appointed in respect of a Series of ELI Products will be made available from time to time on the website operated by the Arranger at <http://www.eli.hk> or such other website as specified in the relevant Term Sheet, or free of charge upon request from the Arranger.
- Series and Tranches: The ELI Products will be issued in series (each a “**Series**”). Each Series of ELI Products may comprise one or more tranches of ELI Products issued on different issue dates (each a “**Tranche**”). The ELI Products of each Series will have identical terms and conditions except that the issue date and/or the issue price of each Tranche will be different.
- References in this Information Memorandum to “**Series**” shall include references to “**Tranche**” where applicable.

Product Booklet and Term Sheet:

The Issuer will prepare a Product Booklet applicable to each type of ELI Products. In respect of each Series of ELI Products, the Issuer will prepare a Term Sheet setting out particulars applicable to such Series, together with important information about the offer of the ELI Products.

The applicable Product Booklet and the relevant Term Sheet must be read in conjunction with the Terms and Conditions applicable to such Series which, when so read, together constitute the full terms and conditions applicable to the relevant Series. The applicable Product Booklet and the relevant Term Sheet are the contractual documents which amend, vary and/or supplement the relevant Terms and Conditions and set out, for the purposes of the relevant type of ELI Product, the definitions of certain capitalised terms in the relevant Terms and Conditions which are not otherwise defined in the Terms and Conditions. They may also specify additional terms and conditions which shall, to the extent so specified or to the extent inconsistent with the relevant Terms and Conditions, replace or modify the relevant Terms and Conditions for the purpose of such type of ELI Products. Investors are bound by the relevant terms and conditions applicable to the particular ELI Products in which they invest.

Each Product Booklet and Term Sheet will be available in separate English and Chinese language versions. Copies of these documents are available for inspection as described under the section headed "Documents on Display" on page 55 of this Information Memorandum.

Form:

In respect of each Series of ELI Products, the Terms and Conditions as amended by the applicable Product Booklet and the relevant Term Sheet constitute the full terms and conditions applicable to the relevant Series. An Application by a Distributor pursuant to the Disclosure Documents, upon acceptance by the Issuer, constitutes a contract between the Issuer and the relevant Distributor (acting as a principal or as the agent of the investor) under which, in consideration for the payment of the Purchase Price by the relevant Distributor, the Issuer agrees to perform its obligations under the relevant Terms and Conditions in respect of each Series of ELI Products. No certificate of title will be issued in respect of any ELI Product and the Distributor (being the person shown in the Register as entitled to a particular number of ELI Products) shall be treated as the absolute owner and holder of such ELI Products.

ELI holders are prohibited from transferring the benefit of an ELI Product without the prior written consent of the Issuer.

Trading and Settlement  
Currencies:

ELI Products may be traded and settled in any currency or currencies, including without limitation Hong Kong Dollars, United States Dollars, Canadian Dollars, New Zealand Dollars, Australian Dollars, Sterling, euro, Japanese Yen and any other major currencies as set out in the relevant Term Sheet as the Settlement Currency, subject to any applicable legal or regulatory restrictions.

Investors must have a Designated Account with their Distributors in the same currency as the Settlement Currency of the ELI Products. Monies to be paid by investors (e.g. the purchase monies) and monies to be paid to them (e.g. the Cash Settlement Amount or the Settlement Amount) will be denominated in the Settlement Currency.

Status of the ELI Products on  
the liquidation of the Issuer:

The ELI Products will constitute general, unsecured and unsubordinated contractual obligations of the Issuer and of no other person and rank *pari passu* among themselves and (save for certain obligations required to be preferred by law) equally with all other unsecured and unsubordinated obligations of the Issuer.

Guarantee:

Performance of the Issuer's obligations under the ELI Products will be unconditionally guaranteed by the Guarantor as provided in a deed of guarantee dated 14 November 2006 granted in favour of the Beneficiaries (such term as defined in the Guarantee), a copy of which is available for inspection as described under the section headed "Documents on Display" on page 55 of this Information Memorandum. The text of the Guarantee is set out on page 41 of this Information Memorandum.

The obligations of the Guarantor under the Guarantee will be direct, unsecured and general obligations of the Guarantor and rank equally with all its existing and future unsecured and unsubordinated obligations but excluding any debts for the time being preferred by law.

Enforcement of ELI:

The Distributors, as the registered holders of ELI Products, will be given direct contractual rights of enforcement against the Issuer or the Guarantor (as the case may be) in the event of a default in payment or delivery under the ELI Products.

Any action investors may wish to take against the Issuer or the Guarantor (as the case may be) in relation to such non-payment or non-delivery by the Issuer pursuant to the terms of the relevant Terms and Conditions will require the cooperation of their Distributor. Investors have no right of direct action against the Issuer or the Guarantor and will need to rely on their Distributors to contact and/or take action against the Issuer or Guarantor on their behalf. The business terms of one Distributor to another may be very different and investors are advised to read carefully the terms of business of their Distributors (or any party investors intend to engage in maintaining an account for their ELI Products), and ensure investors understand the circumstances in which they may rely on such party to act on their behalf. The contract between the Issuer and the relevant Distributor for a particular Series of ELI Products is evidenced by the Terms and Conditions as amended by the applicable Product Booklet and the relevant Term Sheet.

Realising your investment early:

ELI Products are not transferable without the prior written consent of the Issuer. The Issuer may, from time to time, issue a particular ELI Product with specific market making or liquidity arrangements for that ELI Product. Such arrangements will be included in the relevant Term Sheet for that ELI Product. The Issuer, or an entity appointed by the Issuer may, but is not bound to, make a price at which it will cancel or purchase (as the case may be) all or part of an ELI holder's holding of an ELI Product before its Settlement Date if requested to do so by an ELI holder.

As at the date of this Information Memorandum, the Issuer has appointed ME(A)L as the entity that will consider such requests and provide indicative prices (if any). See the section headed "Realising Your Investment Early" on page 40 of this Information Memorandum for further details.

Listing:

The ELI Products will not be listed.

Governing Law:

The laws of the Hong Kong Special Administrative Region of the People's Republic of China.

Selling Restrictions:

See the section headed "Offering and Sale" on page 37 of this Information Memorandum for a discussion of certain restrictions on the offering of the ELI Products and the distribution of offering materials in various jurisdictions.

Application Procedures:

Applications for ELI Products by investors must be made through the Distributors, not the Issuer or the Guarantor. If investors wish to purchase any Series of ELI Products, they must contact any one of the Distributors, who will make an Application for the relevant ELI Product directly with the Issuer on their behalf.

The Issuer may reject an Application, close the Offer Period for a Series or part of a Series, or withdraw invitations made under this Information Memorandum, the applicable Product Booklet and the relevant Term Sheet at its sole and absolute discretion at any time.

See the section headed “Procedures for Application” on page 24 of this Information Memorandum for information on the application procedures in respect of the ELI Products.

The relevant Term Sheet will contain information on the Offer Period during which an Application for ELI Products may be made, the amount of the Purchase Price for the ELI Products (or the method by which it will be fixed), the method and timing of payment of the Purchase Price of the ELI Products and any other relevant information as to application procedures and allocation of the relevant ELI Product.

## PROCEDURES FOR APPLICATION

### Offer Period

ELI Products will be offered to retail investors through the Distributors during the period (“**Offer Period**”) specified in the Term Sheet for the relevant Series of ELI Product. The Issuer may close the Offer Period for the whole or a part of a particular Series or withdraw invitations made under this Information Memorandum, the applicable Product Booklet and the relevant Term Sheet at its absolute discretion at any time.

If an investor wishes to purchase any ELI Product pursuant to this Information Memorandum, the applicable Product Booklet and the relevant Term Sheet, he must contact one of the Distributors. An investor’s Distributor will apply for the relevant ELI Product with the Issuer directly on his behalf. The names and contact details of the Distributors are available on the website operated by the Arranger at <http://www.eli.hk> or such other website as specified in the relevant Term Sheet, or upon request from ME(A)L.

### Lodgment of Applications and role of the Distributors

Following acceptance of an Application from a Distributor by the Issuer, the relevant ELI Product will be issued and registered in the name of the Distributors as the registered holders of such ELI Product in the **Register**. The Issuer may reject an Application from a Distributor at its absolute discretion.

Applications for ELI Products by investors must be made through the Distributors. If an investor wishes to purchase any Series of ELI Products, he must contact any one of the Distributors appointed to facilitate the offering of such Series of ELI Products. The Distributors will, on behalf of the investors, apply for any ELI Products in which the investors wish to invest. In consideration of such facilitation, the Issuer may allow commissions to the Distributors in connection with such offering.

It is not possible for investors to apply directly to the Issuer for an ELI Product. An application for an ELI Product by an investor with a Distributor constitutes, upon acceptance by the Distributor, a contract between the investor and the Distributor.

**Prospective investors are advised that arrangements for the purchase by them of any ELI Products as part of the offering of a Series of ELI Products (including, without limitation, arrangements regarding the time and method of payment of the Purchase Price for the ELI Products, the amount of the charges to be levied by the Distributor and any other terms (if any) for placing an order for the ELI Products) will be as separately agreed between the prospective investor and the Distributor and will be subject to the terms and conditions of the Distributor relating to such arrangements. Each Distributor may impose different arrangements relating to the purchase of ELI Products and prospective investors should contact the Distributors for information relating to such arrangements.**

For the purpose of delivery of the Security Amount, the Cash Settlement Amount, Period Number of Securities or the Early Settlement Securities, the Early Settlement Cash Amount and/or notices from the Issuer and/or the Guarantor, an investor’s Distributor, being the registered holder of ELI Products as recorded in the Register maintained by the Issuer, will be treated as the ELI holder and he will have to rely on his Distributor to distribute notices to him and to credit his accounts with payment or delivery of the Securities or assets underlying the relevant Series of ELI Product. Similarly, an investor will need to rely on his Distributor to send any notice or deliver payment to the Issuer and/or the Guarantor under the Terms and Conditions. An Investor will need to instruct his Distributor in accordance with the normal

operational procedures of such Distributor to send such notice or deliver such payment to the Issuer before any deadline stipulated in the relevant Terms and Conditions. Copies of the Disclosure Documents are available for inspection from the Distributors during the Offer Period and for so long as the relevant ELI Product remains outstanding.

The Purchase Price for ELI Products to be purchased by a prospective investor will be payable to the Distributor in the manner and/or to the account as separately designated by the Distributor in accordance with its normal operating procedures. Each Distributor will be required to provide the prospective investor with details relating to the relevant operating procedures for payment. The form and content of any application procedure in respect of an application by an investor to a Distributor are not prescribed by the Issuer and may differ from one Distributor to another to accommodate the relevant Distributor's application and payment procedure and other applicable operating procedures. In respect of each type of ELI Product, the Issuer will impose a minimum amount for which an Application can be made by each investor as specified in the relevant Term Sheet. In addition, each Distributor may impose a minimum purchase requirement, such that each prospective investor through that Distributor must agree to purchase a minimum number of ELI Products. The original of any application by investors to Distributors for ELI Products sent by facsimile should be forwarded to the relevant Distributor. None of the Issuer, the Guarantor, ME(A)L, or the Distributors shall be responsible for any loss resulting from non-receipt of any such application sent by facsimile or by post by an investor to a Distributor.

Investors wishing to apply for a particular Series of ELI Products will be required to submit their applications to the Distributors, together with payment for the ELI Products, prior to the close of the Offer Period for that Series. Applications by investors are subject to the terms of this Information Memorandum, the applicable Product Booklet, the relevant Term Sheet and the operating procedures of the Distributors. No application form for ELI Products will be issued by the Issuer. The Issuer has an absolute discretion to accept or reject in whole or in part any Application for an ELI Product made by a Distributor. If an Application is rejected, purchase monies paid by a Distributor will be returned to the Distributor without interest within 10 Business Days. Any refund by a Distributor to an investor will be made in accordance with the relevant Distributor's normal operating procedures. Such procedure may differ from one Distributor to another to accommodate the relevant Distributor's application and payment procedure and other applicable operating procedures. Investors are advised to read carefully the terms of business of their Distributors.

**If a prospective investor wishes to apply for ELI Products, he must already have, or he must open a Designated Account with one of the Distributors. Such accounts must be in the same currency as the Settlement Currency of the ELI Products. If the Underlying Assets are Securities, the Designated Account must be able to be used to settle such Securities. A Distributor may charge a fee for the opening and maintenance of the Designated Account. Please refer to the section headed "Arrangements with Distributors" on page 33 for further details.**

**The Arranger will enter into separate arrangements with the Distributors regarding the application process as between the Issuer and the Distributors, including entering into a Distribution Agreement with each Distributor.**

**None of the Issuer, the Guarantor, ME(A)L or their respective affiliates accepts responsibility for any failure or delay on the part of investors' Distributors in performing their contractual duties to them (except where it is also acting as a Distributor), including any failure to apply for an ELI Product on their behalf, any failure to return all or part of purchase monies paid by them following the rejection of an application for an ELI Product, any non-payment or non-delivery with respect to ELI Products on the part of the Distributors or failure by the Distributors to distribute any notices to them which they receive from the Issuer, ME(A)L or the Guarantor.**

## **Internet Applications**

Prospective investors who have a Designated Account with Distributors who offer on-line application facilities, and have made the necessary arrangements to use their internet banking facilities, can also apply for ELI Products by making an on-line application.

By making an on-line application through a Distributor, investors are required to comply with their Distributor's terms and conditions for use of their internet banking facilities.

The websites of Distributors offering on-line application facilities will be specified in the relevant Term Sheet.

The offer of the ELI Products by the Issuer is made solely on the basis of information contained in the Disclosure Documents. Information appearing on the websites of the Distributors does not form part of the Disclosure Documents (other than the information contained in the electronic versions of the Disclosure Documents appearing on such websites) and prospective investors should exercise an appropriate degree of caution when assessing the value of the information which may appear on these websites.

## **Term Sheets**

On any Business Day, the Issuer may (but is not obliged to) make available one or more Series of ELI Products which will relate to one or more Underlying Assets.

When a Series of an ELI Product is offered, the Issuer will publish a Term Sheet setting out the particulars applicable to the ELI Product constituting that Series. One Term Sheet will be issued for each Series. The Issuer may offer more than one Series of ELI Products on any Business Day. Term Sheets are available from ME(A)L at the address specified on page 5 of this Information Memorandum, from the internet at <http://www.eli.hk> or such other website as may be specified in the relevant Term Sheet, or from a Distributor.

The relevant Term Sheets and the applicable Product Booklets are the contractual documents which may amend, vary and/or supplement the relevant Terms and Conditions and set out, for the purposes of the relevant type of ELI Product, the definitions of certain capitalised terms used in the relevant Terms and Conditions which are not otherwise defined in the Terms and Conditions. The relevant Term Sheet and/or the applicable Product Booklet may also specify additional terms and conditions which shall, to the extent so specified or to the extent inconsistent with the relevant Terms and Conditions, replace or modify the relevant Terms and Conditions for the purpose of such type of ELI Products. Investors are bound by the relevant terms and conditions applicable to the particular ELI Products that they invest in.

Templates of the Term Sheets for each type of ELI Product will be set out in the applicable Product Booklet.

## **What Confirmations do Distributors receive?**

The Issuer may, in its absolute discretion, accept any Application submitted by a Distributor by issuing to the Distributor within one Business Day after the Issue Date a Confirmation setting out details of the Series, including the type of ELI Product, the Underlying Assets, the Purchase Price, the Nominal Value (if applicable) and the Reference Price (or Upper Reference Price and the Lower Reference Price, as the case may be) of the ELI Product for which the Distributor has applied, and any other matters which the Issuer determines is appropriate. Any error or omission in any such Confirmation will not affect the terms or the definitiveness of the details appearing on the Register. If an Application is rejected, the Issuer will inform the relevant Distributor in a manner it deems appropriate.

## **Register**

The Register of ELI holders will be maintained outside of Hong Kong and the Issuer will, upon issuance of a Confirmation, enter, or cause to be entered, in the Register in respect of each Distributor to whom ELI Products are sold:

- the ELI holder's name, address and banking details;
- details of the ELI Product held by that ELI holder, including the number of ELI Products of each Series, the Underlying Assets, the Purchase Price (for KODA ELIs), the Nominal Value of those ELI Products (if applicable) and any other particulars which it thinks proper; and
- details of any transfer of ELI Products made with the consent of the Issuer pursuant to the Terms and Conditions.

In the absence of manifest error, the Register is definitive of the details of an ELI holder's investment in each ELI Product and other particulars recorded in the Register. ELI holders may not rely upon any contrary details in the Confirmation or any contrary representation from the Issuer, the Guarantor, ME(A)L, the Distributor or any of their respective employees, servants or agents as to the terms of ELI Products.

On written request from a Distributor, the Issuer will provide to the Distributor free of charge a copy of an extract of the Register detailing the ELI Products held by the Distributor. The copy will be sent to a Distributor in accordance with the Terms and Conditions as soon as practicable following receipt of a request.

The Issuer will not provide Confirmations detailing holdings of ELI Products to investors directly. Individual investors will not be recorded in the Register of ELI holders and are not regarded as "ELI holders" under the Terms and Conditions. Confirmations may aggregate investments made on behalf of a number of investors through a Distributor. Distributors will be required to maintain their own records of investments in ELI Products made by individual investors. Investors should contact their Distributors for information relating to their holdings of ELI Products and for information generally concerning the operation of the Designated Account.

## **Undertakings by Distributors**

Each Distributor must comply with the selling restrictions set out in this Information Memorandum and with all relevant laws, regulations and guidelines or codes issued by the relevant regulatory authorities, including but not limited to the SFC Code of Conduct.

In respect of each Series of ELI Products, each Distributor gives the following undertakings:

- Copies of the Disclosure Documents (each in separate English and Chinese language versions) will be available for distribution to investors and no application for ELI Products will be accepted from an investor who has not had the opportunity to receive and read all such documents in his preferred language (photocopies of any of these documents may not be substituted for the original printed version except that in the case of the relevant Term Sheet, photocopies of such Term Sheet may be substituted).
- Each prospective investor, at the time of or prior to submitting an application to purchase such ELI Products through the Distributor, will be taken through the confirmations set out on pages 29 to 32 of this Information Memorandum and asked to confirm their understanding thereof.

- ELI Products will not be sold on the basis of any information that is inconsistent with the Disclosure Documents.
- Each Distributor will obtain the Arranger's approval as to the contents and manner of distribution of all marketing materials in relation to the ELI Products and will obtain the SFC's authorisation for the issue and publication of such marketing materials prior to their distribution. Each Distributor is responsible for the marketing material issued or distributed by it to promote ELI Products, and any marketing materials used to promote ELI Products must be true, accurate and not misleading.
- Each Distributor will obtain the SFC's authorisation for any on-line application platform in relation to ELI Products and any website in respect of any ELI Products operated by such Distributor. It will not launch any on-line application or website in relation to the ELI Products until it obtains the SFC's authorisation.
- Distributors will inform prospective investors that copies of the documents listed under the section headed "Documents on Display" on page 55 of this Information Memorandum are available for inspection at the offices specified on page 5 of this Information Memorandum.
- Any notices received from the Issuer, the Guarantor and/or the Arranger including but not limited to a notice of an extension or early close of the Offer Period or any other commercial terms of ELI Products to be fixed after the acceptance of an application for any ELI Products will as soon as reasonably practicable be relayed to the prospective investors and (if applicable) any notices received from investors will immediately be relayed to the Issuer and/or the Guarantor and/or the Arranger or their respective nominee.
- Distributors must provide details of (i) their operating procedures and charges generally for account opening and maintenance and for custodial and other services applicable to investors and (ii) their procedures for the receipt of applications and purchase monies in respect of ELI Products and applicable handling charges.
- During the Offer Period any notices received from the Issuer and/or the Guarantor and/or the Arranger will immediately be relayed to prospective investors and (if applicable) any notices received from investors will immediately be relayed to the Issuer and/or the Guarantor and/or the Arranger or their respective nominee.
- During the Offer Period:
  - (a) copies of the Disclosure Documents (in separate English and Chinese versions) will be made available and distributed to prospective investors in the manner described in this Information Memorandum (including any addenda or supplements) and the applicable Product Booklet and only at the locations ("**Relevant Locations**") notified in writing by the Distributors to the Arranger as being the distribution points of the Disclosure Documents and no application for ELI Products may be accepted from a prospective investor who has not had the opportunity to receive and read, a copy of each of these documents in his preferred language (photocopies of any of these documents may not be substituted for the original printed version except that in the case of the relevant Term Sheet, photocopies of such Term Sheet may be substituted);
  - (b) the Distributors must not offer ELI Products at any of the Relevant Locations unless copies of the Disclosure Documents in both English and Chinese versions are available for distribution to prospective investors. If either language version of any such documents runs out or ceases to be available or distributed at any Relevant

Location during the Offer Period, then all such documents should cease to be made available or distributed at the Relevant Location until such time as both language versions of all documents are again made available or distributed to the public at that Relevant Location.

Under the SFC Code of Conduct, the Distributors as entities registered with or licensed by the SFC are required to ensure that the suitability of ELI Products for a prospective investor is reasonable in all circumstances when making a recommendation of any ELI Products to that prospective investor and to ensure that the prospective investor understands the nature and risks of investing in ELI Products.

Investors should note that in addition to being offered to retail investors in Hong Kong, the ELI Products may be offered by the Issuer and/or its distributors in Macau. In respect of such offers, the Issuer and to the best knowledge and belief, its distributors, will comply with the laws, regulations, guidelines and codes applicable in Macau. The SFC does not regulate any aspect of the sale, marketing or distribution of the ELI Products in Macau, and purchases of ELI Products in Macau will not be subject to the same regulatory regime as applies in Hong Kong. The arrangements for the sale and distribution of ELI Products by, and the obligations of, the distributors appointed by the Arranger in Macau may differ from those of the Distributors in Hong Kong. In particular, investor protection provisions under the SFC Code of Conduct will not apply to investors purchasing ELI Products from distributors appointed by the Arranger in Macau. ELI Products may be offered in Macau on similar or different terms to those offered to retail investors in Hong Kong.

#### **Confirmations to be given by applicants for ELI Products**

By giving application instructions to any Distributor for the purchase of any ELI Product, you are deemed to confirm to the Distributor, the Issuer, the Guarantor and the Arranger that, amongst other things, you:

- **understand** that:
  - (i) ELI Products are not listed or traded on any markets operated by Hong Kong Exchanges and Clearing Limited or any other stock exchange; and
  - (ii) there will not be a liquid secondary market in ELI Products;
- **undertake** and **agree** to accept ELI Products applied for or any lesser amount (providing such amount is no less than the Minimum Application Amount specified in the relevant Term Sheet) allocated to you;
- **undertake** and **agree** to pay in full the Purchase Price of the ELI Products allocated to you;
- **understand** that until you pay in full to the relevant Distributor the Purchase Price in respect of the ELI Product applied for (for example because there are insufficient monies in your Designated Account for such payment), your Distributor may do the following under the terms and conditions of the operation of your Designated Account with the relevant Distributor in addition and without prejudice to any other remedies available to them:
  - (i) have a security interest in, or otherwise impose other restrictions on, your ELI Product for repayment of the amount of the unpaid Purchase Price under the terms and conditions of the operation of the applicant's Designated Account with such Distributor such that you may not be able to transfer or otherwise dispose of your ELI Product; or

- (ii) exercise a lien, right of set off or similar claim against you in respect of monies held in any of your accounts maintained with such Distributor to secure any amounts which may be owing by you to it; or
  - (iii) charge interest on the amount of the unpaid Purchase Price; or
  - (iv) deduct the amount of the unpaid Purchase Price from payment of Settlement Amount on your ELI Product;
- **understand** that your Distributor may have the right to sell any ELI Product credited to your Designated Account to recoup unpaid purchase monies or other expenses (including interest costs);
  - **authorises** the Distributor to which you give your application instructions to credit the relevant ELI Product to your Designated Account with it and understand that no certificates of title will be available for your ELI Product;
  - **agree** that if you are not allocated any ELI Product or if your application is successful only in part for any reason, the whole or an appropriate portion of the Purchase Price paid by you will be returned to you in the Settlement Currency specified in the relevant Term Sheet without interest and at your own risk and that any interest earned will be retained for the benefit of the relevant Distributor;
  - have **read** the terms and conditions of the ELI Products and the application procedures set out in this Information Memorandum and agree to be bound by them;
  - that you have either **received** copies of the Disclosure Documents in your preferred language or have been **afforded** sufficient opportunity to obtain such documents in your preferred language;
  - **understand** and **accept** that none of the Issuer, the Guarantor, the Arranger or any of their affiliates (except when it is also acting as a Distributor) accept any responsibility for the provision of payment services and custody services by the Distributors or for any consequences of, or arising from the use of, the Designated Account or custody services of any of the Distributors;
  - **agree** that none of the Issuer, the Guarantor, the Arranger or their respective directors, officers, agent nominees and affiliates (except when it is also acting as a Distributor) will be liable to any persons in any way for any loss which may be suffered as a result of any dealings by the Distributors or the operation of your Designated Account with them;
  - **confirm** that you are not located within the United States and are not a U.S. Person within the meaning of Regulation S under the Securities Act (which includes any person resident in the United States and any partnership or corporation organised or incorporated under the laws of the United States);
  - **understand, are familiar with, and accept** the terms and conditions applying to the use of investment services provided by your Distributor;
  - **understand** that in the case of an ELI Product with,
    - (i) in the case of a Bull ELI, a Callable ELI, a Bear ELI or a KODA ELI, a Reference Price that is not a Fixed Reference Price;
    - (ii) in the case of a Callable ELI with a Knock-in Feature, a Knock-in Price that is not a Fixed Knock-in Price;

(iii) in the case of a Range ELI, an Upper Reference Price and a Lower Reference Price that are not a Fixed Upper Reference Price and a Fixed Lower Reference Price respectively; or

(iv) in the case of a KODA ELI, a Knock-out Price that is not a Fixed Knock-out Price,

the Reference Price, the Knock-in Price, the Upper Reference Price, the Lower Reference Price or the Knock-out Price (as the case may be) has not yet been fixed and will only be set after your purchase of the ELI Product on the Trade Date and the Purchase Price for each of the above ELI Products will not be known when you apply to purchase such ELI Products but only after you have committed to purchase such ELI Products. We will issue a Confirmation setting out such final terms to the Distributors within one Business Day after the Issue Date;

- **understand** that you are purchasing the ELI Products from the Distributor, and that no direct contractual relationship with respect to the purchase contract for the ELI Products will arise between you and the Issuer at the time of application and thereafter;
- **understand** that no certificates of title would be issued in respect of the ELI Products and that an interest in ELI Products will not be transferable without the prior written consent of the Issuer;
- **understand** and **accept** that under the Terms and Conditions applicable to the relevant ELI Products, the Distributor (recorded as the ELI holder) will be treated by the Issuer as the holder of the ELI Products for the purpose of the delivery of notices and the payment or delivery of any amount due to you and/or other physical settlement (as the case may be) by the Issuer under the Terms and Conditions and the Issuer (except when it is also acting as the Distributor) will not be liable for any failure on the part of the Distributor of the delivery of notices and the payment or delivery of such payments and/or such other physical settlement (as the case may be) by the Issuer under the Terms and Conditions;
- **understand** that you are deemed to have notice of the terms of the contractual documentation for the Programme and in respect of the ELI Products, including this Information Memorandum (including the Terms and Conditions applicable to the relevant ELI Products), the applicable Product Booklet, any addenda and/or supplemental documents to any of these documents and the relevant Term Sheet for the relevant Series of ELI Products and that these documents are available for inspection in the manner described in the section headed "Documents on Display" on page 55 of this Information Memorandum, and agree that you will be bound by these documents;
- have **read** and **understood** this Information Memorandum, the Financial Statements, the relevant Product Booklet, any addenda and/or supplemental documents to any of these documents and the relevant Term Sheet for the relevant Series of ELI Products;
- **understand** that ELI Products will be registered in the name of the Distributor selected by you which means that you will have to rely on the Distributor to credit your account with that Distributor with payments credited or debited to it, or delivery of the Underlying Assets credited to it, made by or on behalf of the Issuer and/or the Guarantor and/or the Arranger (as the case may be), to distribute notices to you which it receives from the Issuer and/or the Guarantor and/or the Arranger (as the case may be) and to relay the notices received from you to the Issuer and/or the Guarantor and/or the Arranger (as the case may be);
- **understand** any action you may wish to take against the Issuer or the Guarantor in accordance with the Terms and Conditions of the ELI Products will require the cooperation of the Distributor. You have no right of direct action against the Issuer or the

Guarantor and will need to rely on your Distributor to contact and/or take action against the Issuer or the Guarantor on your behalf. The terms of business of your Distributor (or any party you intend to engage in maintaining an account for your ELI Products) govern the circumstances in which you may rely on such party to act on your behalf;

- **understand** that under the SFC Code of Conduct, your Distributor should ensure that the ELI Products are a suitable investment for you and that you understand the nature of the investment and the risks involved;
- **understand** and **accept** that if the Underlying Assets are traded in a currency other than the Settlement Currency, the Issuer may determine the prevailing exchange rate in its sole and absolute discretion, for the purpose of calculating the Cash Settlement Amount, which will in turn affect your return on the ELI Product; and
- **understand** that ELI Products may not be transferred without the Issuer's consent.

**You are required to confirm that you have read and understood these confirmations when you apply through a Distributor to invest in an ELI Product.**

## ARRANGEMENTS WITH DISTRIBUTORS

ELI Products will be issued by the Issuer to the Distributors (or a nominee company utilised by the Distributor) directly and, upon such issuance, registered in the name of the Distributors as the registered holders of ELI Products in the Register. Payments and/or deliveries in respect of any ELI Products will be made by the Issuer to the Distributors directly only.

Accordingly, to invest in the ELI Products, you must already have, or you must open, a Designated Account with your chosen Distributor to which the Settlement Amount of your ELI Products can be credited by your Distributor.

**If you do not currently have a Designated Account with a Distributor, in order to invest in the ELI Products, you must arrange to open a Designated Account in good time before placing your order. It is important that you should familiarise yourself with, and ensure that you understand and accept, the terms and conditions of operations of the Designated Account before making an application to open such an account with a Distributor.**

Some important points about opening, and holding your ELI Products in a Designated Account are as follows:

- Applications to open a Designated Account with a Distributor will be processed by the Distributor according to its normal procedures and criteria for acceptance. These criteria may include proof of income, creditworthiness, and other personal details. There may also be restrictions and certification or other requirements as to nationality and/or place of residence. United States or Canadian persons, for example, may not be eligible to open a Designated Account for securities laws compliance reasons. If your application to open a Designated Account is refused for any reason, you will be unable to order the ELI Products from that Distributor. The Issuer, the Guarantor and the Arranger accept no responsibility for the account opening process of any Distributor or for any consequences of, or result from, such an application by you, except when it is also acting as a Distributor.
- Designated Account and other custody services with respect to the ELI Products will be supplied by the Distributors subject to their standard terms and conditions for the provision of such services. You should familiarise yourself with, and ensure you understand and accept, the terms and conditions of operation of the Designated Account before making your application to open a Designated Account. The Issuer, the Guarantor and the Arranger accept no responsibility for the provision of custody services by the Distributors or for any consequences of, or arising from the use of, the Designated Account or custody services, except when it is also acting as a Distributor.
- The Distributors will charge fees for the opening and operating of a Designated Account: you should check with the Distributor with which you intend to open a Designated Account what fees will be chargeable. Fees may be charged in respect of individual transactions, such as transfers of ELI Products; taking action on your behalf such as the delivery of notices; taking enforcement action against the Issuer and/or the Guarantor; on a periodic basis for safe custody; on payments of interest and principal when they are received; and on the proceeds arising from any early redemption of an ELI Product. You should check with the Distributor with which you intend to open a Designated Account on what basis fees will be charged in respect of your ELI Products.
- You should ask for and read carefully the standard terms and conditions which govern the operation of a Designated Account with your Distributor as these will determine your rights and obligations with such party. The terms and conditions thereunder may permit the Distributor to take a security interest in, or to impose other restrictions on the ELI

Products credited to your Designated Account or to exercise a lien, right of set off or similar claim against you in respect of monies held in any of your accounts maintained with it to secure any amounts which may be owing by you to the Distributor. The Issuer, the Guarantor and the Arranger accept no responsibility for any claims which any Distributor may have against you in respect of, or as a consequence of, or arising from the use of the Distributor's services, except when it is also acting as a Distributor.

- You will have to rely on the Distributor (as the registered holder of the ELI Product) selected by you to distribute notices to you which it receives from the Issuer and/or the Guarantor. You will only be recorded as the holder of an ELI Product in the Register if the Issuer consents to a transfer of the ELI Product from the Distributor to you upon request made by the Distributor with the Issuer. The Issuer is unlikely to give such consent. You will also need to rely on your Distributor to relay notices from you to the Issuer and/or the Guarantor. If you wish to receive any information in respect of the ELI Products, you should contact the Distributor through which you purchased the ELI Products. The Issuer, the Guarantor and the Arranger accept no responsibility for any failure or delay on the part of the Distributors in doing so, except when it is also acting as a Distributor.
- The Issuer and/or the Guarantor (as the case may be) will not make payments or deliveries under the terms of the ELI Products directly to you. As an investor in the ELI Products, you will have to rely on your Distributor (recorded as registered holder of the ELI Products) to effect payments to the Issuer and/or the Arranger from you, to credit your Designated Account with payments credited to it from the Issuer and/or the Guarantor and to enforce the obligations of the Issuer under the ELI Product and of the Guarantor under the Guarantee. The Issuer, the Guarantor and the Arranger accept no responsibility for any failure or delay on the part of the Distributor in doing so, except when it is also acting as a Distributor.

## TAXATION

The comments below are of a general nature and are only a summary of the tax laws and practice currently applicable in Hong Kong and the British Virgin Islands. These comments are not intended to be a comprehensive description of all the tax considerations that may be relevant to the purchase, ownership, transfer, holding, exercise or disposal of the ELI Products and the underlying assets. The comments relate to the position of persons who are the absolute beneficial owners of the ELI Products and may not apply equally to all persons. Potential purchasers of the ELI Products who are in any doubt as to their tax position on purchase, ownership, transfer, holding, exercise or disposal of any ELI Products should consult their own tax advisers.

### General

Purchasers of ELI Products may be required to pay stamp duties, taxes and other charges in connection with any purchase of ELI Products in addition to the issue price or Purchase Price of such ELI Products.

### Taxation in Hong Kong

#### *Profits Tax*

No tax is payable in Hong Kong by withholding or otherwise in respect of dividends of any company or in respect of any capital gains arising on the sale of the underlying Securities or ELI Products, except that Hong Kong profits tax may be chargeable on any such gains in the case of certain persons carrying on a trade, profession or business in Hong Kong.

*If you are in any doubt as to whether you are carrying on a trade, profession or business in Hong Kong you should consult your own tax adviser.*

#### *Stamp Duty*

Hong Kong stamp duty is not chargeable upon the transfer of any ELI Products. Where upon maturity of an ELI Product, the Issuer is to transfer Securities which are listed on The Stock Exchange of Hong Kong Limited ("**Hong Kong Listed Securities**") to the holder of the ELI Product, the transfer of those Hong Kong Listed Securities will be chargeable to Hong Kong stamp duty since any person who effects a sale or purchase of Hong Kong Listed Securities, whether as principal or as agent and whether in Hong Kong or elsewhere, is required to execute a contract note evidencing such sale or purchase and to have that note stamped with Hong Kong stamp duty.

Contract notes will attract stamp duty at the rate of HK\$2.00 per HK\$1,000 or part thereof (of which HK\$1.00 per HK\$1,000 is payable by the seller and HK\$1.00 per HK\$1,000 is payable by the purchaser) by reference to the value of the consideration or market value, whichever is the greater. If, in the case of a sale or purchase of Hong Kong Listed Securities by a person who is not resident in Hong Kong, the stamp duty on either or both of the contract notes is not paid, the transferee will be liable to pay stamp duty on the instrument of transfer in an amount equal to all the unpaid duty. In addition, if the stamp duty is not paid on or before the due date (two days after the sale or purchase if effected in Hong Kong or 30 days thereafter if effected elsewhere), a penalty of up to ten times the duty payable may be imposed. In addition, stamp duty is payable at the fixed rate of HK\$5 on each instrument of transfer executed in relation to any transfer of Hong Kong Listed Securities.

Under the terms of the ELI Products, the Issuer will pay both buyer's and seller's stamp duty in respect of the transfer of the underlying Hong Kong Listed Securities upon delivery of the Security Amount. See the Terms and Conditions of the ELI Products.

### *Withholding Tax*

No withholding tax is payable in Hong Kong in respect of payments on the ELI Products.

### *Capital Gains Tax*

No capital gains tax is currently levied in Hong Kong.

### **Additional Information**

Please note that, where the underlying Securities are not securities listed on The Stock Exchange of Hong Kong Limited but are listed in other jurisdictions, stamp duty and other taxes may be payable in such other jurisdictions. In respect of any Series of ELI Products where the underlying Securities are listed in other jurisdictions outside Hong Kong, the applicable Product Booklet or the relevant Term Sheet (as the case may be) will disclose whether stamp duty and/or other taxes are payable on any transfers or exercise of the ELI Products.

### **British Virgin Islands**

At the date of this Information Memorandum the Issuer is exempt from all provisions of the Income Tax Act of the British Virgin Islands, including with respect to all dividends, interests, rents, royalties, compensation and other amounts payable by the Issuer to persons who are not persons resident in the British Virgin Islands. Capital gains realised with respect to any shares, debt obligations or other securities of the Issuer by persons who are not persons resident in the British Virgin Islands are also exempt from all provisions of the Income Tax Act of the British Virgin Islands. No estate, inheritance, succession or gift tax, rate, duty, levy or other charge is payable by persons who are not persons resident in the British Virgin Islands with respect to any shares, debt obligations or other securities of the Issuer.

## OFFERING AND SALE

### General

No action has been or will be taken by the Issuer that would permit a public offering of the ELI Products or possession or distribution of any offering material in relation to the ELI Products in any jurisdiction where action for that purpose is required, other than in Hong Kong. No offers, sales or deliveries of any ELI Products, or distribution of any offering material relating to the ELI Products may be made in or from any jurisdiction except in circumstances which will result in compliance with any applicable laws or regulations and will not impose any obligation on the Issuer.

### Australia

No disclosure document (as defined in the Corporations Act 2001 of Australia) in relation to the Programme has been lodged with the Australian Securities and Investments Commission (“ASIC”). Each Distributor has represented and agreed and each further Distributor appointed under the Programme will be required to represent and agree that, unless the relevant Product Booklet or Term Sheet otherwise provides, it:

- (a) has not offered or invited applications, and will not offer or invite applications, for the issue, sale or purchase of ELI Products in Australia (including an offer or invitation which is received by a person in Australia); and
- (b) has not distributed or published, and will not distribute or publish, this Information Memorandum, any Product Booklet or any other offering material or advertisement relating to ELI Products in Australia,

unless (i) the minimum aggregate consideration payable by each offeree is at least A\$500,000 or its equivalent in another currency (disregarding moneys lent by the offeror or its associates) or the offer or invitation otherwise does not require disclosure to investors in accordance with Part 6D.2 of the Corporations Act 2001 of Australia, and (ii) such action complies with all applicable laws and regulations and does not require any document to be lodged with ASIC.

### United States of America

The ELI Products have not been, and will not be, registered under the Securities Act. Subject to certain exceptions, ELI Products, or interests therein, may not at any time be offered, sold, resold or delivered, directly or indirectly, in the United States or to, or for the account or benefit of, any U.S. person or to others for offering, sale or resale in the United States or to any such U.S. person. Offers and sales of ELI Products, or interests therein, in the United States or to U.S. persons would constitute a violation of United States securities laws unless made in compliance with the registration requirements of the Securities Act or pursuant to an exemption therefrom. As used herein, “**United States**” means the United States of America (including the States and the District of Columbia), its territories, its possessions and other areas subject to its jurisdiction; and “**U.S. person**” means any national or resident of the United States, including any corporation, partnership or other entity created or organised in or under the laws of the United States or of any political subdivision thereof, any estate or trust the income of which is subject to United States income taxation regardless of its source, and any other U.S. person as such term is defined in Regulation S under the Securities Act.

## United Kingdom

In relation to any ELI Products which have a maturity of less than one year, such ELI Products may not be offered or sold other than to persons whose ordinary activities involved them in acquiring, holding, managing or disposing of investments (as principal or as agent) for the purposes of their businesses or who it is reasonable to expect will acquire, hold, manage or dispose of investments (as principal or agent) for the purposes of their businesses where the issue of the ELI Products would otherwise constitute a contravention of section 19 of the Financial Services and Markets Act 2000 (as amended) of the United Kingdom (“**FSMA**”).

Any invitation or inducement to engage in investment activity (within the meaning of section 21 of FSMA) in connection with the offer of ELI Products has only been communicated or caused to be communicated and will only be communicated or caused to be communicated in circumstances in which section 21(1) of the FSMA would not, if the Issuer was not an authorised person, apply to the Issuer.

All applicable provisions of the FSMA with respect to any ELI Products has been complied, and will be complied, within, from or otherwise involving the United Kingdom.

## European Economic Area

In relation to each Member State of the European Economic Area which has implemented the Prospectus Directive (each, a “**Relevant Member State**”), with effect from and including the date on which the Prospectus Directive is implemented in that Relevant Member State (the “**Relevant Implementation Date**”), no offer of ELI Products to the public in that Relevant Member State has been, or will be, made except for an offer of ELI Products to the public in that Relevant Member State:

- (a) in (or in Germany, where the offer starts within) the period beginning on the date of publication of a prospectus in relation to those ELI Products which has been approved by the competent authority in that Relevant Member State or, where appropriate, approved in another Relevant Member State and notified to the competent authority in that Relevant Member State, all in accordance with the Prospectus Directive and ending on the date which is 12 months after the date of such publication;
- (b) at any time to legal entities which are authorised or regulated to operate in the financial markets or, if not so authorised or regulated, whose corporate purpose is solely to invest in securities;
- (c) at any time to any legal entity which has two or more of (1) an average of at least 250 employees during the last financial year; (2) a total balance sheet of more than 43,000,000; and (3) an annual net turnover of more than 50,000,000, as shown in its last annual or consolidated accounts; or
- (d) at any time in any other circumstances which do not require the publication by the Issuer of a prospectus pursuant to Article 3 of the Prospectus Directive.

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

## **Singapore**

This Information Memorandum has not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, each Distributor represents and agrees that the Information Memorandum and any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the ELI Products has not been and will not be circulated or distributed by it nor have the ELI Products been, nor will the ELI Products be, offered or sold by it, or be made the subject of an invitation for subscription or purchase by it, whether directly or indirectly, to persons in Singapore other than (i) to an institutional investor under Section 274 of the Securities and Futures Act, Chapter 289 of Singapore (the “**SFA**”), (ii) to a relevant person, or any person pursuant to Section 275(1A), and in accordance with the conditions, specified in Section 275 of the SFA or (iii) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA.

## **British Virgin Islands**

ELI Products may not be offered or sold to persons resident in the British Virgin Islands.

## REALISING YOUR INVESTMENT EARLY

ELI Products are not transferable without the prior written consent of the Issuer. ELI Products are not listed on any stock exchange. Unlike a direct holding in listed securities, there will not be a liquid secondary market in ELI Products. ELI Products are an investment that is intended to be held to maturity. ELI Products are not a trading instrument and are not issued with a certificate of title. If you do not intend to invest in an ELI Product for the full term of the ELI Product, you should not make an investment in an ELI Product because you will not ordinarily be able to realise the value of an ELI Product after the purchase of such ELI Product but before the Settlement Date.

The Issuer, or an entity appointed by the Issuer may, but is not bound to, make a price at which it will cancel or purchase (as the case may be) all or part of an ELI holder's holding of an ELI Product before its Settlement Date if requested to do so by the relevant Distributor (registered as the ELI holder of such ELI Product). As at the date of this Information Memorandum the Issuer has appointed ME(A)L as the entity that will consider such requests and provide indicative prices (if any). There is no guarantee that such a price will be available, nor that it will be any particular amount. As a result, retail investors could incur significant losses by requesting a cancellation of an ELI Product prior to the Settlement Date. If a price is made to cancel or purchase (as the case may be) an ELI Product, the price that the Issuer will pay will generally be affected by the market price or prevailing level or value of the Underlying Assets to which the relevant ELI Product relates more than any other single factor. Other factors that may be relevant in determining the price paid by the Issuer include:

- the expected volatility of the market price or the prevailing level or value of the Underlying Assets;
- the expected dividends or distributions on the Underlying Assets (if applicable);
- interest rates; and
- time remaining to maturity of the ELI Product.

### Secondary Sales

The Issuer does not currently intend to make a market in ELI Products. On a case by case basis, the Issuer may (through ME(A)L) upon a request from a Distributor and in its absolute discretion, quote a price at which it is willing to purchase ELI Products (a “**bid**” price) and/or a price at which it is willing to sell ELI Products (an “**offer**” price). You must contact your Distributor to obtain any bid price or offer price quoted by ME(A)L (acting on behalf of the Issuer). You will not be able to transfer the ELI Products without the Issuer's consent. However, the Issuer is unlikely to give consent to such transfer except in circumstances where a Distributor requests the Issuer's consent to transfer an ELI Product recorded in its name to another Distributor or licensed intermediary registered with the SFC. From time to time the Issuer may offer a particular ELI Product with specific market making or liquidity arrangements for that ELI Product. Any such specific arrangements will be included in the Term Sheet for that ELI Product.

These secondary sale arrangements (if any) are limited and do not assure an active trading market for ELI Products. There can be no assurance that the Issuer (through ME(A)L) will make a market in ELI Products, or if it does so, that it will continue to do so. Only oral information on same-day trading volume and same-day trading prices (if any) of ELI Products may be available upon request from the Distributors. Accordingly, there can be no assurance that investors or members of the public will have access to a firm bid price or a firm offer price for ELI Products in an amount which they may wish to sell or purchase. The Issuer (through ME(A)L) may cease to quote bid prices and offer prices at any time.

## TEXT OF GUARANTEE OF MACQUARIE BANK LIMITED

*The Guarantor's obligations in respect of the performance of the Issuer's obligations under the ELI Products are contained in a guarantee dated 14 November 2006 ("Guarantee"), the full text of which is set out below:*

- "Date:** 14 November 2006
- Parties:** **MACQUARIE BANK LIMITED** (ABN 46 008 583 542) ("**Guarantor**")
- In favour of:** Each person who is from time to time a Beneficiary (as defined below).
- Recitals:**
- A. The Issuer has established a programme ("**Programme**") for the issue of equity, index or other asset linked investment products ("**ELI Products**") pursuant to an information memorandum ("**Information Memorandum**") dated 20 November 2006 (as replaced, amended or supplemented from time to time whether by way of any addenda, supplements or otherwise).
  - B. The Issuer is a wholly owned subsidiary of the Guarantor.
  - C. The Guarantor has authorised the giving of this deed poll in respect of the guarantee of the payment of all sums payable, and the delivery of securities or other assets ("**Deliverable Assets**"), from time to time by the Issuer to the Beneficiaries under the ELI Products.

### **Operative provisions:**

#### **1 Definitions and interpretation**

##### *1.1 Other definitions*

In this deed poll, capitalised words and expressions have the meaning given to them in the Information Memorandum. In the event of any inconsistency between a definition in this deed poll and a definition in the Information Memorandum, the definition in this deed poll will prevail.

##### *1.2 Definitions*

The following words have these meanings in this deed poll:

**Beneficiary** means a holder of any ELI Product recorded in the Register;

**Guaranteed Obligations** means, in respect of each Beneficiary, any sum which now or in the future as may become actually or contingently owing by the Issuer to the Beneficiary in respect of any ELI Product and the obligations to deliver any Deliverable Assets under the Terms and Conditions;

**ME(A)L** means Macquarie Equities (Asia) Limited;

**Tax Act** means the Income Tax Assessment Act 1936 (Commonwealth) and the Income Tax Assessment Act 1997 (Commonwealth); and

**Taxes** has the meaning in clause 12.

## 2 **Deed poll**

### 2.1 *Manner of execution*

This guarantee and indemnity is executed as a deed poll. Accordingly, each Beneficiary has the benefit of, and is entitled to enforce, this deed poll even though it is not a party to, or is not in existence at the time of execution and delivery of, this guarantee and indemnity.

### 2.2 *Enforcement*

Each Beneficiary may enforce its rights under this guarantee and indemnity independently of any other Beneficiary.

### 2.3 *ELI Products*

As long as the Guaranteed Obligations remain outstanding, the Guarantor agrees to observe its obligations under the ELI Products as though the same were set out in full in this deed poll.

## 3 **Guarantee**

### 3.1 *Guarantee*

The Guarantor unconditionally and irrevocably guarantees to each Beneficiary the due and punctual payment or, in the case that Deliverable Assets are deliverable under the Terms and Conditions, the performance of the Guaranteed Obligations to the Beneficiary at the time payment or performance of such obligations is or becomes due (after the expiry of any applicable grace period).

### 3.2 *Payment*

On demand from a Beneficiary, the Guarantor agrees to pay an amount equal to, or to procure performance of, the Guaranteed Obligations then due and payable or, if Deliverable Assets are deliverable under the Terms and Conditions, then required to be performed (after the expiry of any applicable grace period) in the same manner and currency in which the Issuer is required to pay or perform the Guaranteed Obligations under the relevant ELI Product.

## 4 **Indemnity**

If any Guaranteed Obligations owing by the Issuer (including moneys which would have been Guaranteed Obligations if they were recoverable) are not recoverable from the Issuer or from the Guarantor for any reason (including, without limitation, any legal limitation, disability, incapacity or thing affecting the Issuer) then the Guarantor will, as a sole, original and independent obligor (but without affecting the obligations of the Issuer), upon demand by a Beneficiary:

- (a) pay such moneys, by way of a full indemnity in the manner and currency as is provided for in the ELI Products; and
- (b) indemnify each Beneficiary against all losses, claims, costs, charges and expenses to which it may be subject or which it may incur under or in respect of the ELI Products or this deed poll.

This indemnity constitutes a separate and independent obligation from the other obligations under this deed poll and shall give rise to a separate and independent cause of action.

## **5 Waiver of rights**

The Guarantor waives any right it has of first requiring the Beneficiaries to commence proceedings or enforce any other right against the Issuer or any other person before claiming under this deed poll.

## **6 Status of Guarantee and Indemnity**

This deed poll:

- (a) is a continuing guarantee and indemnity;
- (b) subject to clause 9, will not be taken to be wholly or partially discharged by the payment or other performance at any time of any Guaranteed Obligations or by any settlement of account or other matter or thing; and
- (c) constitutes a direct, unsecured and general obligation of the Guarantor and ranks pari passu with all its other existing and future unsecured obligations but excluding any debts for the time being preferred by law and any subordinated obligations.

## **7 Guarantee not affected**

The liabilities of the Guarantor under this deed poll as a guarantor, indemnifier or principal debtor and the rights of the Beneficiaries under this deed poll are not affected by anything which might otherwise affect them at law or in equity including, but not limited to, one or more of the following:

- (a) a Beneficiary granting time or other indulgence to, compounding or compromising with or releasing the Issuer;
- (b) acquiescence, delay, acts, omissions or mistakes on the part of a Beneficiary;
- (c) any novation of a right of a Beneficiary;
- (d) any variation of a right of a Beneficiary under any ELI Product or any security or other guarantee or indemnity;
- (e) the enforcement or absence of enforcement of any ELI Product or of any security or other guarantee or indemnity;
- (f) the release of any such security, guarantee or indemnity;
- (g) the dissolution, amalgamation, reconstruction or reorganisation of the Issuer; or
- (h) the invalidity or unenforceability of an obligation or liability of the Issuer or any person in any provision of any ELI Product or any of the Issuer's obligations under any of them.

## 8 **Suspension of Guarantor's rights**

As long as the Guaranteed Obligations have not been irrevocably paid or otherwise performed and discharged in full, the Guarantor shall not:

- (a) raise a set-off or counterclaim available to it or the Issuer against a Beneficiary in reduction of its liability under this deed poll;
- (b) make a claim or enforce a right, including, without limitation, a security interest against the Issuer or its estate or property;
- (c) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of any security or guarantee held by a Beneficiary for the Guaranteed Obligations or other money payable under this deed poll; or
- (d) prove in competition with the Beneficiaries if a liquidator, provisional liquidator, receiver, administrator or trustee in bankruptcy is appointed in respect of the Issuer or the Issuer is otherwise unable to pay its debts when they fall due.

## 9 **Discharge of guarantee**

### 9.1 *Discharge upon payment or performance*

Payment or performance by the Guarantor of any amount due and payable or the performance of any other obligation under this deed poll to a Beneficiary in accordance with the relevant Terms and Conditions shall fully discharge the Guarantor from any further obligation of the Guarantor to that Beneficiary under this deed poll in respect of that amount or obligation (as the case may be).

### 9.2 *Setting aside*

The discharge in clause 9.1 applies notwithstanding:

- (a) any subsequent setting aside of any payment made by the Guarantor to, or for the benefit of, a Beneficiary; and
- (b) any requirement that any Beneficiary repay moneys it has received to any person,

in each case for any reason whatsoever.

## 10 **Notices**

### 10.1 *To Beneficiaries*

All notices to Beneficiaries with respect to this deed poll are valid if made in accordance with the Terms and Conditions in respect of notices to holders of the ELI Products.

## 10.2 To the Guarantor

All notices, requests, demands, consents, approvals, agreements or other communications to the Guarantor under this deed poll must be in writing left at the address of the addressee or sent by prepaid ordinary post (airmail if outside Australia) to the address of the addressee or by facsimile to the facsimile number of the addressee set out below:

Address: Macquarie Bank Limited  
No. 1 Martin Place  
Sydney, NSW 2000  
Australia

Telephone: +612 8232 3333

Facsimile: +61 2 8232 4540

Attention: Executive Director, Legal Risk Management

or such other address or facsimile number as the Guarantor may notify to the Beneficiaries from time to time.

## 11 Revocation of guarantee

### 11.1 Notice of revocation

The Guarantor may at any time by notice to the Beneficiaries revoke this deed poll with effect from the date (“**Revocation Date**”) specified in the notice, which date shall not be less than 30 days after the date upon which the notice is given to the Beneficiaries. Subject to clause 9, from the Revocation Date, the Guarantor will not incur any further liability under this deed poll. Such revocation will not affect this deed poll with respect to any Guaranteed Obligations as at the close of business on the Revocation Date even though the Guaranteed Obligations may only be payable or delivered after the Revocation Date.

### 11.2 Delivery of revocation notice

The notice given by the Guarantor under clause 11.1 must be given in accordance with clause 10, to the effect that this deed poll has been revoked and specifying the Revocation Date. Upon the relevant notice being given in accordance with clause 10, all Beneficiaries are deemed to have knowledge of the revocation of this deed poll with effect from the Revocation Date.

## 12 Taxation

Payments under this deed poll are subject in all cases to applicable provisions of fiscal and other laws and regulations. Payments shall be made free and clear of, and without withholding or deduction for or on account of, any present or future taxes, duties, assessments or government charges of whatever nature (together, “**Taxes**”) imposed or levied by or on behalf of the Commonwealth of Australia or the Australian Capital Territory or any political subdivision thereof or any authority therein or thereof having power to tax, unless such withholding or deduction of such Taxes is required by law. In that event, the Guarantor will pay such additional amounts (“**Additional Amounts**”) as may be necessary in order that the net amounts received by the Beneficiaries after such withholding or deduction shall equal the respective amounts which would otherwise have

been receivable in respect of the ELI Products in the absence of such withholding or deduction; except that no Additional Amounts are payable in relation to any payment in respect of any ELI Product:

- (a) to, or to a third party on behalf of, a holder who is liable to such Taxes in respect of such ELI Product by reason of his having some connection with the Commonwealth of Australia or the Australian Capital Territory other than the mere holding of such ELI Product or receipt of payment or delivery in respect thereof;
- (b) to, or to a third party on behalf of, a holder who could lawfully avoid (but has not so avoided) such deduction or withholding by complying or procuring that any third party complies with any statutory requirements or by making or procuring that any third party makes a declaration of non-residence or other similar claim for exemption to any tax authority in the place where the ELI Product is presented for payment;
- (c) presented for payment more than 30 days after the Relevant Date except to the extent that a holder would have been entitled to Additional Amounts on presenting the same for payment on the last day of the period of 30 days assuming, whether or not such is in fact the case, that day to have been a Business Day;
- (d) if the Additional Amounts are payable otherwise than by deduction or withholding from payments of principal or interest;
- (e) if the ELI Products had been kept in safe custody, and the payments had been collected, by a banking institution;
- (f) to, or to a third party on behalf of, a holder who is liable to the Taxes in respect of the ELI Product by reason of his being an associate of the Guarantor for the purposes of section 128F(9) of the Tax Act;
- (g) presented for payment, where such withholding or deduction is imposed on a payment to an individual and is required to be made pursuant to any European Union Directive on the taxation of savings implementing the conclusions of the ECOFIN Council meeting of 26-27 November 2000 or any law implementing or complying with, or introduced in order to conform to, such Directive; or
- (h) in such other circumstances as may be specified in a Term Sheet.

## **13 Deposit and production of deed poll**

### *13.1 Held by the Issuer*

This deed poll must be deposited with and held by ME(A)L until any claim made against the Issuer or the Guarantor by any Beneficiary in relation to the ELI Products or this deed poll has been discharged in full.

### *13.2 Production*

The Guarantor acknowledges the right of every Beneficiary to the production of this deed poll in accordance with this clause 13.2.

Within five Business Days of receipt by ME(A)L of a request from a Beneficiary to do so, ME(A)L must provide (at the Beneficiary's expense):

- (a) a certified copy of this deed poll to that Beneficiary if required in connection with any legal proceeding, claim or action brought by such Beneficiary in relation to its rights under this deed poll ("**Relevant Proceeding**"); or
- (b) the original of this deed poll to a court if ME(A)L is satisfied that:
  - (i) this deed poll is required in connection with any Relevant Proceeding;
  - (ii) the relevant Beneficiary has taken reasonable steps to ensure that this deed poll will not be lost, damaged or destroyed; and
  - (iii) this deed poll will be returned to ME(A)L on request and is capable of being made available in respect of any other legal proceeding, claim or action brought by another Beneficiary in relation to such other Beneficiary's rights under this deed poll.

ME(A)L is not liable for any loss or damage suffered by any Beneficiary in relation to the provision by ME(A)L of certified copies of, or the original of, this deed poll in accordance with this clause 13.2 including, without limitation, any loss or damage suffered by a Beneficiary who has requested the original of this deed poll which is at that time produced to a court in connection with a proceeding or action brought by another Beneficiary.

## 14 **Governing law and jurisdiction**

### 14.1 *Governing law*

This deed poll is governed by the law in force in New South Wales.

### 14.2 *Jurisdiction*

The Guarantor irrevocably agrees for the benefit of each Beneficiary that the courts of New South Wales are to have non-exclusive jurisdiction to settle any disputes which may arise out of or in connection with this deed poll and that accordingly any suit, action or proceedings arising out of or in connection with this deed poll (together referred to as "**Proceedings**") may be brought in the courts of New South Wales.

### 14.3 *Appropriate forum*

The Guarantor irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales and waives any objection which it may have to the courts of New South Wales being nominated as the forum to hear and determine any Proceedings and to settle any disputes, and agrees not to claim that any such court is not a convenient or appropriate forum.

#### 14.4 *Non-exclusivity*

These submissions are made for the benefit of each of the Beneficiaries and shall not limit the right of any of them to take Proceedings in any other court of competent jurisdiction, nor shall the taking of Proceedings in any one or more jurisdictions preclude the taking of Proceedings in any other jurisdiction (whether concurrently or not) if and to the extent permitted by law.

**EXECUTED** as a deed poll in New South Wales.”

## INFORMATION RELATING TO THE ISSUER

### General

The Issuer was registered and incorporated on 25 February 2004 as an international business company under the International Business Companies Act 1984 (as amended) of the British Virgin Islands, registration number 583316. The Issuer has been incorporated for an indefinite period. The Registered Office of the Issuer is at Romasco Place, Wickhams Cay 1, P.O. Box 3140, Road Town, Tortola, British Virgin Islands. The authorised share capital of the Issuer is US\$50,000 divided into 50,000 ordinary shares of US\$1.00 each, all of which have been issued. All of the issued shares are fully-paid and are held by the Guarantor.

The BVI Business Companies Act 2004 (as amended) (the “**BC Act**”) came into effect on 1 January 2005. On 1 January 2007, any companies that have not already re-registered under the BC Act will be automatically be re-registered as business companies under the BC Act. As at the date of this Information Memorandum, the Issuer has not and does not plan to voluntarily re-register under the BC Act. Consequently, the Issuer will automatically be re-registered as a business company under the BC Act on 1 January 2007. It is not anticipated that re-registration will affect the business of the Issuer.

The Issuer was registered as an oversea company under Part XI of the Companies Ordinance in Hong Kong on 14 September 2005. Its principal place of business in Hong Kong is 19th Floor, CITIC Tower, 1 Tim Mei Avenue, Central, Hong Kong.

### Business

The Issuer is a “special purpose company” and has been established for the purpose of issuing ELI Products and other financial products. The Issuer has not engaged, since its incorporation, in any material activities other than establishing the Programme and other programmes for the issuance of other financial products and the authorisation of the documents and agreements referred to in this Information Memorandum and in other offering documents in relation to other financial products to which it is or will be a party.

The Issuer has, and will have, no net assets other than the sum of US\$50,000 representing its issued and paid-up share capital and such fees (as agreed) payable to it in connection with the issue of ELI Products and other financial products. Funds raised from the issuance of ELI Products will be used by the Issuer to enter into financial hedging transactions with respect to ELI Products.

The Issuer does not have any subsidiaries. The Issuer is a subsidiary owned as to 100 per cent. by the Guarantor.

### Financial statements of the Issuer

On the basis that the Issuer was incorporated as a special purpose vehicle on 25 February 2004, the financial statements in respect of the Issuer will (if published) only contain very limited information and will be, in the opinion of the Issuer, irrelevant to prospective investors.

The financial year of the Issuer runs from 1 April to 31 March. So far as the Issuer is aware, the Issuer is not involved in any litigation, claims or arbitration proceedings which are material in the context of the issue of the ELI Products nor, so far as the Issuer is aware, are any proceedings or claims threatened or pending against the Issuer.

There has been no material adverse change in the financial position or prospects of the Issuer, and no significant change in the financial or trading position of the Issuer, in each case, since its incorporation.

## Capitalisation

The following table sets out the capitalisation of the Issuer on the date of this Information Memorandum:

	US\$	HK\$ <sup>Note</sup>
<b>Shareholders' Funds</b>		
Share Capital (Authorised US\$50,000; issued 50,000 shares of US\$1.00 each).....	50,000	390,000
Issued Share Capital.....	<u>50,000</u>	<u>390,000</u>
<b>Total Capitalisation</b> .....	<u>50,000</u>	<u>390,000</u>

*Note:* For illustration purposes only, the amount is translated into Hong Kong dollars at the rate of US\$1.00 = HK\$7.80.

## Directors

The directors of the Issuer and their business addresses as at the date of this Information Memorandum are as follows:

1. David Bavin
2. James Kimberley Burke
3. Paul O'Brien

The business address of David Bavin is L 5 HANWHA BDG SOKONG-DONG, CHUNG-KU, Seoul 100-755 Korea.

The business address of James Kimberley Burke is No.1 Martin Place, Sydney NSW, 2000 Australia.

The business address of Paul O'Brien is Macquarie Equities (Asia) Limited, 19th Floor Citic Tower, 1 Tim Mei Ave., Central, Hong Kong.

## INFORMATION RELATING TO THE GUARANTOR

Up-to-date information, including the financial information and/or any major developments of the Guarantor may be viewed at [www.macquarie.com.au](http://www.macquarie.com.au). As a company whose shares are quoted on the Australian Stock Exchange (“ASX”), the Guarantor is required to make periodic and/or continuous disclosures, and lodge certain filings with the ASX under the ASX Listing Rules. Up-to-date information, including financial information and/or any major developments concerning the Guarantor including some of the filings requested by the ASX may be viewed from <http://www.asx.com.au/asx/research/CompanyInfoSearch.jsp>.

The Guarantor was incorporated on 26 April 1983 with limited liability for an unlimited duration. It is incorporated in the Commonwealth of Australia, registered under the laws of the Australian Capital Territory, and is regulated by the Corporations Act 2001 of Australia. The registered office of the Guarantor is at Level 3, 25 National Circuit, Forrest, Australian Capital Territory, 2603, Australia. The Guarantor’s principal place of business is at No.1 Martin Place, Sydney, New South Wales, 2000, Australia. The ordinary shares of the Guarantor are listed on ASX.

The Guarantor and its subsidiaries provide a wide range of banking and financial services. The Guarantor is an authorised deposit-taking institution pursuant to section 9 of the Banking Act. The Guarantor is not regulated by the Hong Kong Monetary Authority and is not a corporation licensed with the SFC.

As at the latest practicable date for ascertaining certain information prior to the publication of this Information Memorandum, i.e. 15 November 2006, the Guarantor was rated by Standard & Poor’s, FitchIBCA and Moody’s Investors Service as follows:

	Short Term	Long Term	Outlook
Standard & Poor’s*	A1	A	Stable
Fitch Ratings*	F1	A+	Stable
Moody’s Investors Service*	P1	A2	Positive

### \*Rating Agencies

The rating agencies (Standard & Poor’s, Fitch Ratings and Moody’s Investors Service) have not been consulted nor their consent sought for the inclusion of their ratings in this Information Memorandum. The ratings agencies do not independently verify information provided to them by the Guarantor, and therefore, the rating agencies make no representation or warranty with respect to the accuracy of their ratings. The rating agencies have not been involved in the preparation, or authorised the circulation of, this Information Memorandum.

Prospective investors should note that credit ratings assigned by the rating agencies address only credit risk, which is only one element of any investment decision and should not be construed as relating to the ELI Products, the subject of this Information Memorandum. Ratings are not recommendations to buy, hold or sell ELI Products. By publishing a rating, the rating agencies are not inducing or advising investors to take any action with respect to the ELI Product or any other security. Ratings and rating reports should not be construed as investment advice, personalised or other. Accordingly, each investor should conduct their own evaluation of the ELI Product or consult with their investment adviser.

Ratings are subject to change or withdrawal at any time, which change or withdrawal is within each ratings agency’s sole discretion.

*Information in respect of the ratings may be found on [www.standardandpoors.com](http://www.standardandpoors.com), [www.moodys.com](http://www.moodys.com) and [www.fitchratings.com](http://www.fitchratings.com). Information appearing on such websites is not a part of this Information Memorandum and no responsibility is accepted in relation to any such information by any person responsible for this Information Memorandum. Investors should visit these rating agencies’ websites or the Guarantor’s website on [www.macquarie.com.au](http://www.macquarie.com.au) for any information with respect to changes, if any, in the Guarantor’s ratings from time to time.*

The financial year of the Guarantor runs from 1 April to 31 March. Contingent liabilities exist in respect of claims and potential claims against the Guarantor and its subsidiaries. These claims are confidential. Where necessary, appropriate provisions have been made in the financial statements. The Guarantor does not consider that the outcome of any such claims known to exist as at the date of this Information Memorandum, either individually or in aggregate are likely to have a material effect on its operations or financial position or on its ability to meet its obligations under the Guarantee or is material in the context of the ELI Products.

The audited financial report of the Guarantor, the independent auditors' report thereto and interim reports are available for inspection at the address specified in the section headed "Documents on Display" on page 55 of this Information Memorandum.

There has been no material adverse changes in the financial position of the Guarantor since the end of the period reported on in the Financial Statements of the Guarantor.

## Consolidated Capitalisation — Macquarie Group

	As at	
	Sep-06	Sep-05
	AU\$m	AU\$m
<b>Capital Base</b>		
<b>Tier 1 Capital</b>		
Ordinary share capital	2,889	1,825
Retained earnings	2,434	1,488
Reserves	117	—
Macquarie Income Securities	391	391
Macquarie Income Preferred Securities	869	456
Outside equity interests	2	—
APRA AIFRS transitional relief	214	—
<b>Total Tier 1 Capital before Tier 1 Capital Deductions</b>	<u>6,916</u>	<u>4,160</u>
<b>Tier 1 Capital Deductions:</b>		
Equity investments in entities not in the field of finance	(1,090)	(781)
Intangibles	(531)	(294)
Net future income tax benefit	(347)	(96)
Other Tier 1 Capital Deductions	(76)	—
<b>Total Tier 1 Capital</b>	<u>4,872</u>	<u>2,989</u>
<b>Tier 2 Capital</b>		
Macquarie Income Preferred Securities	—	345
General provision for credit losses	142	89
Term subordinated debt	2,166	1,322
APRA AIFRS transitional relief	(66)	—
Other Upper Tier 2 Capital	74	—
<b>Total Tier 2 Capital</b>	<u>2,316</u>	<u>1,756</u>
<b>Total Capital Deductions</b>	<u>(1,348)</u>	<u>(935)</u>
<b>Total Capital</b>	<u>5,840</u>	<u>3,810</u>
<b>Risk-Weighted Assets</b>	36,836	23,089
<b>Tier 1 Capital Ratio (%)</b>	13.2%	12.9%
<b>Total Capital Ratio (%)</b>	15.9%	16.5%

### Directors

The voting directors of the Guarantor and their business address on the date of this Information Memorandum are as follows:

1. David S Clarke
2. Mark RG Johnson
3. Allan E Moss
4. John G Allpass
5. Laurence G Cox

6. Peter M Kirby
7. Catherine B Livingstone
8. H Kevin McCann
9. John R Niland
10. Helen M Nugent

The business address of each voting director is No. 1 Martin Place, Sydney, NSW, 2000, Australia.

## DOCUMENTS ON DISPLAY

The Issuer undertakes, for so long as any ELI Products remain outstanding, to make the following documents containing details of the ELI Products and the financial and other information on the Issuer and the Guarantor available for inspection by investors in such Series of ELI Products:

- (i) the constitution of the Issuer and the Guarantor;
- (ii) a copy of this Information Memorandum (in separate English and Chinese language versions);
- (iii) any addenda to the Information Memorandum;
- (iv) the applicable Product Booklet (in separate English and Chinese language versions) in respect of each type of ELI Products;
- (v) the relevant Term Sheet (in separate English and Chinese language versions) in respect of any Series of ELI Products;
- (vi) the Financial Statements (in separate English and Chinese language versions). The Guarantor's most recent Financial Statements are also available to be reviewed on-line via the Guarantor's website at <http://www.macquarie.com.au/shareholdercentre>. The Financial Statements of the Guarantor contain a range of information including its most recent audited financial report and risk management policies;
- (vii) the latest financial statements of the Issuer in English (if published);
- (viii) the Guarantee; and
- (ix) a copy of any notice given by the Issuer and/or the Arranger in respect of the ELI Products pursuant to the Terms and Conditions of the ELI Products or otherwise provided herein.

In addition, in respect of each Series of ELI Products, the applicable Product Booklet are available for inspection at the locations specified below from the relevant Issue Date until the relevant Fixing Date (each as defined in the relevant Terms and Conditions).

These documents will be available for inspection during usual business hours on any weekday (Saturdays, Sundays and holidays excepted) at the office of ME(A)L at 19th Floor, CITIC Tower, 1 Tim Mei Avenue, Central Hong Kong and at the offices of the Distributors whose names and contact details are available on the website operated by the Arranger at <http://www.eli.hk>. Requests for photocopies of such documents may be subject to a reasonable charge to reflect the reasonable expenses incurred by ME(A)L or the relevant Distributor(s) in providing such photocopies.

No circumstance has arisen or information has become available except as disclosed in this Information Memorandum that would materially affect an investor's decision for the purpose of making an informed assessment of the capacity of the Issuer and the Guarantor to fulfil their respective obligations under the Terms and Conditions of the ELI Products and the Guarantee.

As at the date of this Information Memorandum, no addendum to this Information Memorandum has been issued. The relevant Term Sheet and the applicable Product Booklet in respect of any issue of ELI Products will provide details of any such addenda issued after the date of this Information Memorandum.

## **TERMS AND CONDITIONS OF BULL ELIS (PHYSICAL DELIVERY WITH CASH SETTLEMENT OPTION)**

*The following is the text of the terms and conditions applicable to Bull ELIs. The applicable Product Booklet and the relevant Term Sheet in relation to the issue of any series of Bull ELI may specify additional terms and conditions which shall, to the extent so specified or to the extent inconsistent with the relevant Terms and Conditions, replace or modify the relevant Terms and Conditions for the purpose of such series of Bull ELIs. Capitalised terms used in the relevant Terms and Conditions and not otherwise defined therein shall have the meaning given to them in the applicable Product Booklet and the relevant Term Sheet.*

### **TERMS AND CONDITIONS OF BULL ELIS (PHYSICAL DELIVERY WITH CASH SETTLEMENT OPTION)**

#### **1 Acceptance and issue of Confirmation and the Guarantee**

##### *(a) Acceptance and issue of Confirmation*

Macquarie Structured Products Asia Limited (“**Issuer**”) may in its absolute discretion accept any Application to the Issuer by issuing to the Applicant within one Business Day of the Trade Date (or such other period specified in the Term Sheet) a Confirmation setting out at least the Series, the type of ELI Product, the Reference Price, the Security and the Nominal Value of the Bull ELI for which the Applicant has applied, and any other matters which the Issuer determines is appropriate. Any error or omission in any such Confirmation will not affect the terms or the definitiveness of the Register.

##### *(b) Guarantee*

The Issuer’s obligations under Bull ELIs are unconditionally guaranteed by Macquarie Bank Limited (“**Guarantor**”) pursuant to the guarantee dated 14 November 2006 executed by the Guarantor (“**Guarantee**”). The Guarantee constitutes a direct unsecured, unsubordinated and general obligation of the Guarantor and ranks equally with all its other existing and future unsecured and unsubordinated obligations of the Guarantor, but excluding any debts for the time being preferred by law.

#### **2 Sale and Purchase of Security Amount**

On Acceptance of an Application a contract is created under which, in consideration for the payment of the Purchase Price in the Settlement Currency by the Applicant to the Issuer, the Issuer agrees to sell to the ELI holder, and under which the ELI holder agrees to purchase from the Issuer, the Security Amount for the Purchase Price and on the other conditions set out in these Terms and Conditions. The obligation of the Issuer under Bull ELIs is not a deposit liability of the Issuer nor a debt of any kind, and is not guaranteed by any other party other than the Guarantor under the Guarantee. It is an unsecured and unsubordinated contractual obligation of the Issuer which will rank equally with the Issuer’s other unsecured and unsubordinated contractual obligations and behind preferred liabilities including those mandatorily preferred by law.

#### **3 No rights in respect of Securities**

In the period between the Issue Date and the Settlement Date (the “**Investment Period**”) and subject to Condition 4 below, the ELI holder has no rights in respect of the Securities, and in the event the Issuer and/or any of its affiliates should hold any Securities during the Investment Period, all such Securities will be held solely for the account of the Issuer

and/or its affiliates as appropriate but in no circumstances whatsoever will any Securities be allocated or deemed allocated by the Issuer for the benefit of any Bull ELI or for the fulfilment by the Issuer of any of its obligations under the Terms and Conditions of the Bull ELIs and/or for the benefit of any ELI holder; the Issuer will have no obligations to any ELI holder whatsoever, in relation to any Securities held by the Issuer during the Investment Period; and neither the Issuer nor its agent or nominee shall be under any obligation to deliver to such ELI holder any letter, certificate, notice, circular, dividend or any other document or payment whatsoever received by the Issuer or its agent or nominee in its capacity as a holder of such Security.

#### 4 **Settlement**

On the Settlement Date the Issuer must, subject to Condition 5, deliver to the ELI holder the Security Amount provided that in respect of any Odd Lot, the Issuer may pay the cash equivalent of the Odd Lot in accordance with Condition 6. Such delivery must be effected by delivery of the Security Amount to the Settlement Account nominated by the ELI holder in the Application, or if delivery through the Settlement Account is not reasonably practicable, by whatever means the Issuer reasonably determines is the most practicable in the circumstances.

Where the Issuer must convert one currency into another currency, it will convert the currency at prevailing market rates as determined appropriate by the Issuer in its sole and absolute discretion.

All direct costs of an investment in Bull ELIs, including both the transferor's and the transferee's stamp duty and any transaction levies that may be incurred at settlement will be borne by the Issuer.

#### 5 **Cash Election**

The Issuer may, in its sole and absolute discretion elect that in lieu of procuring delivery of the Security Amount under Condition 4, it will pay the Cash Settlement Amount in the Settlement Currency on the Settlement Date. On payment of the Cash Settlement Amount the Issuer shall have no further obligations in respect of the Bull ELI. The Cash Settlement Amount shall be paid to the ELI holder by cheque in the name of the ELI holder and sent to the address of the ELI holder shown in the Register or by transfer of the Cash Settlement Amount to the cash account in the Settlement Currency of the ELI holder recorded in the Register.

#### 6 **Non-board Lots**

If the Security Amount comprises a number of Securities which does not correspond with the board lot for such Securities or an integral multiple thereof at the Settlement Date, then in respect of that number of Securities which exceeds the amount of such board lot or the relevant integral multiple thereof (the "**Excess Securities**" or "**Odd Lot**"), the Issuer may, in its sole and absolute discretion, elect, in respect of a Bull ELI, by notice to the relevant ELI holder pursuant to Condition 11, on the Settlement Date to either (a) procure the delivery of the Excess Securities, or (b) pay to the relevant ELI holder a cash amount in the Settlement Currency (to be paid at the same time as the documents of title relating to Securities to which that ELI holder has become entitled in accordance with these Terms and Conditions is delivered to that ELI holder) equal to the Security Value on the Fixing Date multiplied by the number of Excess Securities.

Where the Issuer must convert one currency into another currency, it will convert the currency at prevailing market rates as determined appropriate by the Issuer in its sole and absolute discretion.

## 7 Register

The Register of ELI holders will be maintained outside of Hong Kong and the Issuer will, upon issuance of a Confirmation referred to in Condition 1 enter, or cause to be entered, in the Register in respect of each ELI holder:

- (a) the ELI holder's name, address and banking details;
- (b) details of the Settlement Account;
- (c) details of the Bull ELI held by that ELI holder, including the number of Bull ELIs of each Series, the Securities, the Nominal Value of those Bull ELIs and any other particulars which it thinks proper; and
- (d) details of each transfer of Bull ELIs made with the consent of the Issuer pursuant to Condition 10(b).

In the absence of manifest error the Register so kept and maintained is definitive of the details of each Bull ELI and other particulars recorded in it and ELI holders may not rely upon any contrary details in the Confirmation or any contrary representation from the Issuer or any of its employees, servants or agents as to the terms of Bull ELIs.

On written request, the Issuer will provide to an ELI holder free of charge a copy of an extract of the Register detailing such ELI holder's Bull ELIs. The copy will be sent to the ELI holder in accordance with Condition 11 as soon as practicable following receipt of a request.

## 8 Adjustments

Where a Potential Adjustment Event specified in the Schedule occurs in respect of Securities on or after the Issue Date of a Bull ELI then the terms of the Bull ELI may be varied in accordance with the Schedule. The Issuer will notify ELI holders of such Potential Adjustment Event and such variation (if any) in accordance with Condition 11.

## 9 Extraordinary Events

Where an Extraordinary Event specified in the Schedule occurs in respect of the Securities on or after the Issue Date of a Bull ELI, then the Issuer will notify ELI holders of such Extraordinary Event in accordance with Condition 11. The Issuer may take such actions as set out in the Schedule upon occurrence of an Extraordinary Event. The Issuer will notify the ELI holders in accordance with Condition 11 of any such action taken by it.

## 10 Assignments

- (a) The Issuer may assign, transfer or novate any of its rights or obligations in respect of any Bull ELI to the Guarantor. The Issuer will notify the ELI holders upon such assignment, transfer or novation in accordance with Condition 11.
- (b) The ELI holder may not novate, assign or transfer any of its rights or obligations in respect of any Bull ELI without the prior written consent of the Issuer.

## 11 Notices to ELI holders

- (a) All notices which may be given by the Issuer to the ELI holder under these Terms and Conditions must be made in writing (including without limitation in the form of electronic records) and:
- (i) in the case of ELI holders whose address as shown in the Register is in Hong Kong, notice will be taken to be duly given or made at 9:00 am on the third Business Day after being properly sent by ordinary mail from Hong Kong to the address of the ELI holder shown in the Register, or if given by other means or if received earlier, at the time of actual receipt by or on behalf of the ELI holder;
  - (ii) in the case of ELI holders whose address as shown in the Register is outside Hong Kong, notice will be taken to be duly given or made at 9:00 am on the third Business Day after being properly sent by air mail (where available, or otherwise by the best generally available mail service to the appropriate destination from Hong Kong) to the address of the ELI holder shown in the Register, or if sent by other means or if received earlier, at the time of actual receipt by or on behalf of the ELI holder.
- (b) All notices which may be given by the ELI holder to the Issuer under these Terms and Conditions:
- (i) must be in writing;
  - (ii) must be signed by the ELI holder;
  - (iii) must be delivered to the address of Macquarie Equities (Asia) Limited as shown in this Information Memorandum or such alternative address as notified to ELI holders from time to time; and
  - (iv) will be taken to be duly given or made only when actually received by Macquarie Equities (Asia) Limited.

## 12 No Waiver

No failure by the Issuer to exercise a right or power, and no delay by the Issuer in exercising a right or power operates as a waiver of that or any other right or power.

## 13 Governing Law and Jurisdiction

These Terms and Conditions are governed by the laws of Hong Kong and the parties agree to submit to the non-exclusive jurisdiction of the courts of Hong Kong.

## 14 Translation

In the event of any inconsistency between the Chinese translation of these Terms and Conditions and the English version of these Terms and Conditions, the English version of these Terms and Conditions shall prevail.

## 15 Definitions

In this Information Memorandum unless the context otherwise requires:

**Acceptance** means acceptance by the Issuer of an Application under Condition 1.

**Applicant** means a person who lodges an Application.

**Application** means an application to the Issuer for a Bull ELI in a form satisfactory to the Issuer.

**Bull ELI** means an ELI Product specified as a Bull ELI in the relevant Term Sheet.

**Business Day** means a day other than a Saturday, Sunday, or public holiday, on which banks are open for general business in Hong Kong and the SEHK is scheduled to open for trading.

**Cash Settlement Amount** means the amount in the Settlement Currency determined as the product of the Security Amount and the Security Value on the Fixing Date.

**CCASS** means the Central Clearing and Settlement System of Hong Kong.

**Closing Price** in relation to a class of securities listed on SEHK means the closing price of the relevant class of securities as published by the SEHK on the relevant Fixing Date. However if the Issuer determines, in its sole and absolute discretion, that on the Fixing Date a Market Disruption Event has occurred, then the Fixing Date shall be postponed until the first succeeding Business Day on which there is no Market Disruption Event, unless there is a Market Disruption Event on each of the five Business Days immediately following the original date that, but for the Market Disruption Event, would have been the Fixing Date; in that case, (A) that fifth Business Day shall be deemed to be the Fixing Date notwithstanding the Market Disruption Event, and (B) the Issuer shall determine the closing price on the basis of its good faith estimate of the bid price that would have prevailed on that fifth Business Day but for the Market Disruption Event.

Upon occurrence of a Market Disruption Event on the relevant Fixing Date, the Issuer will notify the ELI holders of such event in accordance with Condition 11.

**Condition** means a numbered condition in these Terms and Conditions.

**Confirmation** means a Confirmation issued under Condition 1.

**Distributor** means a stockbroker, financial adviser or bank authorised in Hong Kong and/or Macau to provide advice in relation to Bull ELIs which has been appointed as a distributor for a particular Bull ELI.

**ELI holder** means the person whose name is recorded in the Register as the holder of a Bull ELI.

**Extraordinary Event** has the same meaning as defined in the Schedule.

**Fixing Date** means the date specified as such in the Term Sheet or, if not a Business Day, the following Business Day, provided that if a Market Disruption Event occurs on any date that otherwise would have been the Fixing Date, the Fixing Date will be the Business Day determined in accordance with the definition of Closing Price. The Issuer will notify the ELI holders of the postponed Fixing Date in accordance with Condition 11.

**Fixed Price Bull ELI** means a Bull ELI where the Reference Price is a Fixed Reference Price.

**Fixed Reference Price** means the reference price specified as the Fixed Reference Price in the relevant Term Sheet.

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

**HK\$, \$ or cents** means the currency of Hong Kong.

**Initial Number of Securities** means the number of Securities given by dividing the Nominal Value by the Reference Price, rounded down to the nearest two decimal places.

**Initial Spot Price** means, in respect of a Security, the price specified as such in the Term Sheet.

**Issue Date** means in relation to Bull ELIs which form part of a Series, the Issue Date specified in the Term Sheet for that Series.

**Information Memorandum** means this Information Memorandum in which these Terms and Conditions are set out together with the Financial Statements (as defined in the Information Memorandum).

**Listed Entity** means a company or a trust listed on the SEHK, the underlying securities of which are the subject of Bull ELIs offered by the Issuer under the Terms and Conditions, or any one or more of those entities.

**Macquarie Equities (Asia) Limited or ME(A)L** means Macquarie Equities (Asia) Limited, a licensed entity registered with the Securities and Futures Commission and a trading participant of the SEHK.

**Market Disruption Event** means an event as a result of which the Closing Price of the Security is not published or available on a Business Day for reason outside the Issuer's control (such as suspension of or limitation imposed on trading on the SEHK).

**Minimum Application Amount** means the minimum amount for which an Application can be made as specified in the Term Sheet.

**Nominal Value** means the amount of Bull ELIs for which the Applicant is applying as per the Applicant's Application.

**Potential Adjustment Event** has the same meaning as defined in the Schedule.

**Purchase Price** means the amount in the Settlement Currency paid by an ELI holder for a Bull ELI, being the Nominal Value multiplied by the Purchase Price Percentage specified for the relevant Security in respect of the relevant Series (rounded to three decimal places with 0.0005 being rounded up).

**Purchase Price Percentage** means in relation to a Bull ELI the percentage of the Nominal Value specified as such for the relevant Security for that Bull ELI in the relevant Term Sheet.

**Reference Price Percentage** means in relation to a Bull ELI, other than a Fixed Price Bull ELI, the percentage specified as such for the relevant Security for that Bull ELI in the relevant Term Sheet.

**Reference Price** means:

- (a) in relation to a Fixed Price Bull ELI, the reference price specified as the Fixed Reference Price for that Bull ELI in the relevant Term Sheet; and
- (b) in relation to a Bull ELI that is not a Fixed Price Bull ELI, the Closing Price of the relevant Security for that Bull ELI on the relevant Trade Date multiplied by the Reference Price Percentage (rounded to three decimal places with 0.0005 being rounded up) and notified in writing to the ELI holder in the Confirmation.

**Register** means the register established under Condition 7.

**Schedule** means the schedule to these Terms and Conditions.

**Security**, in relation to a Bull ELI which forms part of a Series, on the Issue Date (i) where the Listed Entity is a company, means one share in the capital of the Listed Entity specified in the Term Sheet and to which the Bull ELI relates, and subsequently the securities or other property which a share becomes following any adjustments made in accordance with the Schedule; and (ii) where the Listed Entity is a trust, means one unit of the Listed Entity specified in the Term Sheet and to which the Bull ELI relates, and subsequently the securities or other property which a unit becomes following any adjustments made in accordance with the Schedule.

**Security Amount** means:

- (a) if the Security Value on the Fixing Date is equal to or greater than the Reference Price, the number of Securities given by dividing the Nominal Value by the Security Value on the Fixing Date, rounded down to the nearest two decimal places; or
- (b) if the Security Value on the Fixing Date is less than the Reference Price, the Initial Number of Securities.

**Security Value** on any Business Day means the value of a Security on that day calculated by reference:

- (a) where and to the extent that the Security comprises securities listed on SEHK, to the Closing Price of these securities on the relevant date;
- (b) where and to the extent that the Security comprises cash, to the amount of that cash on the relevant date; and
- (c) where and to the extent that the Security comprises property of other kinds, to the value of that property on the relevant date as determined by the Issuer in its sole and absolute discretion.

**SEHK** means The Stock Exchange of Hong Kong Limited.

**Series** means one or more Bull ELIs which are made available pursuant to the Information Memorandum, the details of which are set out in a Term Sheet which identifies the Series, the unique identification number for the Series, and which have the same Trade Date, Fixing Date and Settlement Date.

**Settlement Account** means the CCASS account or any other account specified by the ELI holder as the account for settlement of the Securities.

**Settlement Currency** means the currency specified as such in the relevant Term Sheet.

**Settlement Date** means the date specified as such in the relevant Term Sheet.

**Term Sheet** means a term sheet issued under this Information Memorandum and the applicable Product Booklet, substantially in the form set out in the applicable Product Booklet and which specifies for each Bull ELI made available pursuant to that Term Sheet at least the Trade Date, Issue Date, Fixing Date, Settlement Date, Security, Purchase Price Percentage and Reference Price Percentage or Fixed Reference Price in relation to each Bull ELI made available as part of that Series.

**Terms and Conditions** means these terms and conditions.

**Trade Date** means in relation to Bull ELIs which form part of a Series, the Trade Date specified in the Term Sheet for that Series.

## 16 Interpretation

Headings are for convenience only and do not affect interpretation.

The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural and the converse.
- (b) A gender includes all genders.
- (c) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (e) A reference to a paragraph or schedule is a reference to a paragraph of, or schedule to, these Conditions.
- (f) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (g) A reference to **writing** includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form.
- (h) A reference to **conduct** includes an omission, statement or undertaking, whether or not in writing.
- (i) Mentioning anything after **include, includes, or including** does not limit what else might be included.

## **TERMS AND CONDITIONS OF CALLABLE ELIS (PHYSICAL DELIVERY WITH CASH SETTLEMENT OPTION)**

*The following is the text of the terms and conditions applicable to the Callable ELIs. The applicable Product Booklet and the relevant Term Sheet in relation to the issue of any series of Callable ELI may specify additional terms and conditions which shall, to the extent so specified or to the extent inconsistent with the relevant Terms and Conditions, replace or modify the relevant Terms and Conditions for the purpose of such series of Callable ELI. Capitalised terms used in the relevant Terms and Conditions and not otherwise defined therein shall have the meaning given to them in the applicable Product Booklet and the relevant Term Sheet.*

### **TERMS AND CONDITIONS OF CALLABLE ELIS (PHYSICAL DELIVERY WITH CASH SETTLEMENT OPTION)**

#### **1 Acceptance and issue of Confirmation and the Guarantee**

##### *(a) Acceptance and issue of Confirmation*

Macquarie Structured Products Asia Limited (“**Issuer**”) may in its absolute discretion accept any Application to the Issuer by issuing to the Applicant within one Business Day of the Issue Date (or such other period specified in the Term Sheet) a Confirmation setting out at least the Series, the type of ELI Product, the Securities (or in the case of a Basket Callable ELI, each Security in the Basket) and the Nominal Value of the Callable ELI for which the Applicant has applied, and any other matters which the Issuer determines is appropriate. Any error or omission in any such Confirmation will not affect the terms or the definitiveness of the Register.

##### *(b) Guarantee*

The Issuer’s obligations under Callable ELIs are unconditionally guaranteed by Macquarie Bank Limited (“**Guarantor**”) pursuant to the guarantee dated 14 November 2006 executed by the Guarantor (“**Guarantee**”). The Guarantee constitutes a direct unsecured, unsubordinated and general obligation of the Guarantor and ranks equally with all its other existing and future unsecured and unsubordinated obligations of the Guarantor, but excluding any debts for the time being preferred by law.

#### **2 Sale and Purchase of Security Amount**

On Acceptance of an Application a contract is created under which, in consideration for the payment of the Purchase Price in the Settlement Currency by the Applicant to the Issuer, the Issuer agrees to sell to the ELI holder, and under which the ELI holder agrees to purchase from the Issuer, the Security Amount for the Purchase Price and on the other conditions set out in these Terms and Conditions. The obligation of the Issuer under Callable ELIs is not a deposit liability of the Issuer nor a debt of any kind, and is not guaranteed by any other party other than the Guarantor under the Guarantee. It is an unsecured and unsubordinated contractual obligation of the Issuer which will rank equally with the Issuer’s other unsecured and unsubordinated contractual obligations and behind preferred liabilities including those mandatorily preferred by law.

#### **3 No rights in respect of Securities**

In the period between the Issue Date and the Settlement Date or, if applicable, the Call Settlement Date (the “**Investment Period**”) and subject to Condition 4 below, the ELI holder has no rights in respect of the Securities, and in the event the Issuer and/or any

of its affiliates should hold any Securities during the Investment Period, all such Securities will be held solely for the account of the Issuer and/or its affiliates as appropriate but in no circumstances whatsoever will any Securities be allocated or deemed allocated by the Issuer for the benefit of any Callable ELI or for the fulfilment by the Issuer of any of its obligations under the Terms and Conditions of the Callable ELIs and/or for the benefit of any ELI holder; the Issuer will have no obligations to any ELI holder whatsoever, in relation to any Securities held by the Issuer during the Investment Period; and neither the Issuer nor its agent or nominee shall be under any obligation to deliver to such ELI holder any letter, certificate, notice, circular, dividend or any other document or payment whatsoever received by the Issuer or its agent or nominee in its capacity as a holder of such Security.

#### 4 **Settlement**

On the Settlement Date or the Call Settlement Date (as the case may be) the Issuer must, subject to Condition 5, (a) deliver to the ELI holder the Security Amount provided that in respect of any Odd Lot, the Issuer may pay the cash equivalent of the Odd Lot in accordance with Condition 6; and (b) pay to the ELI holder any Bonus Coupon if such coupon is specified in the relevant Term Sheet and the condition for the payment of the Bonus Coupon is met. The Security Amount must be delivered and the Bonus Coupon (if any) must be paid to the Settlement Account nominated by the ELI holder in the Application, or if delivery or payment through the Settlement Account is not reasonably practicable, by whatever means the Issuer reasonably determines is the most practicable in the circumstances. Where the Issuer must convert one currency into another currency, it will convert the currency at prevailing market rates as determined by the Issuer in its sole and absolute discretion.

All direct costs of an investment in Callable ELIs, including both the transferor's and the transferee's stamp duty and any transaction levies that may be incurred at settlement will be borne by the Issuer.

#### 5 **Cash Election**

The Issuer may, in its sole and absolute discretion elect that in lieu of procuring delivery of the Security Amount under Condition 4 or the Call Security Amount under Condition 9, it will pay the Cash Settlement Amount on the Settlement Date or the Call Settlement Amount on the Call Settlement Date (as the case may be). On payment of the Cash Settlement Amount together with any outstanding Distribution Amount, the Issuer shall have no further obligations in respect of the Callable ELI. The Cash Settlement Amount or the Call Settlement Amount (as the case may be) together with any outstanding Distribution Amount shall be paid to the ELI holder in the Settlement Currency by cheque in the name of the ELI holder and sent to the address of the ELI holder shown in the Register or by transfer of such amount to the cash account in the Settlement Currency of the ELI holder recorded in the Register.

#### 6 **Non-board Lots**

In respect of a Single Callable ELI, if the Security Amount or the Call Security Amount (as the case may be) comprises a number of Securities which does not correspond with the board lot for such Securities or an integral multiple thereof at the Settlement Date or the Call Settlement Date (as the case may be), then in respect of that number of Securities which exceeds the amount of such board lot or the relevant integral multiple thereof (the "**Excess Securities**" or "**Odd Lot**"), the Issuer may, in its sole and absolute discretion, elect, in respect of a Callable ELI, by notice to the relevant ELI holder pursuant to Condition 13, on the Settlement Date or the Call Settlement Date (as the case may be) to either (a) procure the delivery of the Excess Securities, or (b) pay to the relevant ELI

holder a cash amount in the Settlement Currency (to be paid at the same time as the documents of title relating to Securities to which that ELI holder has become entitled in accordance with these Terms and Conditions is delivered to that ELI holder) equal to the Security Value on the Fixing Date or the Call Date (as the case may be) multiplied by the number of Excess Securities.

In respect of a Basket Callable ELI, if the Security Amount or the Call Security Amount (as the case may be) comprises a number of the Worst Performing Security as of the Fixing Date or the Call Date (as the case may be) which does not correspond with the board lot for that Worst Performing Security or an integral multiple thereof at the Settlement Date or the Call Settlement Date (as the case may be), then in respect of that number of that Worst Performing Security which exceeds the amount of such board lot or the relevant integral multiple thereof (the “**Excess Securities**” or “**Odd Lot**”), the Issuer may, in its sole and absolute discretion, elect, in respect of a Basket Callable ELI, by notice to the relevant ELI holder pursuant to Condition 13, on the Settlement Date or the Call Settlement Date (as the case may be) to either (a) procure the delivery of the Excess Securities provided that any fractional Excess Securities will be settled in cash by reference to the Security Value on the Fixing Date or the Call Date (as the case may be), or (b) pay to the relevant ELI holder a cash amount (to be paid at the same time as the documents of title relating to that Worst Performing Security to which that ELI holder has become entitled in accordance with these Terms and Conditions is delivered to that ELI holder) equal to the Security Value on the Fixing Date or the Call Date (as the case may be) multiplied by the number of Excess Securities.

Where the Issuer must convert one currency into another currency, it will convert the currency at prevailing market rates as determined appropriate by the Issuer in its sole and absolute discretion.

## 7 Register

The Register of ELI holders will be maintained outside of Hong Kong and the Issuer will, upon issuance of a Confirmation referred to in Condition 1 enter, or cause to be entered, in the Register in respect of each ELI holder:

- (a) the ELI holder’s name, address and banking details;
- (b) details of the Settlement Account;
- (c) details of the Callable ELI held by that ELI holder, including the number of Callable ELIs of each Series, the Securities, the Nominal Value of those Callable ELIs and any other particulars which it thinks proper; and
- (d) details of each transfer of Callable ELIs made with the consent of the Issuer pursuant to Condition 12(b).

In the absence of manifest error the Register so kept and maintained is definitive of the details of each Callable ELI and other particulars recorded in it and ELI holders may not rely upon any contrary details in the Confirmation or any contrary representation from the Issuer or any of its employees, servants or agents as to the terms of Callable ELIs.

On written request, the Issuer will provide to an ELI holder free of charge a copy of an extract of the Register detailing such ELI holder’s Callable ELIs. The copy will be sent to the ELI holder in accordance with Condition 13 as soon as practicable following receipt of a request.

## 8 Distributions

In respect of a Single Callable ELI and a Distribution Period:

- (a) where a Distribution Strike Price is specified in the Term Sheet as applicable to that Distribution Period, the Issuer will determine the Security Value on the Distribution Valuation Date in respect of that Distribution Period. If:
  - (i) the Security Value on the Distribution Valuation Date is equal to or greater than the Distribution Strike Price, the Issuer must pay the Distribution Amount in accordance with this Condition 8, on the immediately following Distribution Date; or
  - (ii) the Security Value on the Distribution Valuation Date is less than the Distribution Strike Price, the Issuer is not obliged to pay the Distribution Amount on the immediately following Distribution Date; and
- (b) where a condition for payment of the Distribution Amount is specified in the Term Sheet as applicable to that Distribution Period, if:
  - (i) the Issuer determines that the condition is satisfied, the Issuer must pay the Distribution Amount in accordance with this Condition 8, on the immediately following Distribution Date; or
  - (ii) the Issuer determines that the condition is not satisfied, the Issuer is not obliged to pay the Distribution Amount on the immediately following Distribution Date.

In respect of a Basket Callable ELI and a Distribution Period:

- (a) where a Distribution Strike Price is specified in the Term Sheet as applicable to that Distribution Period, the Issuer will determine the Worst Performing Security in the Basket as of the Distribution Valuation Date in respect of that Distribution Period and the Security Value on that Distribution Valuation Date. If:
  - (i) the Security Value on the Distribution Valuation Date is equal to or greater than the Distribution Strike Price applicable to the Worst Performing Security, the Issuer must pay the Distribution Amount in accordance with this Condition 8, on the immediately following Distribution Date; or
  - (ii) the Security Value on the Distribution Valuation Date is less than the Distribution Strike Price applicable to the Worst Performing Security, the Issuer is not obliged to pay the Distribution Amount on the immediately following Distribution Date; and
- (b) where a condition for payment of the Distribution Amount is specified in the Term Sheet as applicable to that Distribution Period, if:
  - (i) the Issuer determines that the condition is satisfied, the Issuer must pay the Distribution Amount in accordance with this Condition 8, on the immediately following Distribution Date; or
  - (ii) the Issuer determines that the condition is not satisfied, the Issuer is not obliged to pay the Distribution Amount on the immediately following Distribution Date.

In respect of all Callable ELIs and subject to paragraphs (a) and (b) of this Condition 8, the Distribution Amount shall be paid to the ELI holder either by transfer to the cash account nominated by the ELI holder or by cheque in the name of the ELI holder and sent to the address of the ELI holder shown in the Register. No Distribution Amount is payable on any Distribution Date that falls after the Issuer has exercised the Call Feature in accordance with Condition 9.

The Issuer will calculate the amount of the Distribution Amount for the relevant Distribution Period in respect of the Nominal Value of the Callable ELI. The amount of the Distribution Amount will be calculated by multiplying the Distribution Rate and the Nominal Value of the Callable ELI and, if applicable (where the Distribution Rate is expressed as a per annum day count basis in the Term Sheet), by the actual number of days in the Distribution Period divided by 365 and rounding the resultant figure to the nearest cent (an amount equal to or above one half of one cent being rounded upwards).

## **9 Call Feature**

On any Call Date:

- (a) if a Call Strike is specified for that Call Date, then:
  - (i) in respect of a Single Callable ELI, if the Security Value on that Call Date is equal to or greater than the Call Strike, the Callable ELI is cancelled on and with effect from the Call Date; and
  - (ii) in respect of a Basket Callable ELI, if the Security Value of the Worst Performing Security on that Call Date is equal to or greater than the Call Strike applicable to that Worst Performing Security, the Basket Callable ELI is cancelled on and with effect from the Call Date; or
- (b) if no Call Strike is specified for that Call Date then the Issuer may, in its sole and absolute discretion, cancel the Callable ELI on and with effect from the Call Date.

The Issuer must give notice of any cancellation under this Condition 9 to the ELI holder within 2 Business Days after the relevant Call Date in accordance with Condition 13.

If the Issuer exercises the Call Feature, the Issuer must deliver to the ELI holder the Call Security Amount (subject to the Issuer exercising its discretion to pay the equivalent value in cash) together with any outstanding Distribution Amount on the Call Settlement Date. On delivery of the Call Security Amount or payment of the Cash Settlement Amount (as the case may be) together with any outstanding Distribution Amount, the Issuer shall have no further obligations in respect of the Callable ELI.

## **10 Adjustments**

Where a Potential Adjustment Event specified in the Schedule occurs in respect of any Security on or after the Issue Date of a Callable ELI then the terms of the Callable ELI may be varied in accordance with the Schedule. The Issuer will notify ELI holders of such Potential Adjustment Event and such variation (if any) in accordance with Condition 13.

## **11 Extraordinary Events**

Where an Extraordinary Event specified in the Schedule occurs in respect of any Security on or after the Issue Date of a Callable ELI, then the Issuer will notify ELI holders of such Extraordinary Event in accordance with Condition 13. The Issuer may take such actions as set out in the Schedule upon occurrence of an Extraordinary Event. The Issuer will notify the ELI holders in accordance with Condition 13 of any such action taken by it.

## 12 Assignments

- (a) The Issuer may assign, transfer or novate any of its rights or obligations in respect of any Callable ELI to the Guarantor. The Issuer will notify the ELI holders upon such assignment, transfer or novation in accordance with Condition 13.
- (b) The ELI holder may not novate, assign or transfer any of its rights or obligations in respect of any Callable ELI without the prior written consent of the Issuer.

## 13 Notices to ELI holders

- (a) All notices which may be given by the Issuer to the ELI holder under these Terms and Conditions must be made in writing (including without limitation in the form of electronic records) and:
  - (i) in the case of ELI holders whose address as shown in the Register is in Hong Kong, notice will be taken to be duly given or made at 9:00 am on the third Business Day after being properly sent by ordinary mail from Hong Kong to the address of the ELI holder shown in the Register, or if given by other means or if received earlier, at the time of actual receipt by or on behalf of the ELI holder;
  - (ii) in the case of ELI holders whose address as shown in the Register is outside Hong Kong, notice will be taken to be duly given or made at 9:00 am on the third Business Day after being properly sent by air mail (where available, or otherwise by the best generally available mail service to the appropriate destination from Hong Kong) to the address of the ELI holder shown in the Register, or if sent by other means or if received earlier, at the time of actual receipt by or on behalf of the ELI holder.
- (b) All notices which may be given by the ELI holder to the Issuer under these Terms and Conditions:
  - (i) must be in writing;
  - (ii) must be signed by the ELI holder;
  - (iii) must be delivered to the address of Macquarie Equities (Asia) Limited as shown in this Information Memorandum or such alternative address as notified to ELI holders from time to time; and
  - (iv) will be taken to be duly given or made only when actually received by Macquarie Equities (Asia) Limited.

## 14 No Waiver

No failure by the Issuer to exercise a right or power, and no delay by the Issuer in exercising a right or power operates as a waiver of that or any other right or power.

## 15 Governing Law and Jurisdiction

These Terms and Conditions are governed by the laws of Hong Kong and the parties agree to submit to the non-exclusive jurisdiction of the courts of Hong Kong.

## 16 Translation

In the event of any inconsistency between the Chinese translation of these Terms and Conditions and the English version of these Terms and Conditions, the English version of these Terms and Conditions shall prevail.

## 17 Definitions

In this Information Memorandum unless the context otherwise requires:

**Acceptance** means acceptance by the Issuer of an Application under Condition 1.

**Applicant** means a person who lodges an Application.

**Application** means an application to the Issuer for a Callable ELI in a form satisfactory to the Issuer.

**Basket** means, in respect of a Basket Callable ELI, the basket of the Securities specified in the Term Sheet.

**Basket Callable ELI** means an ELI Product linked to a Basket of Securities and specified as a Basket Callable ELI in the relevant Term Sheet or a Basket Knock-in Callable ELI.

**Basket Knock-in Callable ELI** means a Basket Callable ELI linked to a Basket of Securities and specified as a Basket Knock-in Callable ELI in the relevant Term Sheet.

**Bonus Coupon** means the coupon specified as such in the relevant Term Sheet.

**Business Day** means a day other than a Saturday, Sunday, or public holiday, on which banks are open for general business in Hong Kong and the SEHK is scheduled to open for trading.

**Call Date** means each of the dates specified as a Call Date in the Term Sheet for that Callable ELI or, if not a Business Day, the following Business Day, provided that if a Market Disruption Event occurs on any date that otherwise would have been the Call Date, the Call Date will be the Business Day determined in accordance with the definition of Closing Price. The Issuer will notify the ELI holders of postponed Call Date(s) in accordance with Condition 13.

**Callable ELI** means a Single Callable ELI and/or a Basket Callable ELI.

**Call Feature** means the obligation of the Issuer under Condition 9(a) or the right of the Issuer under Condition 9(b) to cancel a Callable ELI by delivering the Call Security Amount or by payment of the Cash Settlement Amount together with any outstanding Distribution Amount.

**Call Notice** means a notice given by the Issuer to an ELI holder in accordance with Conditions 9 and 13.

**Call Settlement Date** means the date specified as such in the relevant Term Sheet.

**Call Security Amount** means:

- (a) in respect of a Single Callable ELI, the number of Securities given by dividing the Call Value by the Security Value on the relevant Call Date applicable to that Single Callable ELI, rounded down to the nearest two decimal places; and
- (b) in respect of a Basket Callable ELI, the number of Worst Performing Security as of the Call Date given by dividing the Call Value applicable to that Worst Performing Security on the Call Date by the Security Value on the relevant Call Date, rounded down to the nearest two decimal places.

**Call Strike:**

- (a) in respect of a Single Callable ELI and a Call Date, means the strike price specified for that Call Date in the Term Sheet for that Callable ELI; and
- (b) in respect of a Basket Callable ELI and a Call Date, means the strike price specified for each Security in the Basket in the Term Sheet.

**Call Value** in respect of each Call Date means the amount specified for that Call Date in the relevant Term Sheet.

**Cash Settlement Amount** means, as applicable:

- (a) the amount determined as the product of the Security Amount and the Security Value on the Fixing Date; or
- (b) the amount determined as the product of the Call Security Amount and the Security Value on the relevant Call Date.

**CCASS** means the Central Clearing and Settlement System of Hong Kong.

**Closing Price:**

- (a) in respect of a Single Callable ELI and in relation to a class of securities listed on SEHK, means the closing price of the relevant class of securities as published by the SEHK on the relevant Fixing Date, Distribution Valuation Date, Call Date or any Business Day during a Distribution Period (as the case may be). However if the Issuer determines, in its sole and absolute discretion, that on the Fixing Date, the Distribution Valuation Date or the Call Date (as the case may be), a Market Disruption Event has occurred, then the Fixing Date, the Distribution Valuation Date or the Call Date (as the case may be) shall be postponed until the first succeeding Business Day on which there is no Market Disruption Event, unless there is a Market Disruption Event on each of the five Business Days immediately following the original date that, but for the Market Disruption Event, would have been the Fixing Date, the Distribution Valuation Date or the Call Date (as the case may be); in that case, (A) that fifth Business Day shall be deemed to be the Fixing Date, the Distribution Valuation Date or the Call Date (as the case may be) notwithstanding the Market Disruption Event, and (B) the Issuer shall determine the closing price on the basis of its good faith estimate of the bid price that would have prevailed on that fifth Business Day but for the Market Disruption Event.
- (b) in respect of a Basket Callable ELI and in relation to a class of securities listed on SEHK, means the closing price of the relevant class of securities as published by the SEHK on the relevant Fixing Date, Distribution Valuation Date, Call Date or any Business Day during a Distribution Period (as the case may be). However if the Issuer determines, in its sole and absolute discretion, that on the Fixing Date, the Distribution Valuation Date or the Call Date (as the case may be), a Market Disruption Event has occurred in respect of any Security(s) in the Basket, then the Fixing Date, the Distribution Valuation Date or the Call Date (as the case may be) shall be postponed until the first succeeding Business Day on which there is no Market Disruption Event in respect of all Securities in the Basket, unless there is a Market Disruption Event on each of the five Business Days immediately following the original date that, but for the Market Disruption Event, would have been the Fixing Date, the Distribution Valuation Date or the Call Date (as the case may be); in that case, (A) that fifth Business Day shall be deemed to be the Fixing Date, the Distribution Valuation Date or the Call Date (as the case may be) notwithstanding the

Market Disruption Event in respect of any Security, and (B) the Issuer shall determine the closing price for each Security in the Basket on the basis of its good faith estimate of the bid price that would have prevailed on that fifth Business Day in respect of each Security in the Basket, but for the Market Disruption Event.

Upon occurrence of a Market Disruption Event on the relevant Fixing Date, Distribution Valuation Date or Call Date (as the case may be), the Issuer will notify the ELI holders of such event and the postponed Fixing Date, Distribution Valuation Date or Call Date (as the case may be) in accordance with Condition 13.

If applicable, for the purpose of determining whether a Business Day during a Distribution Period is a “Days in”, “Days in Lower Range” or “Days in Upper Range”, if the Issuer determines, in its sole and absolute discretion, that on any Business Day during a Distribution Period, a Market Disruption Event has occurred in respect of any Security in the Basket, then the Issuer will determine the closing price of that Security on the basis of its good faith estimate of the bid price for the affected Security(s) that would have prevailed on that Business Day, but for the Market Disruption Event. Upon occurrence of a Market Disruption Event on any Business Day during a Distribution Period, the Issuer will notify the ELI holders of such event and the closing price of the affected Security(s) determined by the Issuer in accordance with Condition 13.

**Condition** means a numbered condition in these Terms and Conditions.

**Confirmation** means a Confirmation issued under Condition 1.

**Distributor** means a stockbroker, financial adviser or bank authorised in Hong Kong and/or Macau to provide advice in relation to Callable ELIs which has been appointed as a distributor for a particular Callable ELI.

**Distribution Amount** in relation to a Distribution Date, means the amount determined in accordance with Condition 8.

**Distribution Date** means each of the dates specified as a Distribution Date in the Term Sheet for that Callable ELI.

**Distribution Period** in respect of a Callable ELI means the period beginning on (and including) the Issue Date of the Callable ELI and ending on (but excluding) the first Distribution Date, and each period thereafter from (and including) a Distribution Date to (but excluding) the next following Distribution Date.

**Distribution Rate** means the rate specified in or determined by reference to the formulae set out in the Term Sheet for that Callable ELI.

**Distribution Strike Price** means the Distribution Strike Price specified in the Term Sheet for that Callable ELI.

**Distribution Valuation Date** means each of the dates specified as a Distribution Valuation Date in the Term Sheet for that Callable ELI or, if not a Business Day, the following Business Day, provided that if a Market Disruption Event occurs on any date that otherwise would have been the Distribution Valuation Date, the Distribution Valuation Date will be the Business Day determined in accordance with the definition of Closing Price. The Issuer will notify the ELI holders of postponed Distribution Valuation Date in accordance with Condition 13.

**ELI holder** means the person whose name is recorded in the Register as the holder of a Callable ELI.

**Extraordinary Event** has the same meaning as defined in the Schedule.

**Fixed Knock-in Price** means the knock-in price specified as the Fixed Knock-in Price in the relevant Term Sheet.

**Fixed Price Knock-in Callable ELI** means a Knock-in Callable ELI where the Knock-in Price is a Fixed Knock-in Price.

**Fixed Price Callable ELI** means a Callable ELI where the Reference Price is a Fixed Reference Price.

**Fixed Reference Price** means the reference price specified as the Fixed Reference Price specified in the relevant Term Sheet.

**Fixing Date** means the date specified as such in the Term Sheet or, if not a Business Day, the following Business Day, provided that if a Market Disruption Event occurs on any date that otherwise would have been the Fixing Date, the Fixing Date will be the Business Day determined in accordance with the definition of Closing Price. The Issuer will notify the ELI holders of such postponed Fixing Date in accordance with Condition 13.

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

**HK\$, \$ or cents** means the currency of Hong Kong.

**Initial Number of Securities** means:

- (a) in respect of a Single Callable ELI, the number of Securities given by dividing the Nominal Value by the Reference Price, rounded down to the nearest two decimal places; and
- (b) in respect of a Basket Callable ELI and the Worst Performing Security in the Basket as of the Fixing Date, the number of that Worst Performing Security given by dividing the Nominal Value by the Reference Price applicable to that Worst Performing Security, rounded down to the nearest two decimal places.

**Initial Spot Price** means, in respect of a Security, the price specified as such in the Term Sheet.

**Issue Date** means in relation to Callable ELIs which form part of a Series, the Issue Date specified in the Term Sheet for that Series.

**Information Memorandum** means this Information Memorandum in which these Terms and Conditions are set out together with the Financial Statements (as defined in the Information Memorandum).

**Knock-in Callable ELI** means a Basket Knock-in Callable ELI or a Single Knock-in Callable ELI.

**Knock-in Determination Date** means each date specified as such in the relevant Term Sheet.

**Knock-in Event** occurs when the Closing Price of the Security or the Worst Performing Security (as the case may be) is at or below the relevant Knock-in Price on any Knock-in Determination Date.

**Knock-in Feature** is an optional feature and is applicable to a Knock-in Callable ELI. If the relevant Term Sheet indicates that the Knock-in Feature applies, the Security Amount payable will be determined upon, among other factors, whether a Knock-in Event has occurred during the term of the Knock-in Callable ELI.

**Knock-in Price** in respect of a Security means:

- (a) in relation to a Fixed Price Knock-in Callable ELI, the knock-in price specified as the Fixed Knock-in Price specified for that Security in the relevant Term Sheet; and
- (b) in relation to a Knock-in Callable ELI that is not a Fixed Price Knock-in Callable ELI, the Closing Price of that Security on the relevant Issue Date multiplied by the relevant Knock-in Price Percentage (rounded to three decimal places with 0.0005 being rounded up) and notified in writing to the ELI holder in the Confirmation.

**Knock-in Price Percentage** means the percentage specified as the Knock-in Price percentage in the relevant Term Sheet.

**Listed Entity** means a company or a trust listed on the SEHK, the underlying securities of which are the subject of Callable ELIs offered by the Issuer under the Terms and Conditions, or any one or more of those entities.

**Macquarie Equities (Asia) Limited or ME(A)L** means Macquarie Equities (Asia) Limited, a licensed entity registered with the Securities and Futures Commission and a trading participant of the SEHK.

**Market Disruption Event** means an event as a result of which the Closing Price of the Security (in the case of Single Callable ELI) or each Security in the Basket (in the case of Basket Callable ELI) is not published or available on a Business Day for reason outside the Issuer's control (such as suspension of or limitation imposed on trading on the SEHK).

**Minimum Application Amount** means the minimum amount for which an Application can be made as specified in the Term Sheet.

**Nominal Value** means the amount of Callable ELIs for which the Applicant is applying as per the Applicant's Application.

**Percentage Performance** means, if applicable to a Callable ELI and in respect of a Security, the percentage determined in accordance with the following formula (rounded to 4 decimal places, with 0.00005 or above rounded up):

$$\text{Percentage Performance of a Security} = \frac{\text{Closing Price of that Security on the relevant Business Day}}{\text{Initial Spot Price applicable to that Security}} \times 100\%$$

**Potential Adjustment Event** has the same meaning as defined in the Schedule.

**Purchase Price** means the amount paid by an ELI holder for a Callable ELI, being the Nominal Value multiplied by the Purchase Price Percentage specified for the relevant Security in respect of the relevant Series (rounded to three decimal places with 0.0005 being rounded up).

**Purchase Price Percentage** means in relation to a Callable ELI the percentage of the Nominal Value specified as such for the relevant Security for that Callable ELI in the relevant Term Sheet.

**Reference Price Percentage** means in relation to a Callable ELI other than a Fixed Price Callable ELI, the percentage specified as such for the relevant Security for that Callable ELI in the relevant Term Sheet.

**Reference Price** in respect of a Security means:

- (a) in relation to a Fixed Price Callable ELI, the reference price specified as the Fixed Reference Price specified for that Callable ELI in the relevant Term Sheet; and
- (b) in relation to Callable ELI that is not a Fixed Price Callable ELI, the Closing Price of the relevant Security for that Callable ELI on the relevant Trade Date multiplied by the Reference Price Percentage (rounded to three decimal places with 0.0005 being rounded up) and notified in writing to the ELI holder in the Confirmation.

**Register** means the register established under Condition 7.

**Schedule** means the schedule to this Information Memorandum.

**Securities** means:

- (a) in relation to a Single Callable ELI which forms part of a Series, on the Issue Date (i) where the Listed Entity is a company, means one share in the capital of the Listed Entity specified in the Term Sheet and to which the Single Callable ELI relates, and subsequently the securities or other property which a share becomes following any adjustments made in accordance with the Schedule; and (ii) where the Listed Entity is a trust, means one unit of the Listed Entity specified in the Term Sheet and to which the Single Callable ELI relates, and subsequently the securities or other property which a unit becomes following any adjustments made in accordance with the Schedule; and
- (b) in relation to a Basket Callable ELI which forms part of a Series, (i) where the Listed Entities are companies, means the shares of each of the Listed Entities specified in the Term Sheet and to which the Basket Callable ELI relates, subject to modification from time to time due to the occurrence of any Potential Adjustment Event or Extraordinary Event in accordance with the Terms and Conditions, and (ii) where the Listed Entities are trusts, means the units of each of the Listed Entities specified in the Term Sheet and to which the Basket Callable ELI relates, subject to modification from time to time due to the occurrence of any Potential Adjustment Event or Extraordinary Event in accordance with the Terms and Conditions, and “**Security**” means any one Security in the Basket.

**Security Amount** means:

- (a) in respect of a Single Callable ELI:
  - (i) where the Call Feature is exercised on any Call Date, the Call Security Amount and any Distribution Amounts accrued on the Call Settlement Date; or
  - (ii) where the Call Feature is not exercised,
    - (A) in the case the relevant Term Sheet indicates that the Knock-in Feature does not apply:

- (x) if the Security Value on the Fixing Date is greater than or equal to the Reference Price, the number of Securities given by dividing the Nominal Value by the Security Value on the Fixing Date, rounded down to the nearest two decimal places; or
  - (y) if the Security Value on the Fixing Date is less than the Reference Price, the Initial Number of Securities; and
- (B) in the case where the relevant Term Sheet indicates that the Knock-in Feature applies:
- (x) if no Knock-in Event has occurred on any Knock-in Determination Date or a Knock-in Event has occurred on a Knock-in Determination Date but the Security Value on the Fixing Date is greater than or equal to its Reference Price, the number of that Security given by dividing the Nominal Value by the Security Value on the Fixing Date, rounded down to the nearest two decimal places; or
  - (y) if a Knock-in Event has occurred on a Knock-in Determination Date and the Security Value on the Fixing Date is less than its Reference Price, the Initial Number of Securities.
- (b) in respect of a Basket Callable ELI:
- (i) where the Call Feature is exercised on any Call Date, the Call Security Amount and any Distribution Amounts accrued on the Call Settlement Date; or
  - (ii) where the Call Feature is not exercised:
- (A) in the case the relevant Term Sheet indicates that the Knock-in Feature does not apply:
- (x) if the Security Value on the Fixing Date is greater than or equal to the Reference Price applicable to the Worst Performing Security as of the Fixing Date, the number of that Worst Performing Security given by dividing the Nominal Value by the Security Value on the Fixing Date, rounded down to the nearest two decimal places; or
  - (y) if the Security Value on the Fixing Date is less than the Reference Price applicable to the Worst Performing Security as of the Fixing Date, the Initial Number of Securities applicable to that Worst Performing Security; and
- (B) in the case where the relevant Term Sheet indicates that the Knock-in Feature applies:
- (x) if no Knock-in Event has occurred on any Knock-in Determination Date or a Knock-in Event has occurred on a Knock-in Determination Date but the Security Value on the Fixing Date is greater than or equal to its Reference Price, the number of that Worst Performing Security given by dividing the Nominal Value by the Security Value on the Fixing Date, rounded down to the nearest two decimal places; or
  - (y) if a Knock-in Event has occurred on a Knock-in Determination Date and the Security Value on the Fixing Date is less than its Reference Price, the Initial Number of Securities applicable to that Worst Performing Security.

**Security Value** on any Business Day means:

- (a) in respect of a Single Callable ELI, the value of a Security on that day calculated by reference:
  - (i) where and to the extent that the Security comprises securities listed on SEHK, to the Closing Price of these securities on the relevant date;
  - (ii) where and to the extent that the Security comprises cash, to the amount of that cash on the relevant date; and
  - (iii) where and to the extent that the Security comprises property of other kinds, to the value of that property on the relevant date as determined by the Issuer in its sole and absolute discretion.
- (b) in respect of a Basket Callable ELI, the value of the Worst Performing Security on that day calculated by reference:
  - (i) where and to the extent that Worst Performing Security comprises securities listed on SEHK, to the Closing Price of these securities on the relevant date;
  - (ii) where and to the extent that Worst Performing Security comprises cash, to the amount of that cash on the relevant date; and
  - (iii) where and to the extent that Worst Performing Security comprises property of other kinds, to the value of that property on the relevant date as determined by the Issuer in its sole and absolute discretion.

**SEHK** means The Stock Exchange of Hong Kong Limited.

**Series** means one or more Callable ELIs which are made available pursuant to the Information Memorandum, the details of which are set out in a Term Sheet which identifies the Series, the unique identification number for the Series, and which have the same Trade Date, Fixing Date and Settlement Date.

**Settlement Account** means the CCASS account specified by the ELI holder as the account for settlement of the Securities.

**Settlement Currency** means the currency specified as such in the relevant Term Sheet.

**Settlement Date** means the date specified as such in the relevant Term Sheet.

**Single Callable ELI** means an ELI Product linked to a Security and specified as a Single Callable ELI in the relevant Term Sheet or a Single Knock-in Callable ELI.

**Single Knock-in Callable ELI** means a Single Callable ELI linked to a Security and specified as a Single Knock-in Callable ELI in the relevant Term Sheet.

**Term Sheet** means a term sheet issued under this Information Memorandum and the applicable Product Booklet, substantially in the form set out in the applicable Product Booklet and which specifies for each Callable ELI made available pursuant to that Term Sheet at least the Trade Date, Issue Date, Fixing Date, Call Date(s), Distribution Date(s), Settlement Date, Security, Purchase Price Percentage, Distribution Rate and Reference Price Percentage or Fixed Reference Price in relation to each Callable ELI made available as part of that Series.

**Terms and Conditions** means these terms and conditions.

**Trade Date** means, in relation to Callable ELIs which form part of a Series, the Trade Date specified in the Term Sheet for that Series.

**Worst Performing Security** in respect of a Basket Callable ELI, means in respect of a Business Day, the Security in the Basket which has the lowest Percentage Performance provided that if more than one Security in the Basket has the same Percentage Performance that is the lowest among the Percentage Performances of all the Securities in the Basket on the relevant Business Day, the Issuer shall in its absolute discretion select which of the Securities with the same lowest Percentage Performance on such Business Day shall be the Worst Performing Security.

## 18 Interpretation

Headings are for convenience only and do not affect interpretation.

The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural and the converse.
- (b) A gender includes all genders.
- (c) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (e) A reference to a paragraph or schedule is a reference to a paragraph of, or schedule to, these Conditions.
- (f) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (g) A reference to **writing** includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form.
- (h) A reference to **conduct** includes an omission, statement or undertaking, whether or not in writing.
- (i) Mentioning anything after **include**, **includes**, or **including** does not limit what else might be included.

## **TERMS AND CONDITIONS OF BEAR ELIS (PHYSICAL DELIVERY WITH CASH SETTLEMENT OPTION)**

*The following is the text of the terms and conditions applicable to Bear ELIs. The applicable Product Booklet and the relevant Term Sheet in relation to the issue of any series of Bear ELI may specify additional terms and conditions which shall, to the extent so specified or to the extent inconsistent with the relevant Terms and Conditions, replace or modify the relevant Terms and Conditions for the purpose of such series of Bear ELI. Capitalised terms used in the relevant Terms and Conditions and not otherwise defined therein shall have the meaning given to them in the applicable Product Booklet and the relevant Term Sheet.*

### **TERMS AND CONDITIONS OF BEAR ELIS (PHYSICAL DELIVERY WITH CASH SETTLEMENT OPTION)**

#### **1 Acceptance and issue of Confirmation and the Guarantee**

##### *(a) Acceptance and issue of Confirmation*

Macquarie Structured Products Asia Limited (“**Issuer**”) may in its absolute discretion accept any Application to the Issuer by issuing to the Applicant within one Business Day of the Issue Date (or such other period specified in the Term Sheet) a Confirmation setting out at least the Series, the type of ELI Product, the Securities and the Nominal Value of the Bear ELI for which the Applicant has applied, and any other matters which the Issuer determines is appropriate. Any error or omission in any such Confirmation will not affect the terms or the definitiveness of the Register.

##### *(b) Guarantee*

The Issuer’s obligations under Bear ELIs are unconditionally guaranteed by Macquarie Bank Limited (“**Guarantor**”) pursuant to the guarantee dated 14 November 2006 executed by the Guarantor (“**Guarantee**”). The Guarantee constitutes a direct unsecured, unsubordinated and general obligation of the Guarantor and ranks equally with all its other existing and future unsecured and unsubordinated obligations of the Guarantor, but excluding any debts for the time being preferred by law.

#### **2 Sale and Purchase of Security Amount**

On Acceptance of an Application a contract is created under which, in consideration for the payment of the Purchase Price in the Settlement Currency by the Applicant to the Issuer, the Issuer agrees to sell to the ELI holder, and under which the ELI holder agrees to purchase from the Issuer, the Security Amount for the Purchase Price and on the other conditions set out in these Terms and Conditions. The obligation of the Issuer under Bear ELIs is not a deposit liability of the Issuer nor a debt of any kind, and is not guaranteed by any other party other than the Guarantor under the Guarantee. It is an unsecured and unsubordinated contractual obligation of the Issuer which will rank equally with the Issuer’s other unsecured and unsubordinated contractual obligations and behind preferred liabilities including those mandatorily preferred by law.

#### **3 No rights in respect of Securities**

In the period between the Issue Date and the Settlement Date (the “**Investment Period**”) and subject to Condition 4 below, the ELI holder has no rights in respect of the Securities, and in the event the Issuer and/or any of its affiliates should hold any Securities during the Investment Period, all such Securities will be held solely for the account of the Issuer and/or its affiliates as appropriate but in no circumstances whatsoever will any Securities

be allocated or deemed allocated by the Issuer for the benefit of any Bear ELI or for the fulfilment by the Issuer of any of its obligations under the Terms and Conditions of the Bear ELIs and/or for the benefit of any ELI holder; the Issuer will have no obligations to any ELI holder whatsoever, in relation to any Securities held by the Issuer during the Investment Period; and neither the Issuer nor its agent or nominee shall be under any obligation to deliver to such ELI holder any letter, certificate, notice, circular, dividend or any other document or payment whatsoever received by the Issuer or its agent or nominee in its capacity as a holder of such Security.

#### 4 **Settlement**

On the Settlement Date the Issuer must, subject to Condition 5, deliver to the ELI holder the Security Amount provided that in respect of any Odd Lot, the Issuer may pay the cash equivalent of the Odd Lot in accordance with Condition 6. Such delivery must be effected by delivery of the Security Amount to the Settlement Account nominated by the ELI holder in the Application, or if delivery through the Settlement Account is not reasonably practicable by whatever means the Issuer reasonably determines is the most practicable in the circumstances. Where the Issuer must convert one currency into another currency, it will convert the currency at prevailing market rates as determined appropriate by the Issuer in its sole and absolute discretion.

All direct costs of an investment in Bear ELIs, including both the transferor's and the transferee's stamp duty and any transaction levies that may be incurred at settlement will be borne by the Issuer.

#### 5 **Cash Election**

The Issuer may, in its sole and absolute discretion elect that in lieu of procuring delivery of the Security Amount under Condition 4, it will pay the Cash Settlement Amount in the Settlement Currency on the Settlement Date. On payment of the Cash Settlement Amount the Issuer shall have no further obligations in respect of the Bear ELI. The Cash Settlement Amount shall be paid to the ELI holder by cheque in the name of the ELI holder and sent to the address of the ELI holder shown in the Register or by transfer of the Cash Settlement Amount to the cash account in the Settlement Currency of the ELI holder recorded in the Register.

#### 6 **Non-board Lots**

If the Security Amount comprises a number of Securities which does not correspond with the board lot for such Securities or an integral multiple thereof at the Settlement Date, then in respect of that number of Securities which exceeds the amount of such board lot or the relevant integral multiple thereof (the "**Excess Securities**" or "**Odd Lot**"), the Issuer may, in its sole and absolute discretion, elect, in respect of a Bear ELI, by notice to the relevant ELI holder pursuant to Condition 11, on the Settlement Date to either (a) procure the delivery of the Excess Securities, or (b) pay to the relevant ELI holder a cash amount in the Settlement Currency (to be paid at the same time as the documents of title relating to Securities to which that ELI holder has become entitled in accordance with these Terms and Conditions is delivered to that ELI holder) equal to the Security Value on the Fixing Date multiplied by the number of Excess Securities. Where the Issuer must convert one currency into another currency, it will convert the currency at prevailing market rates as determined appropriate by the Issuer in its sole and absolute discretion.

## 7 Register

The Register of ELI holders will be maintained outside of Hong Kong and the Issuer will, upon issuance of a Confirmation referred to in Condition 1 enter, or cause to be entered, in the Register in respect of each ELI holder:

- (a) the ELI holder's name, address and banking details;
- (b) details of the Settlement Account;
- (c) details of the Bear ELI held by that ELI holder, including the number of Bear ELIs of each Series, the Securities, the Nominal Value of those Bear ELIs and any other particulars which it thinks proper; and
- (d) details of each transfer of Bear ELIs made with the consent of the Issuer pursuant to Condition 10(b).

In the absence of manifest error the Register so kept and maintained is definitive of the details of each Bear ELI and other particulars recorded in it and ELI holders may not rely upon any contrary details in the Confirmation or any contrary representation from the Issuer or any of its employees, servants or agents as to the terms of Bear ELIs.

On written request, the Issuer will provide to an ELI holder free of charge a copy of an extract of the Register detailing such ELI holder's Bear ELIs. The copy will be sent to the ELI holder in accordance with Condition 11 as soon as practicable following receipt of a request.

## 8 Adjustments

Where a Potential Adjustment Event specified in the Schedule occurs in respect of Securities on or after the Issue Date of a Bear ELI then the terms of the Bear ELI may be varied in accordance with the Schedule. The Issuer will notify ELI holders of such Potential Adjustment Event and such variation (if any) in accordance with Condition 11.

## 9 Extraordinary Events

Where an Extraordinary Event specified in the Schedule occurs in respect of the Securities on or after the Issue Date of a Bear ELI, then the Issuer will notify ELI holders of such Extraordinary Event in accordance with Condition 11. The Issuer may take such actions as set out in the Schedule upon occurrence of an Extraordinary Event. The Issuer will notify the ELI holders in accordance with condition 11 of any such action taken by it.

## 10 Assignments

- (a) The Issuer may assign, transfer or novate any of its rights or obligations in respect of any Bear ELI to the Guarantor. The Issuer will notify the ELI holders upon such assignment, transfer or novation in accordance with Condition 11.
- (b) The ELI holder may not novate, assign or transfer any of its rights or obligations in respect of any Bear ELI without the prior written consent of the Issuer.

## 11 Notices to ELI holders

- (a) All notices which may be given by the Issuer to the ELI holder under these Terms and Conditions must be made in writing (including without limitation in the form of electronic records) and:
- (i) in the case of ELI holders whose address as shown in the Register is in Hong Kong, notice will be taken to be duly given or made at 9:00 am on the third Business Day after being properly sent by ordinary mail from Hong Kong to the address of the ELI holder shown in the Register, or if given by other means or if received earlier, at the time of actual receipt by or on behalf of the ELI holder;
  - (ii) in the case of ELI holders whose address as shown in the Register is outside Hong Kong, notice will be taken to be duly given or made at 9:00 am on the third Business Day after being properly sent by air mail (where available, or otherwise by the best generally available mail service to the appropriate destination from Hong Kong) to the address of the ELI holder shown in the Register, or if sent by other means or if received earlier, at the time of actual receipt by or on behalf of the ELI holder.
- (b) All notices which may be given by the ELI holder to the Issuer under these Terms and Conditions:
- (i) must be in writing;
  - (ii) must be signed by the ELI holder;
  - (iii) must be delivered to the address of Macquarie Equities (Asia) Limited as shown in this Information Memorandum or such alternative address as notified to ELI holders from time to time;
  - (iv) will be taken to be duly given or made only when actually received by Macquarie Equities (Asia) Limited.

## 12 No Waiver

No failure by the Issuer to exercise a right or power, and no delay by the Issuer in exercising a right or power operates as a waiver of that or any other right or power.

## 13 Governing Law and Jurisdiction

These Terms and Conditions are governed by the laws of Hong Kong and the parties agree to submit to the non-exclusive jurisdiction of the courts of Hong Kong.

## 14 Translation

In the event of any inconsistency between the Chinese translation of these Terms and Conditions and the English version of these Terms and Conditions, the English version of these Terms and Conditions shall prevail.

## 15 Definitions

In this Information Memorandum unless the context otherwise requires:

**Acceptance** means acceptance by the Issuer of an Application under Condition 1.

**Applicant** means a person who lodges an Application.

**Application** means an application to the Issuer for a Bear ELI in a form satisfactory to the Issuer.

**Bear ELI** means an ELI Product specified as a Bear ELI in the relevant Term Sheet.

**Bear ELI Settlement Amount** in relation to a Bear ELI, means an amount equivalent to the following:

Nominal Value - Initial Number of Securities x (Security Value on the Fixing Date - Reference Price)

provided that the Bear ELI Settlement Amount will not be less than zero.

**Business Day** means a day other than a Saturday, Sunday, or public holiday, on which banks are open for general business in Hong Kong and the SEHK is scheduled to open for trading.

**Cash Settlement Amount** means the amount determined as the product of the Security Amount and the Security Value on the Fixing Date.

**CCASS** means the Central Clearing and Settlement System of Hong Kong.

**Closing Price** in relation to a class of securities listed on SEHK means the closing price of the relevant class of securities as published by the SEHK on the relevant Fixing Date. However if the Issuer determines, in its sole and absolute discretion, that on the Fixing Date a Market Disruption Event has occurred, then the Fixing Date shall be postponed until the first succeeding Business Day on which there is no Market Disruption Event, unless there is a Market Disruption Event on each of the five Business Days immediately following the original date that, but for the Market Disruption Event, would have been the Fixing Date; in that case, (A) that fifth Business Day shall be deemed to be the Fixing Date notwithstanding the Market Disruption Event, and (B) the Issuer shall determine the closing price on the basis of its good faith estimate of the bid price that would have prevailed on that fifth Business Day but for the Market Disruption Event.

Upon occurrence of a Market Disruption Event on the relevant Fixing Date, the Issuer will notify the ELI holders of such event in accordance with Condition 11.

**Condition** means a numbered condition in these Terms and Conditions.

**Confirmation** means a Confirmation issued under Condition 1.

**Distributor** means a stockbroker, financial adviser or bank authorised in Hong Kong and/or Macau to provide advice in relation to Bear ELIs which has been appointed as a distributor for a particular Bear ELI.

**ELI holder** means the person whose name is recorded in the Register as the holder of a Bear ELI.

**Extraordinary Event** has the same meaning as defined in the Schedule.

**Fixing Date** means the date specified as such in the Term Sheet or, if not a Business Day, the following Business Day, provided that if a Market Disruption Event occurs on any date that otherwise would have been the Fixing Date, the Fixing Date will be the Business Day determined in accordance with the definition of Closing Price. The Issuer will notify the ELI holders of the postponed Fixing Date in accordance with Condition 11.

**Fixed Price Bear ELI** means a Bear ELI where the Reference Price is a Fixed Reference Price.

**Fixed Reference Price** means the reference price specified as the Fixed Reference Price in the relevant Term Sheet.

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

**HK\$, \$ or cents** means the currency of Hong Kong.

**Initial Spot Price** means, in respect of a Security, the price specified as such in the Term Sheet.

**Issue Date** means in relation to Bear ELIs which form part of a Series, the Issue Date specified in the Term Sheet for that Series.

**Information Memorandum** means this Information Memorandum in which these Terms and Conditions are set out together with the Financial Statements (as defined in the Information Memorandum).

**Initial Number of Securities** means the number of Securities given by dividing the Nominal Value by the Reference Price, rounded down to the nearest two decimal places.

**Listed Entity** means a company or a trust listed on the SEHK, the underlying securities of which are the subject of Bear ELIs offered by the Issuer under the Terms and Conditions, or any one or more of those entities.

**Macquarie Equities (Asia) Limited or ME(A)L** means Macquarie Equities (Asia) Limited, a licensed entity registered with the Securities and Futures Commission and a trading participant of the SEHK.

**Market Disruption Event** means an event as a result of which the Closing Price of the Security is not published or available on a Business Day for reason outside the Issuer's control (such as suspension of or limitation imposed on trading on the SEHK).

**Minimum Application Amount** means the minimum amount for which an Application can be made as specified in the Term Sheet.

**Nominal Value** means the amount of Bear ELIs for which the Applicant is applying as per the Applicant's Application.

**Potential Adjustment Event** has the same meaning as defined in the Schedule.

**Purchase Price** means the amount paid by an ELI holder for a Bear ELI, being the Purchase Price Percentage specified for the relevant Security in respect of the relevant Series multiplied by the Nominal Value (rounded to three decimal places with 0.0005 being rounded up).

**Purchase Price Percentage** means in relation to a Bear ELI the percentage of the Nominal Value specified as such for the relevant Security for that Bear ELI in the relevant Term Sheet.

**Reference Price Percentage** means in relation to a Bear ELI, other than a Fixed Price Bear ELI, the percentage specified as such for the relevant Security for that Bear ELI in the relevant Term Sheet.

**Reference Price** means:

- (a) in relation to a Fixed Price Bear ELI, the reference price specified as the Fixed Reference Price for that Bear ELI in the relevant Term Sheet; and
- (b) in relation to a Bear ELI that is not a Fixed Price Bear ELI, the Closing Price of the relevant Security for that Bear ELI on the relevant Trade Date multiplied by the Reference Price Percentage (rounded to three decimal places with 0.0005 being rounded up) and notified in writing to the ELI holder in the Confirmation.

**Register** means the register established under Condition 7.

**Schedule** means the schedule to this Information Memorandum.

**Security**, in relation to a Bear ELI which forms part of a Series, on the Issue Date (i) where the Listed Entity is a company, means one share in the capital of the Listed Entity specified in the Term Sheet and to which the Bear ELI relates, and subsequently the securities or other property which a share becomes following any adjustments made in accordance with the Schedule; and (ii) where the Listed Entity is a trust, means one unit of the Listed Entity specified in the Term Sheet and to which the Bear ELI relates, and subsequently the securities or other property which a unit becomes following any adjustments made in accordance with the Schedule.

**Security Amount** means:

- (a) if the Security Value on the Fixing Date is less than or equal to the Reference Price, the number of Securities given by dividing the Nominal Value by the Security Value on the Fixing Date, rounded down to the nearest two decimal places; or
- (b) if the Security Value on the Fixing Date is greater than the Reference Price, the number of Securities given by dividing the Bear ELI Settlement Amount by the Security Value on the Fixing Date, rounded down to the nearest two decimal places.

**Security Value** on any Business Day means the value of a Security on that day calculated by reference:

- (a) where and to the extent that the Security comprises securities listed on SEHK, to the Closing Price of these securities on the relevant date;
- (b) where and to the extent that the Security comprises cash, to the amount of that cash on the relevant date; and
- (c) where and to the extent that the Security comprises property of other kinds, to the value of that property on the relevant date as determined by the Issuer in its sole and absolute discretion.

**SEHK** means The Stock Exchange of Hong Kong Limited.

**Series** means one or more Bear ELIs which are made available pursuant to the Information Memorandum, the details of which are set out in a Term Sheet which identifies the Series, the unique identification number for the Series, and which have the same Trade Date, Fixing Date and Settlement Date.

**Settlement Account** means the CCASS account specified by the ELI holder as the account for settlement of the Securities.

**Settlement Currency** means the currency specified as such in the relevant Term Sheet.

**Settlement Date** means the date specified as such in the relevant Term Sheet.

**Term Sheet** means a term sheet issued under this Information Memorandum and the applicable Product Booklet, substantially in the form set out in the applicable Product Booklet and which specifies for each Bear ELI made available pursuant to that Term Sheet at least the Trade Date, Issue Date, Fixing Date, Settlement Date, Security, Purchase Price Percentage and Reference Price Percentage or Fixed Reference Price in relation to each Bear ELI made available as part of that Series.

**Terms and Conditions** means these terms and conditions.

**Trade Date** means in relation to Bear ELIs which form part of a Series, the Trade Date specified in the Term Sheet for that Series.

## 18 Interpretation

Headings are for convenience only and do not affect interpretation.

The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural and the converse.
- (b) A gender includes all genders.
- (c) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (e) A reference to a paragraph or schedule is a reference to a paragraph of, or schedule to, these Conditions.
- (f) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (g) A reference to **writing** includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form.
- (h) A reference to **conduct** includes an omission, statement or undertaking, whether or not in writing.
- (i) Mentioning anything after **include**, **includes**, or **including** does not limit what else might be included.

## **TERMS AND CONDITIONS OF RANGE ELIS (PHYSICAL DELIVERY WITH CASH SETTLEMENT OPTION)**

*The following is the text of the terms and conditions applicable to Range ELIs. The applicable Product Booklet and Term Sheet in relation to the issue of any series of Range ELI may specify additional terms and conditions which shall, to the extent so specified or to the extent inconsistent with the relevant Terms and Conditions, replace or modify the relevant Terms and Conditions for the purpose of such series of Range ELIs. Capitalised terms used in the relevant Terms and Conditions and not otherwise defined therein shall have the meaning given to them in the applicable Product Booklet and Term Sheet.*

### **TERMS AND CONDITIONS OF RANGE ELIS (PHYSICAL DELIVERY WITH CASH SETTLEMENT OPTION)**

#### **1 Acceptance and issue of Confirmation and the Guarantee**

##### *(a) Acceptance and issue of Confirmation*

Macquarie Structured Products Asia Limited (“**Issuer**”) may in its absolute discretion accept any Application to the Issuer by issuing to the Applicant within one Business Day of the Issue Date (or such other period specified in the Term Sheet) a Confirmation setting out at least the Series, the type of ELI Product, the Securities, the Lower Reference Price, the Upper Reference Price and the Nominal Value of the Range ELI for which the Applicant has applied, and any other matters which the Issuer determines is appropriate. Any error or omission in any such Confirmation will not affect the terms or the definitiveness of the Register.

##### *(b) Guarantee*

The Issuer’s obligations under Range ELIs are unconditionally guaranteed by Macquarie Bank Limited (“**Guarantor**”) pursuant to the guarantee dated 14 November 2006 executed by the Guarantor (“**Guarantee**”). The Guarantee constitutes a direct unsecured, unsubordinated and general obligation of the Guarantor and ranks equally with all its other existing and future unsecured and unsubordinated obligations of the Guarantor, but excluding any debts for the time being preferred by law.

#### **2 Sale and Purchase of Security Amount**

On Acceptance of an Application a contract is created under which, in consideration for the payment of the Purchase Price in the Settlement Currency by the Applicant to the Issuer, the Issuer agrees to sell to the ELI holder, and under which the ELI holder agrees to purchase from the Issuer, the Security Amount for the Purchase Price and on the other conditions set out in these Terms and Conditions. The obligation of the Issuer under Range ELIs is not a deposit liability of the Issuer nor a debt of any kind, and is not guaranteed by any other party. It is an unsecured and unsubordinated contractual obligation of the Issuer which will rank equally with the Issuer’s other unsecured and unsubordinated contractual obligations and behind preferred liabilities including those mandatorily preferred by law.

#### **3 No rights in respect of Securities**

In the period between the Issue Date and the Settlement Date (the “**Investment Period**”) and subject to Condition 4 below, the ELI holder has no rights in respect of the Securities, and in the event the Issuer and/or any of its affiliates should hold any Securities during the Investment Period, all such Securities will be held solely for the account of the Issuer

and/or its affiliates as appropriate but in no circumstances whatsoever will any Securities be allocated or deemed allocated by the Issuer for the benefit of any Range ELI or for the fulfilment by the Issuer of any of its obligations under the Terms and Conditions of the Range ELIs and/or for the benefit of any ELI holder; the Issuer will have no obligations to any ELI holder whatsoever, in relation to any Securities held by the Issuer during the Investment Period; and neither the Issuer nor its agent or nominee shall be under any obligation to deliver to such ELI holder any letter, certificate, notice, circular, dividend or any other document or payment whatsoever received by the Issuer or its agent or nominee in its capacity as a holder of such Security.

#### 4 **Settlement**

On the Settlement Date the Issuer must, subject to Condition 5, deliver to the ELI holder the Security Amount provided that in respect of any Odd Lot, the Issuer may pay the cash equivalent of the Odd Lot in accordance with Condition 6. Such delivery must be effected by delivery of the Security Amount to the Settlement Account nominated by the ELI holder in the Application, or if delivery through the Settlement Account is not reasonably practicable by whatever means the Issuer reasonably determines is the most practicable in the circumstances. Where the Issuer must convert one currency into another currency, it will convert the currency at prevailing market rates as determined appropriate by the Issuer in its sole and absolute discretion.

All direct costs of an investment in Range ELIs, including both the transferor's and the transferee's stamp duty and any transaction levies that may be incurred at settlement will be borne by the Issuer.

#### 5 **Cash Election**

The Issuer may, in its sole and absolute discretion elect that in lieu of procuring delivery of the Security Amount under Condition 4, it will pay the Cash Settlement Amount in the Settlement Currency on the Settlement Date. On payment of the Cash Settlement Amount the Issuer shall have no further obligations in respect of the Range ELI. The Cash Settlement Amount shall be paid to the ELI holder by cheque in the name of the ELI holder and sent to the address of the ELI holder shown in the Register or by transfer of the Cash Settlement Amount to the cash account in the Settlement Currency of the ELI holder recorded in the Register.

#### 6 **Non-board Lots**

If the Security Amount comprises a number of Securities which does not correspond with the board lot for such Securities or an integral multiple thereof at the Settlement Date, then in respect of that number of Securities which exceeds the amount of such board lot or the relevant integral multiple thereof (the "**Excess Securities**" or "**Odd Lot**"), the Issuer may, in its sole and absolute discretion, elect, in respect of a Range ELI, by notice to the relevant ELI holder pursuant to Condition 11, on the Settlement Date to either (a) procure the delivery of the Excess Securities, or (b) pay to the relevant ELI holder a cash amount in the Settlement Currency (to be paid at the same time as the documents of title relating to Securities to which that ELI holder has become entitled in accordance with these Terms and Conditions is delivered to that ELI holder) equal to the Security Value on the Fixing Date multiplied by the number of Excess Securities. Where the Issuer must convert one currency into another currency, it will convert the currency at prevailing market rates as determined appropriate by the Issuer in its sole and absolute discretion.

## 7 Register

The Register of ELI holders will be maintained outside of Hong Kong and the Issuer will, upon issuance of a Confirmation referred to in Condition 1 enter, or cause to be entered, in the Register in respect of each ELI holder:

- (a) the ELI holder's name, address and banking details;
- (b) details of the Settlement Account;
- (c) details of the Range ELI held by that ELI holder, including the number of Range ELIs of each Series, the Securities, the Nominal Value of those Range ELIs and any other particulars which it thinks proper; and
- (d) details of each transfer of Range ELIs made with the consent of the Issuer pursuant to Condition 10(b).

In the absence of manifest error the Register so kept and maintained is definitive of the details of each Range ELI and other particulars recorded in it and ELI holders may not rely upon any contrary details in the Confirmation or any contrary representation from the Issuer or any of its employees, servants or agents as to the terms of Range ELIs.

On written request, the Issuer will provide to an ELI holder free of charge a copy of an extract of the Register detailing such ELI holder's Range ELIs. The copy will be sent to the ELI holder in accordance with Condition 11 as soon as practicable following receipt of a request.

## 8 Adjustments

Where a Potential Adjustment Event specified in the Schedule occurs in respect of Securities on or after the Issue Date of a Range ELI then the terms of the Range ELI may be varied in accordance with the Schedule. The Issuer will notify ELI holders of such Potential Adjustment Event and such variation (if any) in accordance with Condition 11.

## 9 Extraordinary Events

Where an Extraordinary Event specified in the Schedule occurs in respect of the Securities on or after the Issue Date of a Range ELI, then the Issuer will notify ELI holders of such Extraordinary Event in accordance with Condition 11. The Issuer may take such actions as set out in the Schedule upon occurrence of an Extraordinary Event. The Issuer will notify the ELI holders in accordance with Condition 11 of any such action taken by it.

## 10 Assignments

- (a) The Issuer may assign, transfer or novate any of its rights or obligations in respect of any Range ELI to the Guarantor. The Issuer will notify the ELI holders upon such assignment, transfer or novation in accordance with Condition 11.
- (b) The ELI holder may not novate, assign or transfer any of its rights or obligations in respect of any Range ELI without the prior written consent of the Issuer.

## 11 Notices to ELI holders

- (a) All notices which may be given by the Issuer to the ELI holder under these Terms and Conditions must be made in writing (including without limitation in the form of electronic records) and:
- (i) in the case of ELI holders whose address as shown in the Register is in Hong Kong, notice will be taken to be duly given or made at 9:00 am on the third Business Day after being properly sent by ordinary mail from Hong Kong to the address of the ELI holder shown in the Register, or if given by other means or if received earlier, at the time of actual receipt by or on behalf of the ELI holder; and
  - (ii) in the case of ELI holders whose address as shown in the Register is outside Hong Kong, notice will be taken to be duly given or made at 9:00 am on the third Business Day after being properly sent by air mail (where available, or otherwise by the best generally available mail service to the appropriate destination from Hong Kong) to the address of the ELI holder shown in the Register, or if sent by other means or if received earlier, at the time of actual receipt by or on behalf of the ELI holder.
- (b) All notices which may be given by the ELI holder to the Issuer under these Terms and Conditions:
- (i) must be in writing;
  - (ii) must be signed by the ELI holder;
  - (iii) must be delivered to the address of Macquarie Equities (Asia) Limited as shown in this Information Memorandum or such alternative address as notified to ELI holders from time to time; and
  - (iv) will be taken to be duly given or made only when actually received by Macquarie Equities (Asia) Limited.

## 12 No Waiver

No failure by the Issuer to exercise a right or power, and no delay by the Issuer in exercising a right or power operates as a waiver of that or any other right or power.

## 13 Governing Law and Jurisdiction

These Terms and Conditions are governed by the laws of Hong Kong and the parties agree to submit to the non-exclusive jurisdiction of the courts of Hong Kong.

## 14 Translation

In the event of any inconsistency between the Chinese translation of these Terms and Conditions and the English version of these Terms and Conditions, the English version of these Terms and Conditions shall prevail.

## 15 Definitions

In this Information Memorandum unless the context otherwise requires:

**Acceptance** means acceptance by the Issuer of an Application under Condition 1.

**Applicant** means a person who lodges an Application.

**Application** means an application to the Issuer for a Range ELI in a form satisfactory to the Issuer.

**Business Day** means a day other than a Saturday, Sunday, or public holiday, on which banks are open for general business in Hong Kong and the SEHK is scheduled to open for trading.

**Cash Settlement Amount** means the amount determined as the product of the Security Amount and the Security Value on the Fixing Date.

**CCASS** means the Central Clearing and Settlement System of Hong Kong.

**Closing Price** in relation to a class of securities listed on SEHK means the closing price of the relevant class of securities as published by the SEHK on the relevant Fixing Date. However if the Issuer determines, in its sole and absolute discretion, that on the Fixing Date a Market Disruption Event has occurred, then the Fixing Date shall be postponed until the first succeeding Business Day on which there is no Market Disruption Event, unless there is a Market Disruption Event on each of the five Business Days immediately following the original date that, but for the Market Disruption Event, would have been the Fixing Date; in that case, (A) that fifth Business Day shall be deemed to be the Fixing Date notwithstanding the Market Disruption Event, and (B) the Issuer shall determine the closing price on the basis of its good faith estimate of the bid price that would have prevailed on that fifth Business Day but for the Market Disruption Event.

Upon occurrence of a Market Disruption Event on the relevant Fixing Date, the Issuer will notify the ELI holders of such event in accordance with Condition 11.

**Condition** means a numbered condition in these Terms and Conditions.

**Confirmation** means a Confirmation issued under Condition 1.

**Distributor** means a stockbroker, financial adviser or bank authorised in Hong Kong and/or Macau to provide advice in relation to Range ELIs which has been appointed as a distributor for a particular Range ELI.

**ELI holder** means the person whose name is recorded in the Register as the holder of a Range ELI.

**Extraordinary Event** has the same meaning as defined in the Schedule.

**Fixing Date** means the date specified as such in the Term Sheet or, if not a Business Day, the following Business Day, provided that if a Market Disruption Event occurs on any date that otherwise would have been the Fixing Date, the Fixing Date will be the Business Day determined in accordance with the definition of Closing Price. The Issuer will notify the ELI holders of postponed Fixing Date in accordance with Condition 11.

**Fixed Lower Reference Price** means the Fixed Lower Reference Price specified in the relevant Term Sheet.

**Fixed Price Range ELI** means a Range ELI where the Upper Reference Price and the Lower Reference Price is a Fixed Upper Reference Price and a Fixed Lower Reference Price.

**Fixed Upper Reference Price** means the Fixed Upper Reference Price specified in the relevant Term Sheet.

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

**HK\$, \$ or cents** means the currency of Hong Kong.

**Initial Number of Securities** means the number of Securities given by dividing the Nominal Value by the Lower Reference Price, rounded down to the nearest two decimal places.

**Initial Spot Price** means, in respect of a Security, the price specified as such in the Term Sheet.

**Issue Date** means in relation to Range ELIs which form part of a Series, the Issue Date specified in the Term Sheet for that Series.

**Information Memorandum** means this Information Memorandum in which these Terms and Conditions are set out together with the Financial Statements (as defined in the Information Memorandum).

**Listed Entity** means a company or a trust listed on the SEHK, the underlying securities of which are the subject of Range ELIs offered by the Issuer under the Terms and Conditions, or any one or more of those entities.

**Lower Reference Price** means:

- (a) in relation to a Fixed Price Range ELI, the Fixed Lower Reference Price specified for that Range ELI in the relevant Term Sheet; and
- (b) in relation to a Range ELI that is not a Fixed Price ELI, the Closing Price of the relevant Security for that Range ELI on the relevant Trade Date multiplied by the Lower Reference Price Percentage (rounded to three decimal places with 0.0005 being rounded up).

**Lower Reference Price Percentage** means in relation to a Range ELI, other than a Fixed Price Range ELI, the percentage specified as such for the relevant Security for that Range ELI in the relevant Term Sheet.

**Macquarie Equities (Asia) Limited or ME(A)L** means Macquarie Equities (Asia) Limited, a licensed entity registered with the Securities and Futures Commission and a trading participant of the SEHK.

**Market Disruption Event** means an event as a result of which the Closing Price of the Security is not published or available on a Business Day for reason outside the Issuer's control (such as suspension of or limitation imposed on trading on the SEHK).

**Minimum Application Amount** means the minimum amount for which an Application can be made as specified in the Term Sheet.

**Nominal Value** means the amount of Range ELIs for which the Applicant is applying as per the Applicant's Application.

**Potential Adjustment Event** has the same meaning as defined in the Schedule.

**Purchase Price** means the amount paid by an ELI holder for a Range ELI, being the Purchase Price Percentage specified for the relevant Security in respect of the relevant Series multiplied by the Nominal Value (rounded to three decimal places with 0.0005 being rounded up).

**Purchase Price Percentage** means in relation to a Range ELI the percentage of the Nominal Value specified as such for the relevant Security for that Range ELI in the relevant Term Sheet.

**Range ELI** means an ELI Product specified as a Range ELI in the relevant Term Sheet.

**Register** means the register established under Condition 7.

**Schedule** means the schedule to this Information Memorandum.

**Security**, in relation to a Range ELI which forms part of a Series, on the Issue Date (i) where the Listed Entity is a company, means one share in the capital of the Listed Entity specified in the Term Sheet and to which the Range ELI relates, and subsequently the securities or other property which a share becomes following any adjustments made in accordance with the Schedule; and (ii) where the Listed Entity is a trust, means one unit of the Listed Entity specified in the Term Sheet and to which the Range ELI relates, and subsequently the securities or other property which a unit becomes following any adjustments made in accordance with the Schedule.

**Security Amount** means:

- (a) if the Security Value on the Fixing Date is less than or equal to the Upper Reference Price and greater than or equal to the Lower Reference Price, the number of Securities given by dividing the Nominal Value by the Security Value on the Fixing Date, rounded down to the nearest two decimal places;
- (b) if the Security Value on the Fixing Date is greater than the Upper Reference Price, the number of Securities given by dividing the Upper Reference ELI Settlement Amount by the Security Value on the Fixing Date, rounded down to the nearest two decimal places; and
- (c) if the Security Value on the Fixing Date is less than the Lower Reference Price, the Initial Number of Securities.

**Security Value** on any Business Day means the value of a Security on that day calculated by reference:

- (a) where and to the extent that the Security comprises securities listed on SEHK, to the Closing Price of these securities on the relevant date;
- (b) where and to the extent that the Security comprises cash, to the amount of that cash on the relevant date; and
- (c) where and to the extent that the Security comprises property of other kinds, to the value of that property on the relevant date as determined by the Issuer in its sole and absolute discretion.

**SEHK** means The Stock Exchange of Hong Kong Limited.

**Series** means one or more Range ELIs which are made available pursuant to the Information Memorandum, the details of which are set out in a Term Sheet which identifies the Series, the unique identification number for the Series, and which have the same Trade Date, Fixing Date and Settlement Date.

**Settlement Account** means the CCASS account specified by the ELI holder as the account for settlement of the Securities.

**Settlement Currency** means the currency specified as such in the relevant Term Sheet.

**Settlement Date** means the date specified as such in the relevant Term Sheet.

**Term Sheet** means a term sheet issued under this Information Memorandum and the applicable Product Booklet, substantially in the form set out in the applicable Product Booklet and which specifies for each Range ELI made available pursuant to that Term Sheet at least the Trade Date, Issue Date, Fixing Date, Settlement Date, Security, Purchase Price Percentage, Lower Reference Price Percentage and Upper Reference Price Percentage or Fixed Lower Reference Price and Fixed Upper Reference Price in relation to each Range ELI made available as part of that Series.

**Terms and Conditions** means these terms and conditions.

**Trade Date** means in relation to Range ELIs which form part of a Series, the Trade Date specified in the Term Sheet for that Series.

**Upper Reference Price** means:

- (a) in relation to a Fixed Price Range ELI, the Fixed Upper Reference Price specified for that Range ELI in the relevant Term Sheet; and
- (b) in relation to a Range ELI that is not a Fixed Price Range ELI, which forms part of a Series, the Closing Price of the relevant Security for that Range ELI on the Trade Date in relation to that Series multiplied by the Upper Reference Price Percentage (rounded to three decimal places with 0.0005 being rounded up).

**Upper Reference Price Percentage** means in relation to a Range ELI which forms part of a Series, other than a Fixed Price Range ELI, the percentage specified as such for the relevant Security for that Range ELI in the Term Sheet for that Series.

**Upper Reference ELI Settlement Amount** means an amount equivalent to the following:

Nominal Value - Initial Number of Securities x (Security Value on the Fixing Date - Upper Reference Price)

provided that the Upper Reference ELI Settlement Amount will not be less than zero.

## 18 Interpretation

Headings are for convenience only and do not affect interpretation.

The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural and the converse.
- (b) A gender includes all genders.
- (c) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (e) A reference to a paragraph or schedule is a reference to a paragraph of, or schedule to, these Conditions.
- (f) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.

- (g) A reference to **writing** includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form.
- (h) A reference to **conduct** includes an omission, statement or undertaking, whether or not in writing.
- (i) Mentioning anything after **include, includes, or including** does not limit what else might be included.

## TERMS AND CONDITIONS OF KODA ELIS (PHYSICAL DELIVERY)

*The following is the text of the terms and conditions applicable to KODA ELIs. The applicable Product Booklet and the relevant Term Sheet in relation to the issue of any series of KODA ELI may specify additional terms and conditions which shall, to the extent so specified or to the extent inconsistent with the relevant Terms and Conditions, replace or modify the relevant Terms and Conditions for the purpose of such series of KODA ELIs. Capitalised terms used in the relevant Terms and Conditions and not otherwise defined therein shall have the meaning given to them in the applicable Product Booklet and the relevant Term Sheet.*

### TERMS AND CONDITIONS OF KODA ELIS (PHYSICAL DELIVERY)

#### 1 Acceptance and issue of Confirmation and the Guarantee

##### (a) *Acceptance and issue of Confirmation*

Macquarie Structured Products Asia Limited (“**Issuer**”) may in its absolute discretion accept any Application to the Issuer by issuing to the Applicant within one Business Day of the Issue Date (or such other period specified in the Term Sheet) a Confirmation setting out at least the Series, the type of the ELI Products, the Securities, the Purchase Price, the Knock-out Price, the Reference Price of the ELI Product for which the Applicant has applied, and any other matters which the Issuer determines is appropriate. Any error or omission in any such Confirmation will not affect the terms or the definitiveness of the Register.

##### (b) *Guarantee*

The Issuer’s obligations under KODA ELIs are unconditionally guaranteed by Macquarie Bank Limited (“**Guarantor**”) pursuant to the guarantee dated 14 November 2006 executed by the Guarantor (“**Guarantee**”). The Guarantee constitutes a direct unsecured, unsubordinated and general obligation of the Guarantor and ranks equally with all its other existing and future unsecured and unsubordinated obligations of the Guarantor, including those in respect of deposits, but excluding any debts for the time being preferred by law.

#### 2 Sale and Purchase of Securities

On Acceptance of an Application a contract is created under which, in consideration for the payment of the Purchase Price in the Settlement Currency by the Applicant to the Issuer, the Issuer agrees to sell to the ELI holder, and under which the ELI holder agrees to purchase from the Issuer, the Total Number of Securities for the Purchase Price and on the other conditions set out in these Terms and Conditions. The obligation of the Issuer under a KODA ELI is not a deposit liability of the Issuer nor a debt of any kind, and is not guaranteed by any other party other than the Guarantor under the Guarantee. It is an unsecured and unsubordinated contractual obligation of the Issuer which will rank equally with the Issuer’s other unsecured and unsubordinated contractual obligations and behind preferred liabilities including those mandatorily preferred by law.

#### 3 No rights in respect of Securities

During the period (“**Investment Period**”) from the First Accumulation Date to the earlier of (i) the Settlement Date immediately following the Final Accumulation Date; and (ii) the Early Settlement Date, as the case may be, and subject to Condition 4 below, the ELI holder has no rights in respect of the relevant Period Number of Securities, and in the

event the Issuer and/or any of its affiliates should hold any Securities during the Investment Period, all such Securities will be held solely for the account of the Issuer and/or its affiliates as appropriate but in no circumstances whatsoever will any Securities be allocated or deemed allocated by the Issuer for the benefit of any KODA ELI or for the fulfilment by the Issuer of any of its obligations under the Terms and Conditions of the KODA ELI and/or for the benefit of any ELI holder; the Issuer will have no obligations to any ELI holder whatsoever, in relation to any Securities held by the Issuer; and neither the Issuer nor its agent or nominee shall be under any obligation to deliver to such ELI holder any letter, certificate, notice, circular, dividend or any other document or payment whatsoever received by the Issuer or its agent or nominee in its capacity as a holder of such Security.

#### 4 **Settlement**

On each Settlement Date or the Early Settlement Date (as the case may be) the Issuer must, subject to Condition 5, deliver to the ELI holder the relevant Period Number of Securities and/or Early Settlement Securities (as the case may be), together with the Early Settlement Cash Amount (if applicable). Such delivery must be effected by delivery of the Period Number of Securities and/or Early Settlement Securities (as the case may be), together with the Early Settlement Cash Amount (if applicable) to the Settlement Account nominated by the ELI holder in the Application, or if delivery through the Settlement Account is not reasonably practicable by whatever means the Issuer reasonably determines is the most practicable in the circumstances. Where the Issuer must convert one currency into another currency, it will convert the currency at prevailing market rates as determined appropriate by the Issuer in its sole and absolute discretion.

All direct costs of an investment in KODA ELIs, including both the transferor's and the transferee's stamp duty and any transaction levies that may be incurred at settlement will be borne by the Issuer.

#### 5 **Non-board Lots**

If a Period Number of Securities or the Early Settlement Securities comprises a number of Securities which does not correspond with the board lot for such Securities or an integral multiple thereof on the Settlement Date or the Early Settlement Date (as the case may be) and Odd Lot Cash Settlement is specified in the relevant confirmation as applicable for that KODA ELI then in respect of that number of Securities which exceeds the amount of such board lot or the relevant integral multiple thereof (the "**Excess Securities**" or "**Odd Lot**"), the Issuer may, in its sole and absolute discretion, elect, in respect of a KODA ELI, by notice to the relevant ELI holder pursuant to Condition 11, on the Settlement Date or the Early Settlement Date(s) (as the case may be) to either (a) procure the delivery of the Excess Securities, or (b) pay to the relevant ELI holder a cash amount in the Settlement Currency (to be paid at the same time as the documents of title relating to Securities to which that ELI holder has become entitled in accordance with these Terms and Conditions is delivered to that ELI holder) equal to the Security Value on the last Business Day of the relevant Accumulation Period or, in the case where the Knock-out Event occurs (other than where a Knock-out Event occurs during a Protected Period), the Knock-out Date (as the case may be) multiplied by the number of Excess Securities. Where the Issuer must convert one currency into another currency, it will convert the currency at prevailing market rates as determined appropriate by the Issuer in its sole and absolute discretion.

## 6 **Knock-out Feature**

If a Knock-out Event occurs, then the Issuer will:

- (a) notify each ELI holder, within one Business Day following the occurrence of the Knock-out Event, of the Knock-out Date, the Early Settlement Securities, the Early Settlement Cash Amount and the applicable Early Settlement Date(s); and
- (b) settle each KODA ELI on the applicable Early Settlement Date(s) by:
  - (i) procuring the delivery of the Early Settlement Securities to the ELI holder; and
  - (ii) payment of the Early Settlement Cash Amount to the ELI holder, to the Settlement Account in accordance with Condition 4.

Upon delivery of the Period Number of Securities accumulated in respect of each of the Accumulation Periods prior to the Knock-out Date and delivery of the Early Settlement Securities (and the Early Settlement Cash Amount, if applicable) to the Settlement Account in accordance with these Terms and Conditions, the Issuer shall have no further obligations in respect of such KODA ELI.

## 7 **Register**

The Register of ELI holders will be maintained outside of Hong Kong and the Issuer will, upon issuance of a Confirmation referred to in Condition 1 enter, or cause to be entered, in the Register in respect of each ELI holder:

- (a) the ELI holder's name, address and banking details;
- (b) details of the Settlement Account;
- (c) details of the KODA ELI held by that ELI holder, including the number of KODA ELIs of each Series, the Securities, the Purchase Price of those KODA ELIs and any other particulars which it thinks proper; and
- (d) details of each transfer of KODA ELIs made with the consent of the Issuer pursuant to Condition 10(b).

In the absence of manifest error the Register so kept and maintained is definitive of the details of each KODA ELI and other particulars recorded in it and ELI holders may not rely upon any contrary details in the Confirmation or any contrary representation from the Issuer or any of its employees, servants or agents as to the terms of KODA ELIs.

On written request, the Issuer will provide to an ELI holder free of charge a copy of an extract of the Register detailing such ELI holder's KODA ELIs. The copy will be sent to the ELI holder in accordance with Condition 11 as soon as practicable following receipt of a request.

## 8 **Adjustments**

Where a Potential Adjustment Event specified in the Schedule occurs in respect of the Securities on or after the Issue Date of a KODA ELI then the terms of the KODA ELI may be varied in accordance with the Schedule. The Issuer will notify ELI holders of such Potential Adjustment Event and such variation (if any) in accordance with Condition 11.

## 9 **Extraordinary Events**

Where an Extraordinary Event specified in the Schedule occurs in respect of the Securities on or after the Issue Date of a KODA ELI, then the Issuer will notify ELI holders of such Extraordinary Event in accordance with Condition 11. The Issuer may take such actions as set out in the Schedule upon occurrence of an Extraordinary Event. The Issuer will notify the ELI holders in accordance with Condition 11 of any such action taken by it.

## 10 **Assignments**

- (a) The Issuer may assign, transfer or novate any of its rights or obligations in respect of a KODA ELI to the Guarantor. The Issuer will notify the ELI holders upon such assignment, transfer or novation in accordance with Condition 11.
- (b) The ELI holder may not novate, assign or transfer any of its rights or obligations in respect of a KODA ELI without the prior written consent of the Issuer.

## 11 **Notices to ELI holders**

- (a) All notices which may be given by the Issuer to the ELI holder under these Terms and Conditions must be made in writing (including without limitation in the form of electronic records) and:
  - (i) in the case of ELI holders whose address as shown in the Register is in Hong Kong, notice will be taken to be duly given or made at 9:00 am on the third Business Day after being properly sent by ordinary mail from Hong Kong to the address of the ELI holder shown in the Register, or if given by other means or if received earlier, at the time of actual receipt by or on behalf of the ELI holder;
  - (ii) in the case of ELI holders whose address as shown in the Register is outside Hong Kong, notice will be taken to be duly given or made at 9:00 am on the third Business Day after being properly sent by air mail (where available, or otherwise by the best generally available mail service to the appropriate destination from Hong Kong) to the address of the ELI holder shown in the Register, or if sent by other means or if received earlier, at the time of actual receipt by or on behalf of the ELI holder.
- (b) All notices which may be given by the ELI holder to the Issuer under these Terms and Conditions:
  - (i) must be in writing;
  - (ii) must be signed by the ELI holder;
  - (iii) must be delivered to the address of Macquarie Equities (Asia) Limited as shown in this Information Memorandum or such alternative address as notified to ELI holders from time to time;
  - (iv) will be taken to be duly given or made only when actually received by Macquarie Equities (Asia) Limited.

## 12 **No Waiver**

No failure by the Issuer to exercise a right or power, and no delay by the Issuer in exercising a right or power operates as a waiver of that or any other right or power.

### 13 **Governing Law and Jurisdiction**

These Terms and Conditions are governed by the laws of Hong Kong and the parties agree to submit to the non-exclusive jurisdiction of the courts of Hong Kong.

### 14 **Translation**

In the event of any inconsistency between the Chinese translation of these Terms and Conditions and the English version of these Terms and Conditions, the English version of these Terms and Conditions shall prevail.

### 15 **Definitions**

In this Information Memorandum unless the context otherwise requires:

**Acceptance** means acceptance by the Issuer of an Application under Condition 1.

**Accumulation Period** means each Accumulation Period specified in the Term Sheet for a KODA ELI.

**Adjustment Event** has the same meaning as defined in the Schedule.

**Applicant** means a person who lodges an Application.

**Application** means an application to the Issuer for a KODA ELI in a form satisfactory to the Issuer.

**Business Day** means a day other than a Saturday, Sunday, or public holiday, on which banks are open for general business in Hong Kong and the SEHK is scheduled to open for trading.

**CCASS** means the Central Clearing and Settlement System of Hong Kong.

**Closing Price** in relation to a class of securities listed on SEHK means the closing price of the relevant class of securities as published by the SEHK on the relevant date ("**Determination Date**"). However if the Issuer determines, in its sole and absolute discretion, that on a Determination Date a Market Disruption Event has occurred, then the Determination Date shall be postponed until the first succeeding Business Day on which there is no Market Disruption Event, unless there is a Market Disruption Event on each of the five Business Days immediately following the original date that, but for the Market Disruption Event, would have been the Determination Date; in that case, (A) that fifth Business Day shall be deemed to be the Determination Date notwithstanding the Market Disruption Event, and (B) the Issuer shall determine the closing price on the basis of its good faith estimate of the bid price that would have prevailed on that fifth Business Day but for the Market Disruption Event.

Upon occurrence of a Market Disruption Event on the Determination Date, the Issuer will notify the ELI holders of such event in accordance with Condition 11.

**Condition** means a numbered condition in these Terms and Conditions.

**Confirmation** means a Confirmation issued under Condition 1.

**Distributor** means a stockbroker, financial adviser or bank authorised in Hong Kong and/or Macau to provide advice in relation to KODA ELIs which has been appointed as a distributor for the KODA ELI.

**Early Settlement Cash Amount**, means an amount calculated as:

Purchase Price - (Number of Securities per Day x Total Number of Accumulation Days x Reference Price).

**Early Settlement Date** means:

- (a) if the Knock-out Event occurs during a Protected Period:
  - (i) in respect of the Period Number of Securities for each of the Accumulation Periods during the Protected Period, the relevant Settlement Date(s); and
  - (ii) in respect of the Early Settlement Cash Amount, the Settlement Date immediately following the Protected Date; and
- (b) otherwise the date which is two Business Days immediately following the Knock-out Date or such other date as specified in the relevant Term Sheet.

**Early Settlement Securities**, means:

- (a) if the Knock-out Event occurs during a Protected Period, the Period Number of Securities for the Accumulation Period in which the Knock-out Event occurs and each subsequent Accumulation Period up to, and including, the Protected Date; and
- (b) otherwise, the Number of Securities per Day multiplied by the number of Business Days from the first day of the Accumulation Period during which the Knock-out Event occurs up to, but excluding, the Knock-out Date.

**ELI holder** means the person whose name is recorded in the Register as the investor in a KODA ELI.

**Extraordinary Event** has the same meaning as defined in the Schedule.

**Final Accumulation Date** means the final Business Day in the final Accumulation Period.

**First Accumulation Date** means the first Business Day in the first Accumulation Period.

**Fixed Price KODA ELI** means a KODA ELI where the Reference Price is a Fixed Reference Price and the Knock-out Price is a Fixed Knock-out Price.

**Fixed Knock-out Price** means the knock-out price specified as the Fixed Knock-out Price in the relevant Term Sheet.

**Fixed Reference Price** means the reference price specified as the Fixed Reference Price in the relevant Term Sheet.

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

**HK\$, \$ or cents** means the currency of Hong Kong.

**Initial Spot Price** means, in respect of a Security, the price specified as such in the Term Sheet.

**Issue Date** means in relation to KODA ELIs which form part of a Series, the Issue Date specified in the Term Sheet for that Series.

**Information Memorandum** means this Information Memorandum in which the Terms and Conditions are set out together with the Financial Statements (as defined in the Information Memorandum).

**Knock-out Event** occurs if on any Business Day during the Knock-out Period, the Security Value of one Security is equal to or greater than the Knock-out Price.

**Knock-out Date** means the Business Day on which a Knock-out Event occurs.

**Knock-out Period** means the period from, and including, the First Accumulation Date to, and including, the Final Accumulation Date.

**Knock-out Price** means:

- (a) in relation to a Fixed Price KODA ELI, the Fixed Knock-out Price specified for that KODA ELI on the relevant Term Sheet; and
- (b) in relation to a KODA ELI that is not a Fixed Price KODA ELI, the Closing Price of one Security to which that KODA ELI relates on the relevant Trade Date multiplied by the Knock-out Price Percentage (rounded to three decimal places with 0.0005 being rounded up).

**Knock-out Price Percentage** means in relation to a KODA ELI other than a Fixed Price KODA ELI, the percentage specified as such for the relevant Security for that KODA ELI in the relevant Term Sheet.

**KODA ELI** means an ELI Product specified as a KODA ELI in the relevant Term Sheet.

**Listed Entity** means a company or a trust listed on the SEHK, the underlying securities of which are the subject of KODA ELIs offered by the Issuer under the Terms and Conditions, or any one or more of those entities.

**Macquarie Equities (Asia) Limited** or **ME(A)L** means Macquarie Equities (Asia) Limited, a licensed entity registered with the Securities and Futures Commission and a trading participant of the SEHK.

**Market Disruption Event** means an event as a result of which the Closing Price of the Security is not published or available on a Business Day for reason outside the Issuer's control (such as suspension of or limitation imposed on trading on the SEHK).

**Minimum Application Amount** means the minimum amount for which an Application can be made as specified in the Term Sheet.

**Number of Accumulation Days** in respect of an Accumulation Period, means the number of Business Days from, and including, the first day of that Accumulation Period to, but excluding, the Knock-out Date.

**Number of Securities per Day** means the number of Securities per day specified in the Term Sheet for that KODA ELI.

**Period Number of Securities** in respect of each Accumulation Period of a KODA ELI means the number of Securities specified as the Period Number of Securities for that Accumulation Period in the Term Sheet for that KODA ELI.

**Potential Adjustment Event** has the same meaning as defined in the Schedule.

**Protected Date** means the date specified as the Protected Date in the Term Sheet for a KODA ELI, and if such date is not the final Business Day of an Accumulation Period, the date that is the final Business Day of the Accumulation Period in which the Protected Date would otherwise fall.

**Protected Period** means the period from, and including, the First Accumulation Date to, and including, the Protected Date.

**Purchase Price** means the amount paid by an ELI holder for a KODA ELI, being the amount calculated as the product of the Reference Price and the Total Number of Securities.

**Reference Price Percentage** means in relation to a KODA ELI, other than a Fixed Price KODA ELI, the percentage specified as such for the relevant Security for that KODA ELI in the relevant Term Sheet.

**Reference Price** means:

- (a) in relation to a Fixed Price KODA ELI, the reference price specified as the Fixed Reference Price for that KODA ELI on the relevant Term Sheet; and
- (b) in relation to a KODA ELI that is not a Fixed Price KODA ELI, the Closing Price of the relevant Security for that KODA ELI on the relevant Trade Date multiplied by the Reference Price Percentage notified in writing to the ELI holder in the Confirmation (rounded to three decimal places with 0.0005 being rounded up).

**Register** means the register established under Condition 7.

**Schedule** means the schedule to these Terms and Conditions.

**Security**, in relation to a KODA ELI which forms part of a Series, on the Issue Date (i) where the Listed Entity is a company, means one share in the capital of the Listed Entity specified in the Term Sheet and to which the KODA ELI relates, and subsequently the securities or other property which a share becomes following any adjustments made in accordance with the Schedule; and (ii) where the Listed Entity is a trust, means one unit of the Listed Entity specified in the Term Sheet and to which the KODA ELI relates, and subsequently the securities or other property which a unit becomes following any adjustments made in accordance with the Schedule.

**Security Value** on any Business Day means the value of a Security on that day calculated by reference:

- (a) where and to the extent that the Security comprises securities listed on SEHK, to the Closing Price of these securities on the relevant date;
- (b) where and to the extent that the Security comprises cash, to the amount of that cash on the relevant date; and
- (c) where and to the extent that the Security comprises property of other kinds, to the value of that property on the relevant date as determined by the Issuer in its sole and absolute discretion.

**SEHK** means The Stock Exchange of Hong Kong Limited.

**Series** means one or more KODA ELIs which are made available pursuant to the Information Memorandum, the details of which are set out in a Term Sheet which identifies the Series, the unique identification number for the Series, and which have the same Trade Date, Settlement Dates and Accumulation Periods.

**Settlement Account** means the CCASS account specified by the ELI holder as the account for settlement of the Securities.

**Settlement Currency** means the currency specified as such in the relevant Term Sheet.

**Settlement Date** means each day specified as a Settlement Date in the Term Sheet for that KODA ELI, provided that if that day is not a Business Day, the Settlement Date shall be the immediately following Business Day.

**Term Sheet** means a term sheet issued under this Information Memorandum and the applicable Product Booklet, substantially in the form set out in the applicable Product Booklet and which specifies for each KODA ELI made available pursuant to that Term Sheet at least the Trade Date, Issue Date, the Settlement Date(s), Securities, the Reference Price Percentage or Fixed Reference Price, Protected Date, Fixed Knock-out Price or Knock-out Price Percentage, Number of Securities per Day, Total Number of Securities and Accumulation Periods in relation to each KODA ELI made available as part of that Series.

**Terms and Conditions** means these terms and conditions.

**Total Number of Securities** means the amount specified as the Total Number of Securities in the Term Sheet for that KODA ELI.

**Total Number of Accumulation Days** means:

- (a) if the Knock-out Event occurs during a Protected Period, the number of Business Days from, and including, the First Accumulation Date to, and including, the Protected Date; or
- (b) otherwise, the number of Business Days from and including the First Accumulation Date to, but excluding, the Knock-out Date.

**Trade Date** means in relation to KODA ELIs which form part of a Series, the Trade Date specified in the Term Sheet for that Series.

## 18 Interpretation

Headings are for convenience only and do not affect interpretation.

The following rules apply unless the context requires otherwise:

- (a) The singular includes the plural and the converse.
- (b) A gender includes all genders.
- (c) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.

- (e) A reference to a paragraph or schedule is a reference to a paragraph of, or schedule to, these Conditions.
- (f) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (g) A reference to **writing** includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form.
- (h) A reference to **conduct** includes an omission, statement or undertaking, whether or not in writing.
- (i) Mentioning anything after **include**, **includes**, or **including** does not limit what else might be included.

## SCHEDULE TO THE TERMS AND CONDITIONS OF ELI PRODUCTS

### 1 Adjustments

Following each Potential Adjustment Event (as defined below), the Issuer shall, in its sole and absolute discretion, determine the appropriate adjustment, if any, to be made to any of the terms of the ELI Products to account for the diluting or concentrative effect of the Potential Adjustment Event or otherwise necessary to preserve the economic equivalent of the rights of the ELI holders under the ELI Products immediately prior to that Potential Adjustment Event, such adjustment to be effective as of the date determined by the Issuer.

For the purposes of these Terms and Conditions, “**Potential Adjustment Event**” means the declaration by a Listed Entity of any of the following:

- (i) a subdivision, consolidation or reclassification of its Securities (unless it is an Extraordinary Event (as defined below)) or a free distribution of its Securities to existing holders by way of bonus, capitalisation or similar issue; or
- (ii) a distribution to existing holders of its Securities of (a) additional Securities or (b) other securities, capital or securities granting the right to payment of dividends and/or the proceeds of liquidation of the Listed Entity, equally or proportionately with such payments to holders of the Securities or (c) any other type of securities, rights or warrants or other assets, in any case for payment (in cash or otherwise) at less than the prevailing market price as determined by the Issuer; or
- (iii) a bonus issue of its Securities credited as fully paid to the holders of Securities generally by way of capitalisation of profits or reserves (other than pursuant to a scrip dividend or similar scheme for the time being operated by the Listed Entity or otherwise in lieu of a cash dividend and without any payment or other consideration being made or given by such holders); or
- (iv) an extraordinary dividend in respect of its Securities; or
- (v) a call in respect of its Securities that are not fully paid; or
- (vi) a repurchase by the Listed Entity (where the Listed Entity is a company) or a redemption by the manager or trustee (as the case may be) of the Listed Entity (where the Listed Entity is a trust) of its Securities, whether out of profits or capital and whether the consideration for such repurchase or redemption is cash, new shares, securities or otherwise; or
- (vii) any event in respect of the Securities analogous to any of the foregoing events or otherwise having, in the opinion of the Issuer, a diluting or concentrative effect of the market value of the Securities.

In determining whether an adjustment should be made as a result of the occurrence of a Potential Adjustment Event, if options contracts or futures contracts on the Securities are traded on the SEHK or any other exchange, the Issuer may have regard to, but shall not be bound by, any adjustment to the terms of the relevant options contract or futures contract made and announced by the SEHK or any other exchange.

## 2 Extraordinary Events

If any of the following events (each an “**Extraordinary Event**”) occurs on or prior to the Fixing Date, a Call Date or a Distribution Valuation Date or a Business Day during a Distribution Period (in respect of Callable ELIs) or during an Accumulation Period (in respect of KODA ELIs) in respect of a Listed Entity:

- (i) its Securities are reclassified or changed (other than a change in par value, if any, as a result of a subdivision or combination);
- (ii) the Listed Entity consolidates, amalgamates or merges with or into another entity (other than a consolidation, amalgamation or merger following which the Listed Entity is the surviving entity);
- (iii) its Securities are the subject of a takeover offer that results in a transfer of or an irrevocable commitment to transfer all the Securities (other than Securities owned or controlled by the offeror);
- (iv) by reason of the adoption of or any change in any applicable law, the assets of the Listed Entity, or all of its outstanding Securities, are nationalised, expropriated or otherwise required to be transferred to any government, governmental agency or authority;
- (v) where the Listed Entity is a company, in the event of bankruptcy or insolvency (or other analogous event) of the Listed Entity or holders of such Securities become legally prohibited from transferring them;
- (vi) its Securities cease to be listed on the SEHK; or
- (vii) where the Listed Entity is a trust, in the event of a Termination or, if applicable, the liquidation or dissolution of the trustee of the trust (including any successor trustee appointed from time to time) (in its capacity as trustee of the trust) or the appointment of a liquidator, receiver or administrator or analogous person under any applicable law in respect of the whole or substantially the whole of the undertaking, property or assets of the trust,

the Issuer may, in its sole and absolute discretion, determine what amendments are to be made to the Terms and Conditions of the relevant ELI Product to take account of the occurrence of an Extraordinary Event as it considers appropriate, such amendments are to be effective on the date determined by the Issuer.

“**Termination**” means (i) the trust is terminated, or the trustee or the manager of the trust (including any successor manager appointed from time to time) is required to terminate the trust, under the constitution document constituting the trust (“Constitution Document”) or applicable law, or the termination of the trust commences; (ii) the trust is held or is conceded by the trustee or the manager not to have been constituted or to have been imperfectly constituted; (iii) it becomes unlawful or illegal for the trustee or the manager of the trust (including any successor manager appointed from time to time) to hold the property of the trust and perform its obligations in accordance with the Constitution Document; or (iv) the trust ceases to be authorised or approved by the relevant regulatory authority to be offered to the public in Hong Kong under the applicable laws and regulations governing the trust.

In addition, and without limiting the generality of the foregoing, the Issuer shall:

- (1) if the Extraordinary Event involves an offer (or, at the option of a holder of such Securities, may consist) solely of securities (whether of the offeror or a third party) ("**New Securities**"), determine the number of such New Securities (the "**Replacement Securities**") to which a holder of a Security would have been entitled upon the consummation of such Extraordinary Event; or
- (2) if the Extraordinary Event involves an offer of (a) cash and/or securities or assets other than New Securities ("**Cash Consideration**") or (b) Cash Consideration and New Securities, determine the amount (the "**Replacement Assets**") in Cash Consideration and/or New Securities to which a holder of a Security would have been entitled upon the consummation of such Extraordinary Event.

In determining the Closing Price on the Fixing Date, the Call Date, the Distribution Valuation Date or the Business Day during the relevant Distribution Period and the Determination Date (as the case may be), the Issuer shall use as the Closing Price, its best estimate of the value of the relevant Replacement Securities or the relevant Replacement Assets, as the case may be, on the relevant effective date of an Extraordinary Event.

### 3 **Discretion of the Issuer**

Where the Issuer determines that any of the provisions of this Schedule is not appropriate in any particular situation, or any event which is not dealt with in this Schedule should have been dealt with, it may make any alterations to the effect of that provision that it considers to be appropriate to preserve the relative financial positions of the Issuer and/or the ELI holder.

The Issuer will notify ELI holders in writing of any adjustment under paragraph 1, any amendment under paragraph 2 and any alteration under paragraph 3 together with details of the events giving rise to the adjustment/amendment/alteration and the effective date for the adjustment/amendment/alteration by notice sent in accordance with (i) in the case of Bull ELIs, Bear ELIs, Range ELIs and KODA ELIs, Condition 11 and (ii) in the case of Callable ELIs, Condition 13, of the Terms and Conditions.

### 4 **Treatment of different kinds of property**

Where, following the application of this Schedule, a Security comprises property of different kinds (including without limitation securities of different classes or in different companies) each of those kinds of property is to be treated as the Securities and as if it were Security in its own right, and each adjustment required by this Schedule is to be made to each kind of property separately.

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