

## ASIFMA Guidelines for Powers of Attorney for Hong Kong IPOs 19 October 2016

### 1. Preamble and Context

In 2015, ASIFMA released a statement regarding the use of powers of attorney for Hong Kong IPOs. That statement took note of the continued emergence of a unique practice in connection with certain Hong Kong IPOs pursuant to which underwriting syndicate members, including joint bookrunners, are required to execute broad, irrevocable powers of attorney in favor of global coordinators, sometimes immediately upon being invited to join the syndicate, and at times before the resolution of one or more critical matters. ASIFMA's statement further noted that the use of powers of attorney in the manner that had emerged on certain Hong Kong IPOs posed potential risks to underwriting syndicate members from regulatory, risk management and corporate governance perspectives.

ASIFMA formed a working group to address its concerns with the use of powers of attorney, and to develop guidelines for the use of powers of attorney for Hong Kong IPOs. These guidelines are set out below and are being published with the support of the ASIFMA equity capital markets committee.

The guidelines expressly prescribe the type of Hong Kong IPOs for which it may be appropriate to use powers of attorney as those with extraordinarily large underwriting syndicates (as construed by the guidelines). In doing so, the guidelines also seek to prevent the proliferation of the use of powers of attorney outside of Hong Kong's very largest IPOs, which remains a key concern to ASIFMA. Therefore, the guidelines should not be read as having applicability beyond the very limited circumstances in which they are expressly intended to apply.

The guidelines are also not intended to address the more customary and well established practice of formally inviting very junior syndicate members, typically co-managers, to participate in an offering immediately prior to launch pursuant to a telex setting out the final details of the offering.<sup>1</sup>

### 2. Basic Principles

- 2.1 Powers of attorney should be used solely as an administrative tool to enable global coordinators to coordinate extraordinarily large underwriting syndicates and their use should be strictly limited to those circumstances in which they will provide a material benefit in alleviating particular logistical and practical difficulties. In most circumstances, these difficulties can be addressed adequately through the delivery of signature pages or powers of attorney to

<sup>1</sup> Under this more customary practice, junior syndicate members are generally involved in the transaction on a less formal basis prior to receiving the telex and appropriate accommodations are made for the concerns addressed by these guidelines.

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underwriters' counsel under customary escrow arrangements that require the express authorization from the relevant syndicate member for their release. Therefore, these guidelines are intended to apply only where additional measures are required to effectively manage the difficulties associated with extraordinarily large underwriting syndicates, which should be construed to mean a total syndicate with not less than 15 members (inclusive of the joint global coordinators and the other Hong Kong underwriters and international underwriters).

- 2.2 The decision to invite an investment bank to join an underwriting syndicate rests with the issuer, and should be notified by the issuer to the global coordinators promptly. However, the purpose of powers of attorney are to assist the global coordinators in managing the syndicate appointed by the issuer and, therefore, neither issuers nor selling shareholders should be, nor should be lead to believe they are, the direct or indirect beneficiary of a power of attorney granted by a syndicate member.
- 2.3 Global coordinators, issuers and selling shareholders should not utilize powers of attorney to coerce the behavior or limit the access of less senior syndicate members or for any other purpose inconsistent with these guidelines.
- 2.4 Global coordinators requesting the powers of attorney from syndicate members appointed by the issuer should apply the basic principles set out in this clause 2 and, together with legal counsels for the offering, ensure issuers and selling shareholders are fully aware of these guidelines.

### 3. **Timing**

- 3.1 Powers of attorney should generally be executed as late in the transaction as is possible without compromising their benefits.
- 3.2 In order to accommodate appropriate timing, the powers of attorney with respect to the Hong Kong public offer agreements should be bifurcated from the powers of attorney with respect to the international offering agreements. The relevant powers of attorney should not be requested until the relevant agreements are approaching finalization and syndicate members have been given a reasonable opportunity to review them.<sup>2</sup>
- 3.3 Typically, powers of attorney with respect to the Hong Kong public offering agreements should not be requested until the time of bulk print of the Hong Kong prospectus and the powers of attorney with respect to the international offering agreements should not be requested until the time of distribution of the preliminary international offering circular.<sup>3</sup>

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<sup>2</sup> ASIFMA notes that certain of its members are of the view that the negotiation of the Hong Kong underwriting agreement (and therefore many aspects of the international underwriting agreement) may form part of sponsor due diligence to be conducted prior to the time of A-1 filing and/or should be substantially completed prior to the time of A-1 filing given the reputational issues associated with being publicly named as a sponsor in an issuer's A-1 filing. Similarly, other members encourage the finalization of the Hong Kong underwriting agreement prior to pre-deal investor education. These practices would, in part, facilitate compliance with these guidelines.

<sup>3</sup> Proponents of the use of powers of attorney in a manner that is broader than that prescribed by these guidelines have argued that it is necessary to have the powers of attorney in place prior to launch in order to ensure that syndicate members cannot withdraw from the transaction once the preliminary

#### 4. **Syndicate Due Diligence**<sup>4</sup>

- 4.1 Where powers of attorney are sought in connection with a transaction, customary information relevant to an international underwriter due diligence process should be made available to the less senior underwriting syndicate members prior to any request for the execution of powers of attorney.
- 4.2 Syndicate members should be given access to underwriters' counsel. Underwriters' counsel should not be impeded in providing information and documentation to all syndicate members in accordance with these guidelines, and should be granted reasonable discretion as to the due diligence information to be shared, which should include:
- (a) access to a materially complete and up to date draft prospectus and/or preliminary offering circular;<sup>5</sup>
  - (b) a reasonably detailed summary of the legal due diligence process undertaken by the global coordinators and any material issues that have arisen during the due diligence process and the resolution or proposed resolution of such issues;<sup>6</sup>
  - (c) access to sufficient documentation to conduct a summary due diligence review, which may include access to the due diligence notes taken by underwriters' counsel or reasonable alternative documentation, as well as comments received from the Hong Kong Stock Exchange and the SFC and/or the responses given thereto; and
  - (d) access to management of the issuer, its counsels and its auditor and any material third parties or experts, where reasonably requested or required.
- 4.3 The syndicate due diligence timetable should be communicated to newly joined syndicate members promptly.

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international offering circular has gone to print. ASIFMA notes that such withdrawal risk may be reduced if syndicate members are given sufficient access to the due diligence process and transparency regarding underwriting commitments, fees and roles prior to the launch of the transaction. These guidelines seek to provide such access and transparency. Additionally, the withdrawal of a junior syndicate member following distribution of the preliminary offering circular is not necessarily material information, and could often be addressed through the pricing supplement.

<sup>4</sup> The sponsor due diligence process for Hong Kong IPOs may differ from, and include aspects that extend beyond, a customary due diligence process undertaken by underwriters in connection with an international equity offering. These guidelines are intended to ensure that non-sponsor syndicate members are provided reasonable access to due diligence-related information in order to satisfy themselves that they have met customary international due diligence requirements. These guidelines do not purport to impose responsibility on sponsors or joint global coordinators for the due diligence requirements of non-sponsor syndicate members.

<sup>5</sup> The issuer's previously filed A-1 for the transaction may not reflect, among other things, disclosure revised in response to the comments of the Hong Kong Stock Exchange and the SFC and the most recent financial statements and accompanying disclosure that are intended to be included in the final offering documents. Therefore, a public link to an issuer's A-1 filing may not be sufficiently up to date for purposes of the syndicate due diligence process under the timing requirements set out in these guidelines.

<sup>6</sup> These guidelines do not specify the manner in which underwriters' counsel should summarize the global coordinators' due diligence process for syndicate members. It may be appropriate for this summary to be provided orally where, e.g., the sponsors do not make their PN21 work plan available to syndicate members.

- 4.4 It is the responsibility of less senior underwriting syndicate members to raise any issues with the due diligence information as soon as practical. The due diligence process should account for any reasonable issues raised promptly by less senior syndicate members.
- 4.5 Less senior underwriting syndicate members should continue to be provided reasonable access, through underwriters' counsel, to any relevant ongoing legal due diligence process in order to satisfy reasonable internal requirements and establish a customary due diligence defense. Any material developments with respect to due diligence should be promptly communicated to the entire underwriting syndicate.
- 4.6 Additionally, no party, including the sponsors and the global coordinators, should impede underwriters' counsel from assisting with the syndicate due diligence process or disclosing any material due diligence issues that arise subsequent to the execution of a power of attorney.
- 4.7 Global coordinators should seek to ensure the transaction timeline, including, where possible, the timing of the invitation for less senior members to join the underwriting syndicate, accommodates these requirements and allows a reasonable period for less senior syndicate members to conduct their due diligence review.<sup>7</sup>

## 5. **Limitations**

- 5.1 It is recognized that the practicalities of executing Hong Kong IPOs, and particularly the type of Hong Kong IPOs likely to have extraordinarily large underwriting syndicates, will require that some level of discretion reside with global coordinators under the powers of attorney if they are to successfully achieve their intended benefits.<sup>8</sup> However, it is inappropriate for powers of attorney to confer on global coordinators unnecessarily broad discretion to bind less senior underwriting syndicate members to unspecified contractual obligations to be contained in an underwriting agreement and an agreement among underwriters or otherwise impair a less senior underwriting syndicate members from evaluating the disclosure liabilities associated with a global offering of securities and take appropriate measures to establish due diligence defenses. Therefore, the discretion granted to global coordinators pursuant to powers of attorney should be appropriately limited with respect to certain matters, which may include limitations on the global coordinators' ability to utilize powers of attorney to:

- (a) agree changes to the maximum offering price;<sup>9</sup>

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<sup>7</sup> If less senior syndicate members intend to conduct pre-deal investor education, the timeline should allow such syndicate members to conduct their due diligence prior to communications regarding the commencement of pre-deal investor education.

<sup>8</sup> The granting of a power of attorney creates an agency relationship between the global coordinators and the relevant less senior syndicate member pursuant to which global coordinators may, depending on the circumstances, owe duties, including fiduciary duties, to the relevant less senior syndicate member. Global coordinators receiving powers of attorney should satisfy themselves as to the extent of duties that apply to them under a power of attorney and the potential liabilities and consequences that may arise as a result of any breach of those duties. In order for global coordinators to mitigate the risk of breaching such duties, they may seek to more clearly delineate and specify the scope and key conditions in the powers of attorney—more limited discretion may imply more limited duties.

<sup>9</sup> These limitations are intended to apply only where an express agreement has been reached as to the maximum offering price, or maximum offering size, as applicable, with the relevant syndicate member. These limitations are not intended to provide less senior syndicate members the ability to influence pricing discussions beyond that which is customary for similarly situated syndicate members.

- (b) agree changes to the maximum offering size;<sup>10</sup>
  - (c) agree changes to the maximum underwriting commitment of the relevant underwriting syndicate member;
  - (d) agree to price the transaction if the book is not fully covered;
  - (e) to the extent that underwriting fees have been previously agreed, agree subsequent changes to the fees payable to the relevant underwriting syndicate member;
  - (f) agree any provision of an agreement among underwriters that provides for any expense, liability or loss allocation to the relevant underwriting syndicate member that is disproportional to that syndicate member's final underwriting commitment;<sup>10</sup>
  - (g) agree any material changes to the underwriting agreements and the agreements among underwriters from the forms approved by the relevant syndicate member; and
  - (h) agree any material change to the prospectus or the international offering circular approved by the relevant syndicate member (whether prior to printing or by way of supplement).
- 5.2 The foregoing list of limitations is indicative and non-exhaustive and should not be construed to prejudice the omission of certain limitations or the inclusion of additional limitations where it may be appropriate in the context of a particular transaction. Less senior syndicate members should be afforded a reasonable opportunity to review the relevant final or near-final documentation on a timely basis and, consequently, certain of the indicative limitations may not be necessary.
- 5.3 The powers of attorney should include a reasonable expiration date that accounts for the expected transaction timeline. Powers of attorney that are evergreen with no expiration should not be used.
- 5.4 Indicative template forms of powers of attorney for Hong Kong underwriters and international underwriters (the "**Templates**") for use on Hong Kong IPOs under the circumstances permitted by these guidelines are included as [Annex A](#) and [Annex B](#) to these guidelines, respectively. Any person using the Templates shall be deemed to have read, understood and agreed to the terms set out in [Exhibit A](#) to these guidelines.
- 5.5 The Templates are provided to indicate the substantive terms and conditions of powers of attorney that may be implemented in accordance with these guidelines. Certain investment

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<sup>10</sup> Agreements among underwriters for Hong Kong IPOs are customarily executed concurrently with the relevant underwriting agreement. However, ASIFMA notes that, for many of the same reasons underlying the increased use of powers of attorney on Hong Kong IPOs, an accompanying trend has emerged wherein agreements among underwriters are executed at later stages, or even following completion, of HK IPOs, with increasing frequency. These guidelines require that the principal terms to be embodied in the agreement among underwriters be settled prior to the delivery of powers of attorney. Consequently, the relevant agreement among underwriters can, and should, be executed concurrently with the relevant underwriting agreement in order that the economic terms and legal protections provided to less senior syndicate members in the relevant agreement among underwriters become effective concurrently with the assumption of underwriting risk.

banks, and particularly the non-Hong Kong incorporated affiliates of investment banks that underwrite Hong Kong IPOs, may require the use of alternative forms of powers of attorney (which may be governed by laws other than that of Hong Kong). The inclusion of the Templates in these guidelines should not be construed to prejudice the use of alternative forms of powers of attorney containing substantively equivalent terms and conditions.

- 5.6 The appropriate method of implementation of the limitation set out in clause 5.1 (the "**Limitations**") will depend on the circumstances, but may include:
- (a) the express inclusion of the Limitations in the powers of attorney themselves in the manner contemplated by the Templates;
  - (b) the delivery of powers of attorney to underwriters' counsel under escrow arrangements that impose the Limitations as a condition to release;
  - (c) a general obligation on global coordinators to periodically notify the underwriting syndicate members of any matters subject to the Limitations, immediately followed by a brief but reasonable period of time during which the powers of attorney are revocable; or
  - (d) a scheduled bring-down update call among the underwriting syndicate and underwriters' counsel during which any matters subject to the Limitations are disclosed to the underwriting syndicate members, immediately followed by a brief but reasonable period of time during which the powers of attorney are revocable.

## 6. **Appropriate Recipients**

- 6.1 Generally, the exercise of the authority granted under powers of attorney should require the consent of all of the global coordinators for the relevant transaction.
- 6.2 Powers of attorney should identify the specific legal entities that will have the power to sign documents. In other words, it should not grant authority to roles on the syndicate (e.g., the joint global coordinators for the offering).

## EXHIBIT A

### Terms of Use for Templates

*The Templates should be read in connection with the ASIFMA Guidelines for Powers of Attorney for Hong Kong IPOs" published by ASIFMA on 19 October 2016 (the "**Guidelines**"), and are intended for use solely in the circumstances prescribed by those guidelines. Any person using the Templates shall be deemed to have read, understood and agreed to the following terms:*

- 1.1 The Templates are provided solely as guides and are not intended to be, and must not be regarded or relied upon as, legal or other professional advice or opinions on any matters. Use of the Template is voluntary. You are advised to seek your own professional advice as necessary.
- 1.2 All market participants granting or receiving a power of attorney are responsible for exercising their own independent judgment as to whether the form of power of attorney is appropriate under the particular circumstances and conditions, including (a) whether the power of attorney legally and validly grants, irrevocably or otherwise, the powers contemplated by such power of attorney; (b) whether the granting or exercise of such powers complies with relevant legal, regulatory and other obligations; and (c) the extent of any duties that arise under a power of attorney and the potential liabilities and consequences that may arise as a result of any breach of those duties.
- 1.3 Any descriptions of legal or regulatory provisions in the Templates are for informational and summary purposes only and are not intended to convey the full extent or details of regulatory obligations that may apply to any firm or individual. Any persons using the Template are encouraged to undertake their own review of relevant laws, rules, codes, guidelines and circulars and other materials, and are responsible for making their own determination as to their legal, regulatory and other obligations.
- 1.4 ASIFMA, its member firms and any other persons who have contributed to the development of the Templates: (a) accept no responsibility or liability in any form for any errors or omissions in the Templates or for any losses or damages howsoever arising from, including any act or inaction in reliance on, any of their contents or omissions; (b) make no representations or warranties of any kind and specifically disclaim any implied representations or warranties of merchantability, fitness for a particular purpose, completeness or accuracy of the Templates; (c) make no representations that the use of or reference to the Templates will satisfy any legal, regulatory or other obligations; and (d) disclaim any on-going duty or obligation to update or revise the Templates or notify any persons of changes to laws, regulations or regulatory guidance that may affect the use or application of the Templates.

The Templates have been created for the benefit of all industry participants. It is not owned, copyrighted or protected by ASIFMA.

## ANNEX A

### Template Power of Attorney for Hong Kong Underwriters

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#### POWER OF ATTORNEY

[●] (THE "COMPANY")

[GLOBAL OFFERING]<sup>1</sup> OF [●] [H] [SHARES]

BY WAY OF

[HONG KONG PUBLIC OFFERING] OF INITIALLY [●] [H] [SHARES] (THE "[HONG KONG PUBLIC OFFERING]")

AND

[INTERNATIONAL OFFERING] OF INITIALLY [●][H] SHARES (SUBJECT TO THE [OVER-ALLOTMENT OPTION])

Reference is made to the draft dated [●] of the prospectus of the Company relating to the proposed Hong Kong [Public Offering] previously provided to us for the purpose of executing this power of attorney (the "**Draft Hong Kong Prospectus**"), which is expected to be published in final form on or about [●] (in such final form, the "**Hong Kong Prospectus**"). Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to them in the Hong Kong Prospectus.

Further reference is made to the drafts dated [●] of the [Hong Kong Underwriting Agreement], the [Agreement Among Hong Kong Underwriters], the [Agreement between Underwriting Syndicates] and the [Price Determination Agreement] relating to the proposed Hong Kong [Public Offering] previously provided to us for the purpose of executing this power of attorney (collectively, the "**Draft Hong Kong [Public Offering] Agreements**"), which are expected to be executed in final form (in such final form, the "**Hong Kong [Public Offering] Agreements**") on or about [●] (in the case of the [Hong Kong Underwriting Agreement]) and [●] (in the case of the other Hong Kong [Public Offering] Agreements).

Subject to terms and conditions contained herein, we, *[full corporate name of the syndicate member]*, hereby appoint [(1) *[full corporate name of the global coordinator]* and (2) *[full corporate name of the global coordinator]*]<sup>2</sup> (each, a "**Global Coordinator**"), acting jointly, to be our true and lawful attorneys-in-fact and agents with full power and authority on our behalf and in our name and place to execute jointly and deliver the Hong Kong [Public Offering] Agreements in our capacity as a Hong Kong Underwriter and

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<sup>1</sup> All bracket terms should be conformed to the terms used in the transaction documents.

<sup>2</sup> Pursuant to the Guidelines, the exercise of the authority granted under powers of attorney generally should require the consent of all of the global coordinators for the relevant transaction. However, in certain circumstances it may be appropriate to allow for one or more global coordinators acceptable to the relevant syndicate member to be an authorized signatory individually for logistical reasons. Under no circumstances should the authority granted under the power of attorney be exercisable by a global coordinator that is an affiliate of the Company or another interested party without the consent of a wholly independent global coordinator.

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any amendments thereto, in each case, subject to the terms and conditions contained herein. We hereby undertake to confirm and ratify the execution and delivery in accordance herewith of each Hong Kong [Public Offering] Agreement by such attorneys.

This power of attorney and any appointment, power, authority and agency made or granted hereunder is subject to the following terms and conditions in all respects:<sup>3</sup>

***[The following list of conditions is indicative and non-exhaustive and should not be construed to prejudice the omission of certain conditions or the inclusion of additional conditions where it may be appropriate in the context of a particular transaction. In particular, as discussed in the Guidelines, less senior syndicate members should be afforded a reasonable opportunity to review the relevant final or near-final documentation on a timely basis and, consequently, certain of the indicative conditions set out below may not be necessary.]***

- (a) [Each Hong Kong [Public Offering] Agreement executed and delivered on our behalf and in our name and place pursuant to this power of attorney or any appointment, power, authority or agency made or granted hereunder being duly executed in such capacity by each Global Coordinator;]<sup>4</sup>
- (b) [the maximum [Offer Price] per [H] [Share] not exceeding HK\$[●];]
- (c) [the aggregate offering size of the [Global Offering] not exceeding [US/HK]\$[●];]
- (d) [our underwriting commitment as a [Hong Kong Underwriter] pursuant to the [Hong Kong Underwriting Agreement] not exceeding [●]% of the initial size of the Hong Kong [Public Offering], and our underwriting commitment as a [Hong Kong Underwriter], together with our (or our affiliate's) underwriting commitment as an [International Purchaser] pursuant to the [International Purchase Agreement], not exceeding in the aggregate [●]% of the initial size of the [Global Offering];]
- (e) [in the event the total committed investor demand received is not sufficient to meet the total number of [H] [Shares] initially offered under the [Global Offering], the total number of [H] [Shares] offered under the [Global Offering] being reduced to be no more than the total committed investor demand in order that we are not required to subscribe or purchase any [H] [Shares] in order to fulfill our aggregate underwriting commitment pursuant to the [Hong Kong Underwriting Agreement];]
- (f) [no provision of any Hong Kong [Public Offering] Agreement providing for any allocation of underwriting syndicate expenses, liabilities or losses to us in our capacity as Hong Kong Underwriter that is proportionally greater than the proportion our underwriting

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<sup>3</sup> None of the Hong Kong Public Offering Agreements should contain any provision that confers authority on the Global Coordinators that would enable the terms and conditions of the power of attorney to be circumvented.

<sup>4</sup> Please see footnote 2 to this power of attorney.

commitment bears relative to the aggregate underwriting commitment of the [Hong Kong Underwriters];]

- (g) [the absence of any material change, as determined in good faith by the Global Coordinators, in the [Hong Kong Prospectus] (including any material changes to the [Hong Kong Prospectus] made by way of supplement, amendment or other document having similar effect) from the Draft Hong Kong Prospectus (or, in the event we are provided and approve a subsequent draft prospectus for the [Hong Kong Public Offering], such subsequent draft prospectus);]<sup>5</sup>
- (h) [the absence of any material change, as determined in good faith by the Global Coordinators, in the Hong Kong [Public Offering] Agreements (including any material changes to the Hong Kong [Public Offering] Agreements made by way of supplement, amendment or other document having similar effect) from the Draft Hong Kong [Public Offering] Agreements (or, in the event we are provided and approve subsequent drafts of such agreements, such subsequent draft agreements);]<sup>6</sup>[and]
- (i) [no provision of any Hong Kong [Public Offering] Agreement granting or making any appointment, power, authority or agency that permits a Global Coordinator that is an affiliate of the Company or that otherwise has an actual or potential conflict of interest to act on our behalf without the consent of an independent Global Coordinator.]

We represent and warrant that this power of attorney has been executed as a deed in accordance with our corporate constitution and laws applicable to the execution of deeds in our jurisdiction of organization and the Hong Kong Special Administrative Region of the People's Republic of China.<sup>7</sup> This power of attorney and any appointment, power, authority or agency made or granted hereunder shall be solely and exclusively for the purpose of execution and delivery of the Hong Kong [Public Offering] Agreements, subject in all respects to the terms and conditions contained herein, shall expire on [●]<sup>8</sup>, and shall be irrevocable until the time of expiration.<sup>9</sup>

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<sup>5</sup> Less senior syndicate members should be afforded a reasonable opportunity to review the final or near final draft of the Hong Kong Prospectus and, consequently, this limitation may not be required.

<sup>6</sup> Less senior syndicate members should be afforded a reasonable opportunity to review the final or near final drafts of the Draft Hong Kong [Public Offering] Agreements and, consequently, this limitation may not be necessary. If there are economic terms that are not proposed to be settled at the time of execution of the Hong Kong Public Offering Agreements, appropriate amendments should be made to clarify that final resolution of such economic terms do not constitute material changes for purpose of the power of attorney.

<sup>7</sup> The Powers of Attorney Ordinance (Cap 31 of Laws of Hong Kong) (the "POA Ordinance") requires that an instrument creating a power of attorney shall be signed and sealed by the donor of the power and two other persons shall be present as witnesses and shall attest the instrument. These requirements under the POA Ordinance are without prejudice to any requirements under the Hong Kong law relating to the execution of instruments by corporations. A Hong Kong company may execute a power of attorney by having it signed by the sole director (in the case where the company has only one director) or by two directors or one director and the company secretary. This will have the effect as if the document had been executed under the company's common seal. A power of attorney executed by a Hong Kong company should also be expressed to be executed by the company as a deed. For the execution of the power of attorney by a foreign corporation, as a general principle, the capacity and authority of a foreign corporation to enter into a contract governed by Hong Kong law is governed by the law of the place where the foreign corporation is incorporated.

<sup>8</sup> The duration of the power of attorney should be set at a reasonable period that accounts for the expected transaction timeline (e.g., 30 to 45 days).

<sup>9</sup> Certain global coordinators may also request that syndicate members provide their name, logo and other details in their power of attorney and, subject to the terms and conditions of the power of attorney, authorize the use of such information in the relevant offering documents and other public documents.

[This power of attorney (and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to this power of attorney or any appointment, power, authority or agency made or granted hereunder or any act performed or claimed to be performed under hereunder or thereunder) shall be governed by and construed in accordance with the laws of the Hong Kong Special Administrative Region of the People's Republic of China. The courts of the Hong Kong Special Administrative Region of the People's Republic of China shall have [exclusive] jurisdiction to hear and decide any suit, action or proceedings and/or settle any disputes which may arise in connection with this power of attorney or any appointment, power, authority or agency made or granted hereunder or any act performed or claimed to be performed under hereunder or thereunder.]<sup>10</sup>

In witness whereof this power of attorney has been executed as a deed this [●] day of [●].

The Common Seal of )  
[●] )  
is hereunto affixed in the presence of: )  
)

\_\_\_\_\_  
Name: [●]  
Title: [●]

\_\_\_\_\_  
Name: [●]  
Title: [●]

<sup>10</sup> The governing law and dispute resolution clauses of the power of attorney should be reviewed against the corresponding provisions contained in the Hong Kong law-governed Hong Kong Public Offering Agreements and, in particular, the Agreement Among Hong Kong Underwriters to avoid any inconsistencies.

ANNEX B

Template Power of Attorney for International Underwriters

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POWER OF ATTORNEY

[●] (THE "COMPANY")

[GLOBAL OFFERING]<sup>1</sup> OF [●] [H] [SHARES]

BY WAY OF

[HONG KONG PUBLIC OFFERING] OF INITIALLY [●] [H] [SHARES]

AND

[INTERNATIONAL OFFERING] OF INITIALLY [●][H] SHARES (THE "[INTERNATIONAL OFFERING]") (SUBJECT TO THE [OVER-ALLOTMENT OPTION])

Reference is made to the draft dated [●] of the [offering memorandum] of the Company relating to the proposed [International Offering] previously provided to us for the purpose of executing this power of attorney (the "**Draft [Offering Memorandum]**"), which is expected to be distributed in preliminary form on or about [●] (in such form, the "**Preliminary [Offering Memorandum]**") and supplemented with pricing information on or about [●] (the "**Pricing Supplement**" and, together with the Preliminary [Offering Memorandum], the "**Disclosure Package**"). The final [offering memorandum] of the Company relating to the proposed [International Offering] (the "**Final [Offering Memorandum]**") is expected to be distributed on or about [●]. Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to them in the Final [Offering Memorandum].

Further reference is made to the drafts dated [●] of the [International Underwriting Agreement], the [Agreement Among International Underwriters] and the [Agreement between Underwriting Syndicates] relating to the proposed [International Offering] previously provided to us for the purpose of executing this power of attorney (collectively, the "**Draft [International Offering] Agreements**"), which are expected to be executed in final form (in such final form, the "**[International Offering] Agreements**") on or about [●].

Subject to terms and conditions contained herein, we, *[full corporate name of the syndicate member]*, hereby appoint ((1) *[full corporate name of the global coordinator]* and (2) *[full corporate name of the global coordinator]*)<sup>2</sup> (each, a "**Global Coordinator**"), acting jointly, to be our true and lawful attorneys-in-

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<sup>1</sup> All bracket terms should be conformed to the terms used in the transaction documents.

<sup>2</sup> Pursuant to the Guidelines, the exercise of the authority granted under powers of attorney generally should require the consent of all of the global coordinators for the relevant transaction. However, in certain circumstances it may be appropriate to allow for one or more global coordinators acceptable to the relevant syndicate member to be an authorized signatory individually for logistical reasons. Under no circumstances should the authority granted under the power of attorney be exercisable by a global coordinator that is an affiliate of the Company or another interested party without the consent of a wholly independent global coordinator

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fact and agents with full power and authority on our behalf and in our name and place to execute jointly and deliver the [International Offering] Agreements in our capacity as an [International Underwriter] and any amendments thereto, in each case, subject to the terms and conditions contained herein. We hereby undertake to confirm and ratify the execution and delivery in accordance herewith of each [International Offering] Agreement by such attorneys.

This power of attorney and any appointment, power, authority and agency made or granted hereunder is subject to the following terms and conditions in all respects:<sup>3</sup>

***[The following list of conditions is indicative and non-exhaustive and should not be construed to prejudice the omission of certain conditions or the inclusion of additional conditions where it may be appropriate in the context of a particular transaction. In particular, as discussed in the Guidelines, less senior syndicate members should be afforded a reasonable opportunity to review the relevant final or near-final documentation on a timely basis and, consequently, certain of the indicative conditions set out below may not be necessary.]***

- (a) [Each [International Offering] Agreement executed and delivered on our behalf and in our name and place pursuant to this power of attorney or any appointment, power, authority or agency made or granted hereunder being duly executed in such capacity by each Global Coordinator;]<sup>4</sup>
- (b) [the maximum [Offer Price] per [H] [Share] not exceeding HK\$[●];]
- (c) [the aggregate offering size of the [Global Offering] not exceeding [US/HK]\$(●);]
- (d) [our underwriting commitment as a [International Underwriter] pursuant to the [International Underwriting Agreement] not exceeding [●]% of the initial size of the [International Offering], and our underwriting commitment as an [International Underwriter], together with our (or our affiliate's) underwriting commitment as an Hong Kong Underwriter pursuant to the Hong Kong Underwriting Agreement, not exceeding in the aggregate [●]% of the initial size of the [Global Offering];]
- (e) [in the event the total committed investor demand received is not sufficient to meet the total number of [H] [Shares] initially offered under the [Global Offering], the total number of [H] [Shares] offered under the [Global Offering] being reduced to be no more than the total committed investor demand in order that we are not required to subscribe or purchase any [H] [Shares] in order to fulfill our aggregate underwriting commitment pursuant to the [International Underwriting Agreement];]
- (f) [no provision of any [International Offering] Agreement providing for any allocation of underwriting syndicate expenses, liabilities or losses to us in our capacity as [International

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<sup>3</sup> None of the International Offering Agreements should contain any provision that confers authority on the Global Coordinators that would enable the terms and conditions of the power of attorney to be circumvented.

<sup>4</sup> Please see footnote 2 to this power of attorney.

Underwriter] that is proportionally greater than the proportion our underwriting commitment bears relative to the aggregate underwriting commitment of the [International Underwriters];]

- (g) [the absence of any material change, as determined in good faith by the Global Coordinators, in the Preliminary [Offering Memorandum], the Disclosure Package or the Final [Offering Memorandum] (including any material changes to such offering documents made by way of supplement, amendment or other document having similar effect) from the Draft [Offering Memorandum] (or, in the event we are provided and approve a subsequent draft [offering memorandum] for the [International Offering], such subsequent draft offering memorandum); provided, however, that any pricing information complying with the terms and condition of this power of attorney shall not constitute a material change for purposes of this clause (g);]<sup>5</sup>
- (h) [the absence of any material change, as determined in good faith by the Global Coordinators, in the [International Offering] Agreements (including any material changes to the [International Offering] Agreements made by way of supplement, amendment or other document having similar effect) from the Draft [International Offering] Agreements (or, in the event we are provided and approve subsequent drafts of such agreements, such subsequent draft agreements); provided, however, that any pricing information complying with the terms and condition of this power of attorney shall not constitute a material change for purposes of this clause (h);]<sup>6</sup>[and]
- (i) [no provision of any [International Offering] Agreement granting or making any appointment, power, authority or agency that permits a Global Coordinator that is an affiliate of the Company or that otherwise has an actual or potential conflict of interest to act on our behalf without the consent of an independent Global Coordinator.]

We represent and warrant that this power of attorney has been executed as a deed in accordance with our corporate constitution and laws applicable to the execution of deeds in our jurisdiction of organization and [the Hong Kong Special Administrative Region of the People's Republic of China.]<sup>7</sup> This power of attorney and any appointment, power, authority or agency made or granted hereunder shall be

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<sup>5</sup> Less senior syndicate members should be afforded a reasonable opportunity to review the final or near final draft of the of the Preliminary [Offering Memorandum] and, consequently, this limitation may not be necessary.

<sup>6</sup> Less senior syndicate members should be afforded a reasonable opportunity to review the final or near final drafts of the Draft [International Offering] Agreements and, consequently, this limitation may to be necessary. If there are economic terms that are not proposed to be settled at the time of execution of the International Offering Agreements, appropriate amendments should be made to clarify that final resolution of such economic terms do not constitute material changes for purpose of the power of attorney.

<sup>7</sup> The Powers of Attorney Ordinance (Cap 31 of Laws of Hong Kong) (the "POA Ordinance") requires that an instrument creating a power of attorney shall be signed and sealed by the donor of the power and two other persons shall be present as witnesses and shall attest the instrument. These requirements under the POA Ordinance are without prejudice to any requirements under the Hong Kong law relating to the execution of instruments by corporations. A Hong Kong company may execute a power of attorney by having it signed by the sole director (in the case where the company has only one director) or by two directors or one director and the company secretary. This will have the effect as if the document had been executed under the company's common seal. A power of attorney executed by a Hong Kong company should also be expressed to be executed by the company as a deed. For the execution of the power of attorney by a foreign corporation, as a general principle, the capacity and authority of a foreign corporation to enter into a contract governed by Hong Kong law is governed by the law of the place where the foreign corporation is incorporated. Please also see footnote 10 to this power of attorney.

solely and exclusively for the purpose of execution and delivery of the [International Offering] Agreements, subject in all respects to the terms and conditions contained herein, shall expire on [●]<sup>8</sup>, and shall be irrevocable until the time of expiration.<sup>9</sup>

[This power of attorney (and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to this power of attorney or any appointment, power, authority or agency made or granted hereunder or any act performed or claimed to be performed under hereunder or thereunder) shall be governed by and construed in accordance with the laws of the Hong Kong Special Administrative Region of the People's Republic of China. The courts of the Hong Kong Special Administrative Region of the People's Republic of China shall have [exclusive] jurisdiction to hear and decide any suit, action or proceedings and/or settle any disputes which may arise in connection with this power of attorney or any appointment, power, authority or agency made or granted hereunder or any act performed or claimed to be performed under hereunder or thereunder.]<sup>10</sup>

In witness whereof this power of attorney has been executed as a deed this [●] day of [●].

The Common Seal of )  
[●] )  
is hereunto affixed in the presence of: )  
)

\_\_\_\_\_  
Name: [●]  
Title: [●]

\_\_\_\_\_  
Name: [●]  
Title: [●]

<sup>8</sup> The duration of the power of attorney should be set at a reasonable period that accounts for the expected transaction timeline (e.g., 30 to 45 days).

<sup>9</sup> Certain global coordinators may also request that less senior syndicate members provide their name, logo and other details in their power of attorney and, subject to the terms and conditions of the power of attorney, authorize the use of such information in the relevant offering documents and other public documents.

<sup>10</sup> It may also be appropriate to select New York law to govern the power of attorney relating to the International Offering. The governing law and dispute resolution clauses of the power of attorney should be reviewed against the corresponding provisions contained in the New York law- or Hong Kong law-governed transaction agreements, as appropriate, to avoid any inconsistencies.