

PROSPECTUS



**DEPFA BANK plc**

(Incorporated in Ireland)

***DEPFA Deutsche Pfandbriefbank AG***

(Incorporated under the laws of Germany)

***DEPFA ACS BANK***

(Incorporated in Ireland)

as Issuers

***Euro 45,000,000,000***

***PROGRAMME FOR THE ISSUANCE OF DEBT INSTRUMENTS***

This document constitutes a base prospectus (the "Prospectus") for the purposes of Article 5.4 of Directive 2003/71/EC (the "Prospectus Directive") for the purpose of giving information with regard to the issue of debt instruments (the "Instruments") of DEPFA BANK plc ("DEPFA plc"), DEPFA Deutsche Pfandbriefbank AG (the "Pfandbriefbank") and DEPFA ACS BANK ("DEPFA ACS") and of Pfandbrief Instruments (the "Pfandbrief Instruments") by the Pfandbriefbank and of asset covered securities (the "ACS Instruments") of DEPFA ACS under the programme (the "Programme") during the period of twelve months after the date hereof. Application has been made to the Irish Financial Services Regulatory Authority ("IFSRA" or "the Financial Regulator"), as competent authority under the Prospectus Directive, for the Prospectus to be approved. Such approval relates only to the Instruments, Pfandbrief Instruments and ACS Instruments which are to be admitted to trading on the regulated market of The Irish Stock Exchange Limited (the "Irish Stock Exchange") or any other regulated market for the purposes of Directive 2004/39/EC on markets in financial instruments or which are to be offered to the public in a Member State of the European Economic Area, or which are offered in Ireland as a local offer for the purposes of the Investment Funds, Companies and Miscellaneous Provisions Act 2005 of Ireland. In relation to such local offers, such approval may be given by the Financial Regulator pursuant to Regulation 8(5) of the Prospectus (Directive 2003/71/EC) Regulations 2005. Application has been made for such Instruments, Pfandbrief Instruments and ACS Instruments to be admitted to the Official List of the Irish Stock Exchange Limited and to trading on the regulated market of the Irish Stock Exchange Limited, a regulated market for the purposes of Directive 2004/39/EC.

Instruments, Pfandbrief Instruments and ACS Instruments may be issued under the Programme which have a denomination of less than EUR 50,000 except that the minimum denomination of each Instrument or Pfandbrief Instrument issued by Pfandbriefbank and

admitted to trading on a regulated market within the European Economic Area and/or offered to the public in a Member State of the European Economic Area in circumstances which require the publication of a prospectus under the Prospectus Directive will be EUR 1,000 (or, if denominated in a currency other than EUR, the equivalent amount in such currency).

**THERE ARE CERTAIN RISKS RELATED TO ANY ISSUE OF INSTRUMENTS, PFANDBRIEF INSTRUMENTS AND ACS INSTRUMENTS UNDER THE PROGRAMME WHICH INVESTORS SHOULD ENSURE THEY FULLY UNDERSTAND (SEE "RISK FACTORS").**

DEPFA plc and the Pfandbriefbank may not issue ACS Instruments. DEPFA plc and DEPFA ACS may not issue Pfandbrief Instruments.

In relation to any ACS Instruments issued by DEPFA ACS under the Programme there is no provision for gross-up in relation to such ACS Instruments (see Condition 12 of the Terms and Conditions of the ACS Instruments contained herein).

In relation to any Pfandbrief Instruments issued by the Pfandbriefbank under the Programme there is no provision for gross-up in relation to such Pfandbrief Instruments (see Condition 12 of the Terms and Conditions of the Pfandbrief Instruments contained herein).

*Arranger for the Programme*

**MORGAN STANLEY**

*Dealers*

**ABN AMRO**

**BANCO BILBAO VIZCAYA ARGENTARIA, S.A.**

**BARCLAYS CAPITAL**

**BEAR, STEARNS INTERNATIONAL LIMITED**

**BNP PARIBAS**

**CITI**

**COMMERZBANK CORPORATES & MARKETS**

**CREDIT SUISSE**

**DAIWA SECURITIES SMBC EUROPE**

**DEPFA BANK PLC**

**DEUTSCHE BANK**

**DRESDNER KLEINWORT**

**GOLDMAN SACHS INTERNATIONAL**

**HSBC**

**JPMORGAN**

**LEHMAN BROTHERS**

**MERRILL LYNCH INTERNATIONAL**

**MIZUHO INTERNATIONAL PLC**

***MORGAN STANLEY***

***RBC CAPITAL MARKETS***

***TD SECURITIES***

***UBS INVESTMENT BANK***

9 May 2008

***NOMURA INTERNATIONAL***

***SANTANDER***

***THE ROYAL BANK OF SCOTLAND***

**Each of DEPFA plc, the Pfandbriefbank and DEPFA ACS (each an "Issuer" and together the "Issuers") accepts responsibility for the information contained in this Prospectus, provided however that:**

**DEPFA plc is not responsible for the Description of Pfandbriefbank and DEPFA ACS and any risk factors relating to Pfandbriefbank and DEPFA ACS; and**

**Pfandbriefbank is not responsible for the Description of DEPFA plc and DEPFA ACS and any risk factors relating to DEPFA plc and DEPFA ACS; and**

**DEPFA ACS is not responsible for the Description of DEPFA plc and Pfandbriefbank and any risk factors relating to DEPFA plc and Pfandbriefbank.**

**Each of the Issuers declares that, having taken all reasonable care to ensure that such is the case, the information contained in the Prospectus is, to the best of the knowledge of each of the Issuers, in accordance with the facts and does not omit anything likely to affect its import.**

**Each of DEPFA plc, the Pfandbriefbank and DEPFA ACS has confirmed to the dealers (the "Dealers") named under "Subscription and Sale" that, only in respect of information relating to itself, the Prospectus is true and accurate and complete in all material respects and not misleading in any material respect; that there are no other facts in relation to the information contained or incorporated by reference herein the omission of which would, in the context of the issue of the Instruments or, as the case may be, Pfandbrief Instruments or, as the case may be, ACS Instruments, make any statement herein misleading in any material respect; and that all reasonable enquiries have been made to verify the foregoing. Each of DEPFA plc, the Pfandbriefbank and DEPFA ACS (in respect of the information relating to itself) has further confirmed to the Dealers that the Prospectus (subject to being supplemented by final terms (each "Final Terms") referred to herein) contains all such information as investors and their professional advisers would reasonably require, and reasonably expect to find, for the purpose of making an informed assessment of the assets and liabilities, financial position, profits and losses, and prospects of DEPFA plc, the Pfandbriefbank and DEPFA ACS and its subsidiaries (if any) and of the rights attaching to the relevant Instruments or, as the case may be, Pfandbrief Instruments or, as the case may be, ACS Instruments.**

**This Prospectus should be read and construed together with any amendments or supplements hereto and with any other documents incorporated by reference herein and, in relation to any Tranche (as defined herein) of Instruments or, as the case may be, ACS Instruments, or, as the case may be, Pfandbrief Instruments should be read and construed together with the relevant Final Terms.**

**The audited consolidated financial statements of the Group (as defined in "*Description of DEPFA BANK plc*") for the years ended 31 December 2007 and 31 December 2006 are prepared in accordance with international financial reporting standards as adopted in the EU ("IFRS").**

**The interim unaudited consolidated accounts of the Group for the three months to 31 March 2008 incorporated by reference in this Prospectus have been prepared in accordance with IFRS.**

**None of DEPFA plc, the Pfandbriefbank and DEPFA ACS has authorised the making or provision of any representation or information regarding DEPFA plc, the Pfandbriefbank, DEPFA ACS, the Instruments, the Pfandbrief Instruments or the ACS Instruments other than as contained or incorporated by reference in the Prospectus, in the Dealership Agreement (as defined herein), in any other document prepared in connection with the Programme or any Final Terms, or (in any case) as approved for such purpose by DEPFA plc, the Pfandbriefbank or DEPFA ACS. Any such representation or information should not be relied upon as having been authorised by DEPFA plc, the Pfandbriefbank, DEPFA ACS, the Dealers or any of them.**

**No representation or warranty is made or implied by the Dealers or any of their respective affiliates, and neither the Dealers nor any of their respective affiliates makes any representation or warranty or accepts any responsibility, as to the accuracy or completeness of the information contained herein. Neither the delivery of the Prospectus nor any Final Terms nor the offering, sale or delivery of any Instrument or, as the case may be, Pfandbrief Instrument or, as the case may be, ACS Instrument shall, in any circumstances, create any implication that there has been no adverse change in the financial situation of DEPFA plc, the Pfandbriefbank or DEPFA ACS since the date hereof or, as the case may be, the date upon which this document has been most recently amended or supplemented or the balance sheet date of the financial statements of the relevant Issuer attached hereto.**

**The maximum aggregate principal amount of Instruments, Pfandbrief Instruments and ACS Instruments outstanding at any one time under the Programme will not exceed Euro 45,000,000,000 (and for this purpose, any Instrument, Pfandbrief Instrument or ACS Instrument denominated in another currency shall be translated into Euro at the date of the agreement to issue such Instrument, Pfandbrief Instrument or ACS Instrument). The maximum aggregate principal amount of Instruments, Pfandbrief Instruments and ACS Instruments which may be outstanding at any one time under the Programme may be increased from time to time, subject to compliance with the relevant provisions of the Dealership Agreement (as defined under "Subscription and Sale").**

**The distribution of this Prospectus and any Final Terms and the offering, sale and delivery of the Instruments, Pfandbrief Instruments or ACS Instruments in certain jurisdictions may be restricted by law. Persons who come into possession of this Prospectus or any Final Terms are required by the Issuers and the Dealers to inform themselves about and to observe any such restrictions. For a description of certain restrictions on offers, sales and deliveries of Instruments, Pfandbrief Instruments or ACS Instruments, and on the distribution of this Prospectus or any Final Terms and other offering material relating to the Instruments, Pfandbrief Instruments or ACS Instruments, see "Subscription and Sale". In particular, Instruments, Pfandbrief Instruments or ACS Instruments have not been and will not be registered under the United States Securities Act of 1933 (as amended) (the "Securities Act") and are subject to U.S. tax law requirements. Subject to certain**

**exceptions, Instruments, Pfandbrief Instruments or ACS Instruments may not be offered, sold or delivered within the United States or to U.S. persons.**

**Neither the Prospectus nor any Final Terms constitutes an offer or an invitation to subscribe for or purchase any Instruments, Pfandbrief Instruments or ACS Instruments, and should not be considered as a recommendation by DEPFA plc, the Pfandbriefbank, DEPFA ACS, the Dealers or any of them that any recipient of this Prospectus or any Final Terms should subscribe for or purchase any Instruments, Pfandbrief Instruments or ACS Instruments. Each recipient of the Prospectus or any Final Terms shall be taken to have made its own investigation and appraisal of the condition (financial or otherwise) of DEPFA plc, the Pfandbriefbank and DEPFA ACS.**

**All references in the Prospectus to "dollars", "U.S. dollars", "USD", "\$" or "U.S.\$" are to the currency of the United States of America and all references to "euro", "Euro" and "EUR" refer to the single currency introduced at the start of the third stage of European Economic and Monetary Union pursuant to the Treaty establishing the European Community, as amended.**

**This Prospectus supersedes the Prospectus dated 11 May 2007.**

**In connection with the issue of any Tranche of Instruments, Pfandbrief Instruments or ACS Instruments, the Dealer or Dealers (if any) named as the Stabilising Manager(s) (or persons acting on behalf of any Stabilising Manager(s)) in the applicable Final Terms may over allot Instruments, Pfandbrief Instruments or ACS Instruments or effect transactions with a view to supporting the market price of the Instruments, Pfandbrief Instruments or ACS Instruments at a level higher than that which might otherwise prevail. However, there is no assurance that the Stabilising Manager(s) (or persons acting on behalf of a Stabilising Manager) will undertake stabilisation action. Any stabilisation action may begin on or after the date on which adequate public disclosure of the terms of the offer of the relevant Tranche of Instruments, Pfandbrief Instruments or ACS Instruments is made and, if begun, may be ended at any time, but it must end no later than the earlier of 30 days after the issue date of the relevant Tranche of Instruments, Pfandbrief Instruments or ACS Instruments and 60 days after the date of the allotment of the relevant Tranche of Instruments, Pfandbrief Instruments or ACS Instruments. Any stabilisation action or over-allotment must be conducted by the relevant Stabilising Manager(s) (or person(s) acting on behalf of any Stabilising Manager(s)) in accordance with all applicable laws and rules.**

## INFORMATION INCORPORATED BY REFERENCE

The following information which has previously been published or is published simultaneously with this Prospectus and has been submitted to and filed with the Irish Stock Exchange shall be deemed to be incorporated in, and to form part of, this Prospectus:

- 1) the audited consolidated financial statements of DEPFA plc for the years ended 31 December 2007 and 2006 and the audit reports thereon;
- 2) the interim unaudited consolidated financial statements of DEPFA plc for the three months ended 31 March 2008 and 31 March 2007;
- 3) the audited financial statements of the Pfandbriefbank for the years ended 31 December 2007 and 2006 and the audit reports thereon;
- 4) the cashflow statements of the Pfandbriefbank for the years ended 31 December 2006 and 31 December 2007 and the accountants' reports thereon;
- 5) the audited financial statements of DEPFA ACS for the years ended 31 December 2007 and 2006 and the audit reports thereon; and
- 6) the unaudited interim financial statements of Depfa ACS for the three months ended 31 March 2008 and 31 March 2007,

save that any statement contained herein or in any of the documents incorporated by reference in, and forming part of, this Prospectus shall be deemed to be modified or superseded for the purpose of this Prospectus to the extent that a statement contained in any supplement to this Prospectus issued pursuant to Article 16 of the Prospectus Directive (Directive 2003/71/EC) (the "Prospectus Directive") modifies or supersedes such statement.

The Supplemental Base Prospectus of DEPFA plc, the Pfandbriefbank and DEPFA ACS, dated 12 July 2007, which has been filed with the Irish Stock Exchange and approved by the Financial Regulator shall be deemed to be incorporated in, and to form part of, this Prospectus. This Supplemental Base Prospectus includes details on:

- a) The terms and conditions of the Instruments as originally set out on pages 15 up to and including 35 of the listing particulars of DEPFA plc, the Pfandbriefbank and DEPFA ACS contained in the 2003 Information Memorandum as approved by the Irish Stock Exchange on 1 August 2003 (the "DEPFA 2003 Terms and Conditions");
- b) The terms and conditions of the Pfandbrief Instruments as originally set out on pages 62 up to and including 75 of the listing particulars of the Pfandbriefbank contained in the 2003 Information Memorandum as approved by the Irish Stock Exchange on 1 August 2003 (the "Pfandbriefbank 2003 Terms and Conditions");
- c) The terms and conditions of the ACS Instruments as originally set out on pages 91 up to and including 104 of the listing particulars of DEPFA ACS contained in the 2003 Information Memorandum as approved by the Irish Stock Exchange on 1 August 2003 (the "DEPFA ACS 2003 Terms and Conditions");
- d) The terms and conditions of the Instruments as originally set out on pages 14 up to and including 34 of the listing particulars of DEPFA plc and DEPFA ACS

contained in the 2004 Information Memorandum as approved by the Irish Stock Exchange on 30 July 2004 (the "DEPFA 2004 Terms and Conditions");

- e) The terms and conditions of the ACS Instruments as originally set out on pages 62 up to and including 75 of the listing particulars of DEPFA ACS contained in the 2004 Information Memorandum as approved by the Irish Stock Exchange on 30 July 2004 (the "DEPFA ACS 2004 Terms and Conditions").

In addition, the following documents have been filed with the Irish Stock Exchange and shall be deemed to be incorporated in, and to form part of, this Prospectus.

- a) The terms and conditions of the Instruments as referred to on pages 17 up to and including 37 of the prospectus of DEPFA plc and DEPFA ACS relating to the Programme, dated 1 July 2005 (the "DEPFA 2005 Terms and Conditions");
- b) The terms and conditions of the ACS Instruments as referred to on pages 41 up to and including 54 of the prospectus of DEPFA ACS relating to the Programme, dated 1 July 2005 (the "DEPFA ACS 2005 Terms and Conditions");
- c) The terms and conditions of the Instruments as referred to on pages 21 up to and including 41 of the prospectus of DEPFA plc, the Pfandbriefbank and DEPFA ACS relating to the Programme, dated 30 June 2006 (the "DEPFA 2006 Terms and Conditions");
- d) The terms and conditions of the Pfandbrief Instruments as referred to on pages 45 up to and including 58 of the prospectus of DEPFA plc, the Pfandbriefbank and DEPFA ACS relating to the Programme, dated 30 June 2006 (the "Pfandbriefbank 2006 Terms and Conditions");
- e) The terms and conditions of the ACS Instruments as referred to on pages 59 up to and including 72 of the prospectus of DEPFA plc, the Pfandbriefbank and DEPFA ACS relating to the Programme, dated 30 June 2006 (the "DEPFA ACS 2006 Terms and Conditions");
- f) The terms and conditions of the Instruments as referred to on pages 25 up to and including 44 of the prospectus of DEPFA plc, the Pfandbriefbank and DEPFA ACS relating to the Programme, dated 11 May 2007 (the "DEPFA 2007 Terms and Conditions");
- g) The terms and conditions of the Pfandbrief Instruments as referred to on pages 48 up to and including 60 of the prospectus of DEPFA plc, the Pfandbriefbank and DEPFA ACS relating to the Programme, dated 11 May 2007 (the "Pfandbriefbank 2007 Terms and Conditions"); and
- h) The terms and conditions of the ACS Instruments as referred to on pages 61 up to and including 73 of the prospectus of DEPFA plc, the Pfandbriefbank and DEPFA ACS relating to the Programme, dated 11 May 2007 (the "DEPFA ACS 2007 Terms and Conditions").



To the extent that part only of a document is incorporated by reference herein, the non-incorporated part of such document is either not relevant for an investor or is covered elsewhere in the Prospectus.

- 1 The DEPFA 2007 Terms and Conditions, the Pfandbriefbank 2007 Terms and Conditions, the DEPFA ACS 2007 Terms and Conditions, the DEPFA 2006 Terms and Conditions, the Pfandbriefbank 2006 Terms and Conditions, the DEPFA ACS 2006 Terms and Conditions, the DEPFA 2005 Terms and Conditions, the DEPFA ACS 2005 Terms and Conditions, the DEPFA 2004 Terms and Conditions, the DEPFA ACS 2004 Terms and Conditions, the DEPFA 2003 Terms and Conditions, the Pfandbriefbank 2003 Terms and Conditions and the DEPFA ACS 2003 Terms and Conditions shall be relevant in case of re-openings of issues of Instruments, Pfandbrief Instruments or ACS Instruments, as the case may be) that were originally opened having the benefit of one the aforementioned terms and conditions, as specified in the sections 'Form of Final Terms for Instruments' on page 115 of this Prospectus, 'Form of Final Terms for Pfandbrief Instruments' on page 134 of this Prospectus, and 'Form of Final Terms for ACS Instruments' on page 150 of this Prospectus.

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## SUMMARY OF THE PROGRAMME

*This summary must be read as an introduction to this Prospectus and any decision to invest in the Instruments, Pfandbrief Instruments or ACS Instruments should be based on a consideration of the Prospectus as a whole, including the documents incorporated by reference. No civil liability attaches to the Issuers solely on the basis of the summary, including any translation thereof, unless it is misleading, inaccurate or inconsistent when read together with the other parts of this Prospectus. Where a claim relating to the information contained in this Prospectus is brought before a court in a Member State of the European Economic Area, the plaintiff may, under the national legislation of the Member State where the claim is brought, be required to bear the costs of translating the Prospectus before the legal proceedings are initiated. Words and expressions defined in the "Terms and Conditions of the Instruments", "Terms and Conditions of the Pfandbrief Instruments" and "Terms and Conditions of the ACS Instruments" below or elsewhere in this Prospectus have the same meanings in this summary.*

*The following is a brief summary only and should be read, in relation to any Instruments, Pfandbrief Instruments or ACS Instruments, in conjunction with the relevant Final Terms and, to the extent applicable, the Terms and Conditions of the Instruments, Pfandbrief Instruments or ACS Instruments set out herein.*

- Issuers: DEPFA BANK plc ("DEPFA plc"), DEPFA Deutsche Pfandbriefbank AG (the "Pfandbriefbank") and DEPFA ACS BANK ("DEPFA ACS").
- Keep-well Statement: The Pfandbriefbank has the benefit of the following keep well statement dated 13 December 2007 and issued by Hypo Real Estate Holding AG (the "Keep Well Statement"): "For the following company Hypo Real Estate Holding AG ensures that it is able to meet its contractual obligations (with the exception of political risk): DEPFA Deutsche Pfandbriefbank AG." The Keep Well Statement does **not** constitute a guarantee.
- Arranger: Morgan Stanley & Co. International plc.
- Dealers: ABN AMRO Bank N.V., Banco Bilbao Vizcaya Argentaria, S.A., Banco Santander, S.A., Barclays Bank PLC, Bear Stearns International Limited, BNP PARIBAS, Citigroup Global Markets Limited, Commerzbank Aktiengesellschaft, Credit Suisse Securities (Europe) Limited, Daiwa Securities SMBC Europe Limited, DEPFA BANK plc, Deutsche Bank AG, London Branch, Dresdner Bank Aktiengesellschaft, Goldman Sachs International, HSBC Bank plc, J.P. Morgan Securities Ltd., Lehman Brothers International (Europe), Merrill Lynch International, Mizuho International plc, Morgan Stanley & Co. International plc, Nomura International plc, Royal Bank of Canada Europe Limited,

	The Royal Bank of Scotland plc, The Toronto-Dominion Bank and UBS Limited, and any other dealer appointed from time to time by the Issuers either generally in respect of the Programme or in relation to a particular Tranche of Instruments or, as the case may be, Pfandbrief Instruments or, as the case may be, ACS Instruments.
Fiscal Agent:	Deutsche Bank AG, London Branch (in relation to Instruments, Pfandbrief Instruments and ACS Instruments that will initially be deposited with, or with a depositary or common depositary of, any clearing system including Euroclear Bank SA/NV ("Euroclear") and Clearstream Banking, société anonyme, Luxembourg ("CBL"), but excluding Clearstream Banking AG, Frankfurt am Main ("CBF")).
German Fiscal Agent:	Deutsche Bank Aktiengesellschaft, including its function as German paying agent (in relation to Instruments, Pfandbrief Instruments and ACS Instruments that will be deposited with CBF and/or listed on the Frankfurt Stock Exchange).
Other Paying Agents:	Deutsche Bank Luxembourg S.A., Credit Suisse, Zurich office, and, in the case of Instruments, Pfandbrief Instruments and ACS Instruments listed on the Irish Stock Exchange, DEPPFA plc.
Irish Listing Agent:	McCann FitzGerald Listing Services Limited.
Programme Amount:	Euro 45,000,000,000 (and for this purpose Instruments, Pfandbrief Instruments and ACS Instruments denominated in any currency other than Euro shall be translated into Euro at the date of the relevant agreement to issue any Tranche of Instruments, Pfandbrief Instruments or ACS Instruments). The aggregate principal amount of Instruments, Pfandbrief Instruments and ACS Instruments which may be outstanding at any time under the Programme may be increased from time to time, subject to compliance with the relevant provisions of the Dealership Agreement as defined under "Subscription and Sale".
Issuance in Series:	Instruments, Pfandbrief Instruments and ACS Instruments will be consecutively numbered and issued in series (each a "Series"). Each Series may comprise one or more tranches ("Tranches" and each a "Tranche") issued on different dates. The Instruments, Pfandbrief Instruments, or ACS Instruments of each Series will all be subject to identical terms, whether as to currency, interest, maturity or

otherwise, or terms which are identical except that the issue dates, the amount of the first payment of interest and/or the denomination thereof may be different. The Instruments, Pfandbrief Instruments or ACS Instruments of each Tranche will all be subject to identical terms in all respects save that a Tranche may comprise Instruments or, as the case may be, Pfandbrief Instruments or, as the case may be, ACS Instruments of different denominations.

Form of Instruments:

Instruments will be issued in bearer form.

In respect of each Tranche of Instruments, the relevant Issuer will deliver a temporary global Instrument or (if so specified in the relevant Final Terms in respect of Instruments to which U.S. Treasury Regulation §1.163-5(c)(2)(i) (C) (the "TEFRA C Rules") applies) a permanent global Instrument. Each permanent global Instrument which is not intended to be issued in new global instrument (a "New Global Instrument" or "NGI") form (a "Classic Global Instrument" or "CGI"), as specified in the relevant Final Terms, will be deposited on or before the relevant issue date therefor with a depository or a common depository for Euroclear and/or CBL or with CBF and/or any other relevant clearing system and each Global Instrument which is intended to be issued in NGI form, as specified in the relevant Final Terms, will be deposited on or around the relevant issue date with a common safe-keeper for Euroclear and/or Clearstream, Luxembourg.

Each temporary global Instrument will be exchangeable for a permanent global Instrument or, if so specified in the applicable Final Terms, for Instruments in definitive bearer form.

Each permanent global Instrument will be exchangeable for Instruments in definitive bearer form in the circumstances specified in the applicable Final Terms and, if so specified in the relevant Final Terms, at the option of the holder thereof. Instruments in definitive bearer form will, if interest-bearing, either have interest coupons ("Coupons") attached or have a grid for recording the payment of interest endorsed thereon and will, if the principal thereof is repayable by instalments, have a grid for recording the payment of principal endorsed thereon.

Pfandbrief Instruments:

The Pfandbriefbank may issue Pfandbrief Instruments as Public Sector Pfandbriefe (*Öffentliche Pfandbriefe*) as

specified in the applicable Terms and Conditions of the Pfandbrief Instruments.

Pfandbrief Instruments will be issued in bearer form. Pfandbrief Instruments in respect of each Tranche will be represented on issue by a temporary global Pfandbrief Instrument or a permanent global Pfandbrief Instrument which will be deposited on or before the relevant issue date with a common depositary for Euroclear and CBL or, as the case may be, held by CBF. Interests in the temporary global Pfandbrief Instrument will be exchangeable, in whole or in part, for interests in a permanent global Pfandbrief Instrument on or after the Exchange Date (as specified in the relevant Final Terms).

Public Sector Pfandbriefe constitute recourse obligations of the Pfandbriefbank. They are secured or "covered" by pools of public sector loans, the sufficiency of which is determined by the German Pfandbrief Bank Act (*Pfandbriefgesetz*) and monitored by an independent trustee. See "Pfandbriefe".

#### ACS Instruments:

DEPFA ACS is a designated public credit institution under the Asset Covered Securities Acts, 2001 and 2007 of Ireland. As a designated credit institution, DEPFA ACS may issue public credit covered securities in accordance with the ACS Acts (as defined below under "Irish Asset Covered Securities"). ACS Instruments will be issued as such public credit covered securities.

ACS Instruments will be issued in bearer form. ACS Instruments in respect of each Tranche will be represented on issue by a temporary global ACS Instrument or a permanent global ACS Instrument which will be deposited on or before the relevant issue date with a common depositary for Euroclear and CBL or, as the case may be, held by CBF. Interests in the temporary global ACS Instrument will be exchangeable, in whole or in part, for interests in a permanent global ACS Instrument on or after the Exchange Date (as specified in the relevant Final Terms).

ACS Instruments issued by DEPFA ACS constitute recourse obligations of DEPFA ACS. They are secured by a statutory preference under the ACS Act on the assets comprised in a defined pool of public credit assets and limited classes of other assets (the "Pool") maintained by

DEPFA ACS. The ACS Act provides, among other changes, for the supervision and regulation of designated public credit institutions (such as DEPFA ACS) by the Irish Financial Services Regulatory Authority as part of the Central Bank and Financial Services Authority of Ireland (prior to 1 May 2003, the Central Bank of Ireland (the "Authority")) and for the role of a cover-assets monitor (the "Monitor") in respect of each such designated public credit institution. See "Irish Asset Covered Securities".

Currencies:

Instruments, Pfandbrief Instruments and ACS Instruments may be denominated in any currency or currencies (including, without limitation, Australian Dollars ("AUD"), Canadian Dollars ("CAD"), Czech Koruna ("CZK"), Danish Kroner ("DKR"), Estonian Kroons ("EEK"), EUR, Hong Kong Dollars ("HKD"), Hungarian Forint ("HUF"), Japanese Yen ("JPY"), Lithuanian Litas ("LTL"), New Zealand Dollars ("NZD"), Norwegian Kronor ("NKR"), Polish Zloty ("PLN"), Pounds Sterling ("GBP"), Singapore Dollars ("SGD"), Slovak Koruna ("SKK"), South African Rand ("SAR"), Swedish Kronor ("SEK"), Swiss Francs ("CHF") and USD) subject to compliance with all applicable legal or regulatory requirements and, in the case of Pfandbrief Instruments in particular, the German Pfandbrief Act and, in the case of ACS Instruments in particular, the ACS Act and as further specified in the relevant Final Terms. Payments in respect of Instruments, Pfandbrief Instruments and ACS Instruments may, subject to compliance as aforesaid, be made in and/or linked to, any currency or currencies other than the currency in which such Instruments, Pfandbrief Instruments or ACS Instruments are denominated.

Status and Ranking of  
Instruments, Pfandbrief  
Instruments and ACS  
Instruments:

Instruments may be issued on an unsubordinated basis or on a subordinated basis.

Instruments issued on an unsubordinated basis will rank *pari passu* among themselves and the obligations of the relevant Issuer in respect thereof will rank at least *pari passu* with the relevant Issuer's other unsecured and unsubordinated obligations but in the event of insolvency only to the extent permitted by applicable laws relating to creditors' rights.

Instruments issued on a subordinated basis will rank *pari passu* among themselves and at least *pari passu* with the relevant Issuers's other subordinated obligations, subject to

statutorily preferred exceptions.

Pfandbrief Instruments will constitute direct, unconditional and unsubordinated obligations of the Pfandbriefbank and will rank *pari passu* without any preference among themselves. Pfandbrief Instruments are covered by a pool of assets in accordance with the German Pfandbrief Act (*Pfandbriefgesetz*) and rank at least *pari passu* with all other obligations of the Pfandbriefbank arising from Public Sector Pfandbriefe (*Öffentliche Pfandbriefe*).

ACS Instruments will constitute direct, unconditional and unsubordinated obligations of DEPFA ACS and will rank *pari passu* without any preference among themselves. ACS Instruments are secured by a statutory preference under the ACS Act on the assets comprised in the Pool maintained by DEPFA ACS. ACS Instruments will rank *pari passu* with all other public credit covered securities which may be issued by DEPFA ACS in accordance with the ACS Act.

Regulatory Capital:

Instruments may be issued by DEPFA plc, the Pfandbriefbank or DEPFA ACS for regulatory capital purposes, in which case they will include such terms (including subordination as described above) as necessary to qualify for such treatment.

Issue Price:

Instruments, Pfandbrief Instruments and ACS Instruments may be issued at any price and either on a fully or partly paid basis, as specified in the relevant Final Terms.

Maturities:

Instruments, Pfandbrief Instruments and ACS Instruments may be issued with any maturity, or in the case of Instruments, with no specified maturity dates *provided, however, that* Instruments, Pfandbrief Instruments and ACS Instruments will only be issued in compliance with all applicable legal and/ or regulatory and/or central bank requirements.

Redemption:

Instruments, Pfandbrief Instruments and ACS Instruments may be redeemable at par or at such other Redemption Amount (detailed in a formula or otherwise) as may be specified in the relevant Final Terms.

Early Redemption:

Early redemption of the Instruments will be permitted for taxation reasons as mentioned in the Terms and Conditions of the Instruments, but will otherwise be permitted only to the extent specified in the relevant Final Terms. Early



redemption for taxation reasons shall not be permitted for Pfandbrief Instruments or ACS Instruments as they will not be subject to the obligation of DEPFA ACS or Pfandbriefbank, as the case may be, to pay any additional amounts in respect of any amount withheld from any payment thereon for or on account of any tax.

**Interest:** Instruments, Pfandbrief Instruments and ACS Instruments may be interest-bearing or non-interest bearing. Interest (if any) may be at a fixed or floating rate or a combination thereof. Where Instruments are issued on a subordinated basis, provision may be made for interest to be deferred in certain circumstances as specified in the relevant Final Terms and Condition 5.

**Denominations:** Instruments, Pfandbrief Instruments and ACS Instruments will be issued in such denominations as may be specified in the relevant Final Terms, subject to compliance with all applicable legal and/or regulatory and/or central bank requirements except that the minimum denomination of each Instrument or Pfandbrief Instrument issued by the Pfandbriefbank and admitted to trading on a regulated market within the European Economic Area and/or offered to the public in a Member State of the European Economic Area in circumstances which require the publication of a prospectus under the Prospectus Directive will be EUR 1,000 (or, if denominated in a currency other than EUR, the equivalent amount in such currency).

**Taxation:** In relation to Instruments, Pfandbrief Instruments and ACS Instruments issued by an Issuer, payments in respect of Instruments, Pfandbrief Instruments and ACS Instruments will be made without withholding or deduction for, or on account of, any present or future taxes, duties, assessments or governmental charges of whatever nature imposed or levied by or on behalf of the jurisdiction of incorporation of such Issuer or any political subdivision thereof or any authority or agency therein or thereof having power to tax, unless the withholding or deduction of such taxes, duties, assessments or governmental charges is required by law. In that event, in the case of Instruments only, the relevant Issuer will, subject to customary exceptions, pay such additional amounts as will result in the holders of Instruments or Coupons receiving such amounts as they would have received in respect of such Instruments or Coupons had no such withholding or deduction been required. Pfandbrief Instruments and ACS Instruments will

	not provide for the obligation of the relevant Issuer to pay such additional amounts in the event of taxes or duties being withheld or deducted from payments of principal or interest as aforesaid.
Events of Default in respect to Instruments:	As more fully described in Condition 13 of the Instruments.
Events of Default in respect to Pfandbrief Instruments:	None.
Events of Default in respect to ACS Instruments:	None.
Negative Pledge:	None.
Cross Default:	None.
Governing Law:	Unless otherwise specified in the relevant Final Terms, any subordination provisions will be governed by German law or, as the case may be, Irish law. Subject thereto, the Instruments and all related contractual documentation will be governed by, and construed in accordance with, English law. Pfandbrief Instruments will be governed by German law. ACS Instruments will be governed by Irish law.
Admission to Trading:	Each Series of Instruments, Pfandbrief Instruments and ACS Instruments may be admitted to listing on the Official List of the Irish Stock Exchange and to trading on the regulated market of the Irish Stock Exchange or to listing, trading and/or quotation by any other listing authority, stock exchange and/or quotation system as may be agreed between DEPFA plc, the Pfandbriefbank and/or, as the case may be, DEPFA ACS and the relevant Dealer(s) and specified in the relevant Final Terms or may be unlisted.
Risk Factors	There are certain risks related to any issue of Instruments, Pfandbrief Instruments and ACS Instruments under the Programme, which investors should ensure they fully understand (see "Risk Factors").
Terms and Conditions:	Final Terms will be prepared in respect of each Tranche of Instruments, Pfandbrief Instruments or ACS Instruments. If specified in the relevant Final Terms that other terms and conditions may apply to the Instruments, Pfandbrief Instruments or ACS Instruments, such other terms and conditions will replace the Terms and Conditions set out herein. Copies of such documents, in the case of

Instruments, Pfandbrief Instruments or ACS Instruments, to be listed will be delivered to any relevant listing authority, stock exchange and/or quotation system on or before the Issue Date of such Instruments, Pfandbrief Instruments or ACS Instruments. The terms and conditions applicable to each Series of Instruments, Pfandbrief Instruments or ACS Instruments will be those set out herein as supplemented or modified by the relevant Final Terms. If the relevant Final Terms specifies that other terms and conditions apply to the Instruments, Pfandbrief Instruments or ACS Instruments, such other terms and conditions shall be the legally binding terms and conditions of the Instruments, Pfandbrief Instruments or ACS Instruments.

Enforcement of Instruments in Global Form:

In the case of Instruments in global form, investors will have the benefit of a deed of covenant dated 9 May 2008, a copy of which will be available for inspection at the specified office of the Fiscal Agent.

Puts/Calls:

In the event that put and/or call options are applicable to any Instruments, Pfandbrief Instruments or ACS Instruments (as agreed between the relevant Issuer and the relevant Dealer), the details thereof (including notice periods) will be inserted in the relevant Final Terms or, in the case of Pfandbrief Instruments and ACS Instruments, described in the relevant terms and conditions. Puts/calls will in all cases be subject to any legal and/or regulatory requirement providing for minimum maturities for an issue denominated in a specific currency.

Clearing Systems:

Euroclear, CBL and/or any other clearing system as may be specified in the relevant Final Terms or, in the case of Pfandbrief Instruments and ACS Instruments, as may be specified in the relevant terms and conditions prepared for the relevant series of Pfandbrief Instruments or, as the case may be ACS Instruments.

Selling Restrictions:

For a description of certain restrictions on offers, sales and deliveries of Instruments, Pfandbrief Instruments or ACS Instruments and on the distribution of offering material in the United States of America, the European Economic Area, the United Kingdom, Japan and Ireland, see under "Subscription and Sale". Further restrictions may be required in connection with any particular Tranche of Instruments, Pfandbrief Instruments or ACS Instruments and will be specified in the documentation relating to such Tranche.

## RISK FACTORS

*Prospective investors should read the entire Prospectus. Words and expressions defined in the "Terms and Conditions of the Instruments ", "Terms and Conditions of the Pfandbrief Instruments" and "Terms and Conditions of the ACS Instruments" below or elsewhere in this Prospectus have the same meanings in this section. Investing in the Instruments, Pfandbrief Instruments and/or the ACS Instruments involves certain risks. Prospective investors should consider, among other things, the following:*

### **Risks Relating to each of the Issuers**

DEPFA plc and its consolidated subsidiaries (the "**Group**") and the Pfandbriefbank are all exposed to the following risks:

***The Group and the Pfandbriefbank's operations are subject to the general economic conditions of the markets in which the group operates.***

The public finance activities of each of the Issuers depends on the level of finance and financial services required by its public sector clients. In particular, levels of borrowing and other financial activities in each of the primary markets in which the Group and the Pfandbriefbank do business depend on market interest rates, currency fluctuations and other factors that affect the economies of such countries. Each of the Group's and the Pfandbriefbank's business, results of operations and financial condition could be adversely affected by a worsening of general economic conditions, currency fluctuations and regulatory changes in its primary markets (Germany, Italy, France, Spain, Japan, Austria, Canada, Great Britain, Scandinavia, Eastern Europe and the United States). Significantly higher interest rates in any of these primary markets could also affect the Issuer's public sector clients' ability or desire to seek additional levels of finance or financial services.

### ***Credit Risk***

Credit risk is the risk of impairment and partial or total loss of a receivable due to deterioration of credit quality on the part of a counterparty. The relevant receivable may be based on traditional on-balance sheet lending business or off-balance sheet business, e.g. counterparty risk arising from derivative financial instruments. The bulk of the Group's financing activities consist of public sector related lending (over 85 per cent. of the Group's total consolidated on-balance sheet exposures and 85.8 per cent. of the Pfandbriefbank's total consolidated on-balance sheet exposures).

Included in the on balance sheet interest earning assets portfolio is an amount of EUR 15.22 billion relating to Group exposures and EUR 2.55 billion relating to the Pfandbriefbank's exposures to financial institution counterparties. Within the Group, on-balance sheet financial institution counterparty risk arises from securities, money market transactions, sale and repurchase agreements and derivatives. Including Letters of Credit provided by the Group, the Group's off balance sheet risks arising from credit derivative exposures equate to a total nominal value of EUR 12.55 billion, excluding protection acquired for the discontinued property loan business on the residual mortgage book, which is to be sold to Aareal Bank AG. The Pfandbriefbank's off balance sheet risks arising from credit derivative exposures equate to a total nominal value of EUR 2.85 billion.

### ***Market Risk***

Each of DEPFA plc, DEPFA ACS and the Pfandbriefbank is exposed to market risk. Market risk refers to the risk of potential loss arising from changes in interest rates, foreign currency exchange rates, equity prices, price or rate volatilities and other relevant market rates and prices such as commodity prices. Each of DEPFA plc, DEPFA ACS and the Pfandbriefbank defines its market risk as changes in fair value of financial instruments as a result of rate, price and volatility movements. The market risk control function has sub-categorized market risk into risk factors. The relevant risk factors are interest rate, credit spread and foreign exchange risk. As banks focusing on public sector finance, the Issuers are not generally exposed to equity or commodity risk.

### ***Liquidity Risk***

Each of DEPFA plc, DEPFA ACS and the Pfandbriefbank is exposed to liquidity risk. Liquidity risk is defined as the risk of being unable to fulfill current or future payment obligations in full and/or at the due date. The risk drivers determining liquidity risk are:

- liquidity of DEPFA plc, DEPFA ACS and Pfandbriefbank assets;
- diversity of the sources of funds; and
- increased demand for collateral.

### ***Operational Risk***

Each of DEPFA plc, DEPFA ACS and the Pfandbriefbank is exposed to operational risk. Operational risk is the risk of direct or indirect losses due to inadequacy or failure of internal processes, people or systems or due to external events. The objective of each of DEPFA plc, DEPFA ACS and the Pfandbriefbank is to minimise operational risk by:

- the documentation and regular review of all relevant policies, procedures and processes;
- the identification and rectification of sources of error and weakness;
- the employment of suitably qualified and experienced personnel;
- the application of the annual staff appraisal process and the regular review of goals and objectives;
- the maintenance of a robust and reliable systems environment;
- the maintenance and regular review of business continuity plans and procedures; and
- sound control systems.

### ***DEPFA plc, DEPFA ACS and the Pfandbriefbank's risk management strategies and techniques may leave them exposed to unidentified or unanticipated risks***

In order to minimise the above risks, each of DEPFA plc, DEPFA ACS and the Pfandbriefbank has implemented comprehensive risk management strategies, including the extensive use of derivatives. Although the Issuers invest substantial time and effort in their risk management strategies and techniques, such risk management may nonetheless fail under some circumstances, particularly when confronted with risks that are not identified or anticipated. Some of the Issuers' methods for managing risk are based upon observations of historical market

behaviour. DEPFA plc, DEPFA ACS and the Pfandbriefbank apply statistical techniques to these observations to quantify their risk exposures. If circumstances arise that each of DEPFA plc, DEPFA ACS and the Pfandbriefbank did not identify or anticipate in developing the risk models, losses could be greater than each of DEPFA plc, DEPFA ACS and the Pfandbriefbank expect. Furthermore, DEPFA plc, DEPFA ACS and the Pfandbriefbank's quantifications do not take all risks into account. If their measures to assess and mitigate risk prove insufficient, the Issuers may experience material unexpected losses. Many of DEPFA plc, DEPFA ACS and the Pfandbriefbank's more sophisticated trading and investment transactions are designed to profit from price movements and differences between prices. If prices move in a way that DEPFA plc, DEPFA ACS and the Pfandbriefbank's risk modelling has not anticipated, the Issuers may experience significant losses.

### ***The Group's and Pfandbriefbank's trading income is volatile***

The Group's and Pfandbriefbank's trading income depends on numerous factors beyond its control, such as the general market environment, overall trading activity, interest rate levels, fluctuations in exchange rates and general market volatility. The wide variability of trading income can have a material effect on DEPFA plc, DEPFA ACS and the Pfandbriefbank's overall net income.

### ***Financial Institution Risk***

DEPFA plc, DEPFA ACS and the Pfandbriefbank are exposed to financial institution risk. Their counterparty risk exposure from its treasury business is associated with securities transactions, money-market dealings and interest rate derivatives entered into with other banks as counterparties. The extent of the resulting credit risk depends on the structure of the particular transaction. Whilst the credit exposure for on balance sheet instruments is denoted by their current market value, the credit risk of derivative financial instruments corresponds to the "potential" replacement costs - those that could arise from the replacement of an equivalent position in the event of potential counterparty default.

### **Risk Factors Relating only to the Pfandbriefbank**

As a wholly owned subsidiary of Hypo Real Estate Holding AG, the Pfandbriefbank has been fully integrated into the risk management systems of Hypo Real Estate Holding AG and its consolidated subsidiaries (together, the "**HRE Group**"). The Pfandbriefbank is, in addition, exposed to the following additional risks:

### ***Property Risk***

Following the reorganisation of the former DEPFA group in 2002, property risks were almost totally transferred to Aareal Bank AG or third parties. Aareal Bank AG and the Pfandbriefbank have agreed in writing that Aareal Bank AG will take over the entire property-financing portfolio held by the Pfandbriefbank. At the year-end 2007, the Pfandbriefbank has a remaining property financing portfolio in the amount of EUR 1.2 bn of which EUR 0.7 bn was transferred to third parties via securitisation agreements. In addition, Aareal Bank AG has extended guarantees in the amount of EUR 0.1 bn to DEPFA in respect of individual exposures. In addition, the Pfandbriefbank and Aareal Bank AG have entered into an Agency Agreement (in compliance with the respective German Banking Act rules) whereby Aareal Bank AG

administers, on behalf of the Pfandbriefbank, the loans that have not yet been transferred and provides for protection with regard to the proper administration of the loan portfolio.

Aareal Bank AG and the Pfandbriefbank have agreed to strengthen efforts for transferring the portfolio over the next 2 years.

### ***The Keep Well Statement***

The Keep Well Statement does not constitute a guarantee. Therefore, it does not give holders of Instruments and/or Pfandbrief Instruments any right of action against Hypo Real Estate Holding AG in the event that the Pfandbriefbank defaults with regard to payments to be made under the Instruments and/or Pfandbrief Instruments.

### **Factors which are Material for the Purpose of Assessing the Market Risks Associated with the Instruments, Pfandbrief Instruments or ACS Instruments to be issued under the Programme**

#### ***Not all Instruments, Pfandbrief Instruments and ACS Instruments will be actively traded.***

Instruments, Pfandbrief Instruments and ACS Instruments issued under the Programme will be new securities which may not be widely distributed and for which there is currently no active trading market (unless in the case of any particular Tranche, such Tranche is to be consolidated with and form a single series with a Tranche of Instruments, Pfandbrief Instruments or ACS Instruments which is already issued). If a market does develop, it may not be very liquid. Therefore, investors may not be able to sell their Instruments, Pfandbrief Instrument or ACS Instruments easily or at prices that will provide them with a yield comparable to similar investments that have a developed secondary market. This is particularly the case for Instruments, Pfandbrief Instrument or ACS Instruments that are especially sensitive to interest rate, currency or market risks, are designed for specific investment objectives or strategies or have been structured to meet the investment requirements of limited categories of investors. These types of Instruments, Pfandbrief Instrument or ACS Instruments generally would have a more limited secondary market and more price volatility than conventional debt securities. Illiquidity may have a severely adverse effect on the market value of the Instruments, Pfandbrief Instruments or ACS Instruments.

If the Instruments, Pfandbrief Instruments or ACS Instruments are traded after their initial issuance, they may trade at a discount to their initial offering price, depending upon prevailing interest rates, the market for similar securities, general economic conditions and the financial condition of the relevant Issuer. Although application has been made for the Instruments, Pfandbrief Instruments and ACS Instruments issued under the Programme to be admitted to listing on the Official List of the Irish Stock Exchange and to trading on the regulated market of the Irish Stock Exchange, there is no assurance that such applications will be accepted, that any particular Tranche of Instruments, Pfandbrief Instruments or ACS Instruments will be so admitted or that an active trading market will develop. Accordingly, there is no assurance as to the development or liquidity of any trading market for any particular Tranche of Instruments, Pfandbrief Instruments or ACS Instruments.

***Because the Global Instruments, Pfandbrief Instruments and ACS Instruments may be held by or on behalf of a Clearing System, investors will have to rely on their procedures for transfer, payment and communication with the Issuer.***

Instruments, Pfandbrief Instruments and ACS Instruments issued under the Programme may be represented by one or more Global Instruments, Global Pfandbrief Instruments or Global ACS Instruments, as the case may be. Such Global Instruments, Global Pfandbrief Instruments and Global ACS Instruments may be deposited with a common depository, in the case of a CGI, or a common safe-keeper, in the case of a NGI for Euroclear, CBL or CBF. Except in the circumstances described in the relevant Global Instrument, investors will not be entitled to receive definitive Instruments. ACS Instruments and Pfandbrief Instruments will not be issued in definitive form. Euroclear, CBL and CBF will maintain records of the beneficial interests in the Global Instruments or, as the case may be, Pfandbrief Instruments or, as the case may be, Global ACS Instruments. While the Instruments are represented by one or more Global Instruments or the Pfandbrief Instruments are represented by one or more Global Pfandbrief Instruments or the ACS Instruments are represented by one or more Global ACS Instruments, as the case may be, which are deposited with a common safekeeper or common depository on behalf of a Clearing System investors will be able to trade their beneficial interests only through Euroclear, CBL and CBF.

While the Instruments are represented by one or more Global Instruments or the Pfandbrief Instruments are represented by one or more Global Pfandbrief Instruments, or the ACS Instruments are represented by one or more Global ACS Instruments, as the case may be, the relevant Issuer will discharge its payment obligations under the Instruments, Pfandbrief Instruments or ACS Instruments by making payments to the relevant Clearing System for distribution to their account holders. A holder of a beneficial interest in a Global Instrument, Global Pfandbrief Instruments or Global ACS Instrument must rely on the procedures of Euroclear, CBL and CBF to receive payments under the relevant Instruments, Pfandbrief Instruments or ACS Instruments. The relevant Issuer has no responsibility or liability for the records relating to, or payments made in respect of, beneficial interests in the Global Instruments, Global Pfandbrief Instruments or Global ACS Instruments.

### ***Trading in the Clearing Systems***

In relation to any issue of Instruments which have a denomination consisting of the minimum Specified Denomination plus a higher integral multiple of another smaller amount, it is possible that the Instruments may be traded in amounts in excess of the Specified Denomination (or its equivalent) that are not integral multiples of the Specified Denomination (or its equivalent). In such a case an investor who, as a result of trading such amounts, holds a principal amount of less than the minimum Specified Denomination may not receive a definitive Instrument in respect of such holding (should definitive Instruments be printed) and would need to purchase a principal amount of Instruments such that its holding amounts to a Specified Denomination.

***Instruments, Pfandbrief Instruments and ACS Instruments are obligations of the relevant Issuer only.***

The Instruments, Pfandbrief Instruments or ACS Instruments (other than subordinated Instruments) will constitute unsubordinated and unsecured obligations of the relevant Issuer and



will rank equally among themselves and equally with all other unsubordinated and unsecured obligations of the relevant Issuer (other than obligations preferred by mandatory provisions of law, which, in the case of DEPFA ACS, would include ACS Instruments and any other asset covered securities issued by DEPFA ACS). ACS Instruments will constitute unsubordinated obligations of DEPFA ACS secured by a statutory preference under the ACS Act on the Pool maintained by DEPFA ACS. An investment in Instruments or ACS Instruments involves a reliance on the creditworthiness of the relevant Issuer and no other person. Pfandbrief Instruments will constitute direct, unconditional and unsubordinated obligations of the Pfandbriefbank and will rank *pari passu* without any preference among themselves. Pfandbrief Instruments are covered by a pool of assets in accordance with the German Pfandbrief Act (*Pfandbriefgesetz*) and rank at least *pari passu* with all with all other obligations of the Pfandbriefbank arising from Public Sector Pfandbriefe (*Öffentliche Pfandbriefe*).

In addition, investment in Instruments, Pfandbrief Instruments or ACS Instruments involves the risk that subsequent changes in actual or perceived creditworthiness of the relevant Issuer may adversely affect the market value of the relevant Instruments, Pfandbrief Instruments or ACS Instruments.

The creditworthiness of the Issuers will depend, to a large extent, on the financial performance of the HRE Group.

#### ***Exchange rate risks and exchange controls***

The relevant Issuer will pay principal and interest on the Instruments, Pfandbrief Instruments or ACS Instruments in the Specified Currency. This presents certain risks relating to currency conversions if an investor's financial activities are denominated principally in a currency or currency unit (the Investor's Currency) other than the Specified Currency. These include the risk that exchange rates may significantly change (including changes due to devaluation of the Specified Currency or revaluation of the Investor's Currency) and the risk that authorities with jurisdiction over the Investor's Currency may impose or modify exchange controls. An appreciation in the value of the Investor's Currency relative to the Specified Currency would decrease (1) the Investor's Currency-equivalent yield on the Instruments, Pfandbrief Instruments or ACS Instruments (2) the Investor's Currency-equivalent value of the principal payable on the Instruments Pfandbrief Instruments or ACS Instruments, Pfandbrief Instruments or ACS Instruments and (3) the Investor's Currency-equivalent market value of the Instruments, Pfandbrief Instruments or ACS Instruments.

Government and monetary authorities may impose (as some have done in the past) exchange controls that could adversely affect an applicable exchange rate. As a result, investors may receive less interest or principal than expected, or no interest or principal.

#### ***Interest rate risks***

Investment in Fixed Rate Instruments, Pfandbrief Instruments or ACS Instruments involves the risk that subsequent changes in market interest rates may adversely affect the value of the Fixed Rate Instruments, Pfandbrief Instruments or ACS Instruments.

***Credit ratings may not reflect all risks***

One or more independent credit rating agencies may assign credit ratings to the Instruments, Pfandbrief Instruments or ACS Instruments. The ratings may not reflect the potential impact of all risks related to structure, market, additional factors discussed above, and other factors that may affect the value of the Instruments, Pfandbrief Instruments or ACS Instruments. A security rating is not a recommendation to buy, sell or hold securities and may be subject to suspension, reduction or withdrawal at any time by the rating agency. Any ratings assigned to Instruments, Pfandbrief Instruments or ACS Instruments as at the date of this Prospectus are not indicative of future performance of the relevant Issuer's business or its future creditworthiness.

***The relevant Issuer's obligations under Subordinated Instruments are subordinated***

The relevant Issuer's obligations under Subordinated Instruments will be unsecured and subordinated and will rank junior in priority of payment to unsubordinated obligations. Although Subordinated Instruments may pay a higher rate of interest than comparable Instruments which are unsubordinated, there is a real risk that an investor in Subordinated Instruments will lose all or some of his investment should the relevant Issuer become insolvent.

The rights of holders of Subordinated Instruments are subordinated to the prior payment in full of the deposit liabilities and all other liabilities of the relevant Issuer except those liabilities which by their terms rank equally or subordinate to the Subordinated Instruments (but only in the circumstances referred to below) and shall rank at least *pari passu* with all other subordinated obligations of the relevant Issuer (other than such subordinated obligations (if any) as may be preferred by provisions of law that are both mandatory and of general application or which by their terms rank subordinate to the Subordinated Instruments).

In the event of insolvency proceedings over the relevant Issuer's estate or the liquidation, dissolution or winding-up of the relevant Issuer or in the event of any proceedings as the result of which or in consequence of which the relevant Issuer may be liquidated, dissolved or wound-up then no payments shall be made to the holders of the Subordinated Instruments until all claims of all unsubordinated creditors of the relevant Issuer have been fully satisfied including the prior payment in full of the deposit liabilities of the relevant Issuer, but, subject thereto, holders of Subordinated Instruments shall be entitled to claim payment in full of the principal amount, interest and any other amounts due in respect of the Subordinated Instruments at least *pari passu* and rateably with all other subordinated obligations of the relevant Issuer (other than such subordinated obligations (if any) as may be preferred by provisions of law that are both mandatory and of general application or which by their terms rank subordinate to the Subordinated Instruments).

No holder of a Subordinated Instrument may exercise (before any court or otherwise) any right of set-off or counterclaim in respect of any amounts due under any Subordinated Note.

No security of whatever kind is, or shall at any time be, provided by the relevant Issuer or any other person securing the claims of the holders of the Subordinated Instruments under the Subordinated Instruments.

No subsequent agreement between the relevant Issuer and the holders of the Subordinated Instruments may have the effect of limiting the provisions set out herein with regard to the subordination of the Subordinated Instruments or shortening the maturity of the Subordinated Instruments except that a change in taxation leads to the payment of Additional Amounts (as described in Condition 15 of the Instruments). If the Subordinated Instruments of the Pfandbriefbank are redeemed prior to their Maturity Date otherwise than in the circumstances described above, then the amount so redeemed may be required to be returned to the Pfandbriefbank irrespective of any agreement to the contrary, unless such redemption takes place at least five years after the issue of the Subordinated Instruments or a statutory exemption in accordance with Section 10 paragraph 5a of the German Banking Act (*Kreditwesengesetz*) applies or the Pfandbriefbank shall have replaced the capital (*Haftendes Eigenkapital*) within the meaning of the German Banking Act created by the Subordinated Instruments with liable capital of equal or higher ranking or the German Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*) has given approval to the early redemption.

Holders of Subordinated Instruments shall have no right to accelerate the maturity of their Subordinated Instruments upon default of any payment owing under the Subordinated Instruments or upon default in the performance of any covenant of the relevant Issuer or otherwise.

***The Instruments, ACS Instruments and Pfandbrief Instruments May Not Be a Suitable Investment for All Investors***

Each potential investor in the Instruments, ACS Instruments and Pfandbrief Instruments must determine the suitability of that investment in light of its own circumstances. In particular, each potential investor should:

- (i) have sufficient knowledge and experience to make a meaningful evaluation of the Instruments, ACS Instruments and Pfandbrief Instruments, the merits and risks of investing in the Instruments and the information contained or incorporated by reference in this Prospectus or any applicable supplement;
- (ii) have access to, and knowledge of, appropriate analytical tools to evaluate, in the context of its particular financial situation and the investment it is considering, an investment in the Instruments, ACS Instruments and Pfandbrief Instruments and the impact the Instruments, ACS Instruments and Pfandbrief Instruments will have on its overall investment portfolio;
- (iii) have sufficient financial resources and liquidity to bear all of the risks of an investment in the Instruments, ACS Instruments and Pfandbrief Instruments including Instruments, ACS Instruments and Pfandbrief Instruments with principal or interest payable in one or more currencies, or where the currency for principal or interest payments is different from the potential investor's currency;
- (iv) understand thoroughly the terms of the Instruments, ACS Instruments and Pfandbrief Instruments and be familiar with the behaviour of any relevant indices and financial markets; and
- (v) be able to evaluate (either alone or with the help of a financial adviser) possible scenarios for economic, interest rate and other factors that may affect its investment and its ability to bear the applicable risks.

Some Instruments, ACS Instruments and Pfandbrief Instruments are complex financial instruments. Sophisticated institutional investors generally do not purchase complex financial instruments as stand-alone investments. They purchase complex financial instruments as a way to reduce risk or enhance yield with an understood, measured, appropriate addition of risk to their overall portfolios. A potential investor should not invest in Instruments, ACS Instruments and Pfandbrief Instruments which are complex financial instruments unless it has the expertise (either alone or with a financial adviser) to evaluate how the Instruments will perform under changing conditions, the resulting effects on the value of the Instruments, ACS Instruments and Pfandbrief Instruments and the impact this investment will have on the potential investor's overall investment portfolio.

### **Risks relating to Instruments, Pfandbrief Instruments and ACS Instruments generally**

Set out below is a brief description of certain risks relating to Instruments, Pfandbrief Instruments and ACS Instruments generally:

#### ***EU Savings Directive***

Under EC Council Directive 2003/48/EC (the Directive) on the taxation of savings income, EU Member States are required, from 1st July, 2005, to provide to the tax authorities of another Member State details of payments of interest (or similar income) paid by a person within its jurisdiction to an individual resident in that other Member State. However, for a transitional period, Belgium, Luxembourg and Austria are instead required (unless during that period they elect otherwise) to operate a withholding system in relation to such payments (the ending of such transitional period being dependent upon the conclusion of certain other agreements relating to information exchange with certain other countries). A number of non-EU countries and territories including Switzerland have agreed to adopt similar measures (a withholding system in the case of Switzerland) with effect from the same date.

If a payment were to be made or collected through a Member State which has opted for a withholding system and an amount of, or in respect of tax were to be withheld from that payment, neither the relevant Issuer nor any paying agent nor any other person would be obliged to pay additional amounts with respect to any Instruments, Pfandbrief Instruments or ACS Instruments as a result of the imposition of such withholding tax. If a withholding tax is imposed on payment made by a paying agent following implementation of the Directive, the Issuer will be required to maintain a paying agent in a Member State that will not be obliged to withhold or deduct tax pursuant to the Directive.

For additional information in relation to the taxation of Instruments, Pfandbrief Instruments and ACS Instruments to be issued under the Programme see the section titled "Taxation" below.

#### ***Change of law***

The conditions of the Instruments are based on the applicable law in effect as at the date of this Prospectus. No assurance can be given as to the impact of any possible judicial decision or change to the applicable law or administrative practice after the date of this Prospectus.

#### ***Legal investment considerations may restrict certain investments***

The investment activities of certain investors are subject to legal investment laws and regulations, or review or regulation by certain authorities. Each potential investor should consult its legal advisers to determine whether and to what extent (1) Instruments, Pfandbrief Instruments or ACS Instruments are legal investments for it, (2) Instruments, Pfandbrief Instruments or ACS Instruments can be used as collateral for various types of borrowing and (3) other restrictions apply to its purchase or pledge of any Instruments, Pfandbrief Instruments or ACS Instruments. Financial institutions should consult their legal advisors or the appropriate regulators to determine the appropriate treatment of Instruments, Pfandbrief Instruments or ACS Instruments under any applicable risk-based capital or similar rules.

### **Risks related to the structure of a particular issue of Instruments**

A wide range of Instruments, Pfandbrief Instruments or ACS Instruments may be issued under the Programme. A number of these Instruments, Pfandbrief Instruments or ACS Instruments may have features which contain particular risks for potential investors:

#### ***Instruments, Pfandbrief Instruments or ACS Instruments issued at a substantial discount or premium***

The market values of securities issued at a substantial discount or premium from their principal amount tend to fluctuate more in relation to general changes in interest rates than do prices for conventional interest-bearing securities. Generally, the longer the remaining term of the securities, the greater the price volatility as compared to conventional interest-bearing securities with comparable maturities.

#### ***Instruments, Pfandbrief Instruments or ACS Instruments subject to optional redemption by the relevant Issuer***

An optional redemption feature of Instruments, Pfandbrief Instruments or ACS Instruments is likely to limit their market value. During any period when the relevant Issuer may elect to redeem Instruments, Pfandbrief Instruments or ACS Instruments, the market value of those Instruments generally will not rise substantially above the price at which they can be redeemed. This also may be true prior to any redemption period.

The relevant Issuer may be expected to redeem Instruments, Pfandbrief Instruments or ACS Instruments when its cost of borrowing is lower than the interest rate on the relevant Instruments, Pfandbrief Instruments or ACS Instruments. At those times, an investor generally would not be able to reinvest the redemption proceeds at an effective interest rate as high as the interest rate on the Instruments, Pfandbrief Instruments or ACS Instruments being redeemed and may only be able to do so at a significantly lower interest rate. Potential investors should consider reinvestment risk in light of other investments available at that time.

#### ***Index-Linked, Commodity-Linked and Dual Currency Instruments, Pfandbrief Instruments or ACS Instruments***

The relevant Issuer may issue Instruments, Pfandbrief Instruments or ACS Instruments with principal or interest determined by reference to an index or formula or commodity, to changes in the prices of the relevant underlying(s), to movements in currency exchange rates or other factors (each, a Relevant Factor). In addition, the relevant Issuer may issue Instruments, Pfandbrief Instruments or ACS Instruments with principal or interest payable in one or more

currencies which may be different from the currency in which the Instruments are denominated. Potential investors should be aware that:

- (i) the market price of such Instruments, Pfandbrief Instruments or ACS Instruments may be very volatile;
- (ii) they may receive no interest;
- (iii) payment of principal or interest may occur at a different time or in a different currency than expected;
- (iv) they may lose all or a substantial portion of their principal;
- (v) a Relevant Factor may be subject to significant fluctuations that may not correlate with changes in interest rates, currencies or other indices;
- (vi) if a Relevant Factor is applied to Instruments in conjunction with a multiplier greater than one or contains some other leverage factor, the effect of changes in the Relevant Factor on principal or interest payable is likely to be magnified; and
- (vii) the timing of changes in a Relevant Factor may affect the actual yield to investors, even if the average level is consistent with their expectations. In general, the earlier the change in the Relevant Factor, the greater the effect on yield.

Furthermore, Index-Linked Redemption Instruments, Pfandbrief Instruments or ACS Instruments may be redeemable by the relevant Issuer by payment of either the par value amount or an amount determined by reference to the value of the underlying reference item(s). Interest payable on Index-Linked Interest Instruments, Pfandbrief Instruments or ACS Instruments may be calculated by reference to the value of one or more underlying reference item(s).

By purchasing the Index-Linked Instruments, Pfandbrief Instruments or ACS Instruments, an investor will be deemed to represent: (i) that it understands the risks associated with the purchase of Index-Linked Instruments, Pfandbrief Instruments or ACS Instruments, Pfandbrief Instruments or ACS Instruments, (ii) that it understands that the Instruments, Pfandbrief Instruments or ACS Instruments are linked to and depend upon the performance of a certain index or indices, (iii) that it is purchasing the Instruments, Pfandbrief Instruments or ACS Instruments for either investment, financial intermediation, hedging or other commercial purposes, (iv) that the relevant Issuer has not made any representation with respect to the index or indices as defined in the relevant Final Terms, and (v) that the investor has performed its own credit analysis of the Instruments, Pfandbrief Instruments or ACS Instruments.

By purchasing Commodity-Linked Instruments, Pfandbrief Instruments or ACS Instruments, an investor will be deemed to represent: (i) that it understands the risks associated with the purchase of Commodity-Linked Instruments, Pfandbrief Instruments or ACS Instruments, (ii) that it understands that the Instruments, Pfandbrief Instruments or ACS Instruments are linked to and depend upon the performance of a certain commodity or commodities, (iii) that it is purchasing the Instruments, Pfandbrief Instruments or ACS Instruments for either investment, financial intermediation, hedging or other commercial purposes, (iv) that the relevant Issuer has not made any representation with respect to the commodity or commodities as defined in the relevant Final Terms, and (v) that the investor has performed its own credit analysis of the Instruments, Pfandbrief Instruments or ACS Instruments.

### ***Equity-Linked Instruments, Pfandbrief Instruments or ACS Instruments***

Equity-Linked Redemption Instruments, Pfandbrief Instruments or ACS Instruments may be redeemable by the relevant Issuer by payment of the par value amount and/or by the physical delivery of a given number of the underlying reference item(s) and/or by payment of an amount determined by reference to the value of the underlying reference item(s). Accordingly, an investment in Equity-Linked Redemption Instruments, Pfandbrief Instruments or ACS Instruments may bear similar market risks to a direct equity investment (in particular, an investor may lose all or a substantial portion of its principal) and investors should take advice accordingly. Interest payable on Equity-Linked Interest Instruments, Pfandbrief Instruments or ACS Instruments may be calculated by reference to the value of one or more underlying reference item(s). Equity-Linked Instruments, Pfandbrief Instruments or ACS Instruments may not benefit from the same ratings assigned to other Instruments to be issued under the Programme. Investors should note that no specific rating for the relevant Equity-Linked Instruments, Pfandbrief Instruments or ACS Instruments may be applied for or sought.

### ***Partly-paid Instruments, Pfandbrief Instruments or ACS Instruments***

The relevant Issuer may issue Instruments, Pfandbrief Instruments or ACS Instruments whose issue price is payable in more than one instalment. Failure to pay any subsequent instalment could result in an investor losing all of its investment.

### ***Floating Rate Instruments, Pfandbrief Instruments or ACS Instruments with a Multiplier or Other Leverage Factor***

Instruments, Pfandbrief Instruments or ACS Instruments with floating interest rates can be volatile investments. If they are structured to include multipliers or other leverage factors, or caps or floors, or any combination of those features or other similar related features, their market values may be even more volatile than those for securities that do not include those features.

### ***Inverse Floating Rate Instruments, Pfandbrief Instruments or ACS Instruments***

Inverse Floating Rate Instruments, Pfandbrief Instruments or ACS Instruments have an interest rate equal to a fixed interest rate minus an interest rate based upon a reference rate such as EURIBOR or LIBOR. The market values of those Instruments, Pfandbrief Instruments or ACS Instruments typically are more volatile than market values of other conventional floating rate debt securities based on the same reference interest rate (and with otherwise comparable terms). Inverse Floating Rate Instruments, Pfandbrief Instruments or ACS Instruments are more volatile because an increase in the reference interest rate not only decreases the interest rate of the Instruments, Pfandbrief Instruments or ACS Instruments, but may also reflect an increase in prevailing interest rates, which further adversely affects the market value of these Instruments, Pfandbrief Instruments or ACS Instruments.

### ***Fixed/Floating Rate Instruments***

Fixed/Floating Rate Instruments, Pfandbrief Instruments or ACS Instruments may bear interest at a rate that converts from a fixed interest rate to a floating interest rate, or from a floating interest rate to a fixed interest rate. Where the relevant Issuer has the right to effect such conversion, this will affect the secondary market and the market value of the Instruments, Pfandbrief Instruments or ACS Instruments since the relevant Issuer may be expected to convert the rate when it is likely to produce a lower overall cost of borrowing. If the relevant Issuer

converts from a fixed interest rate to a floating interest rate, the spread on the Fixed/Floating Rate Instruments, Pfandbrief Instruments or ACS Instruments may be less favourable than spreads then prevailing on comparable Floating Rate Instruments, Pfandbrief Instruments or ACS Instruments tied to the same reference interest rate. In addition, the new floating interest rate at any time may be lower than the interest rates on other Instruments. If the relevant Issuer converts from a floating interest rate to a fixed interest rate, the fixed interest rate may be lower than then prevailing interest rates on its Instruments, Pfandbrief Instruments or ACS Instruments.

### ***Target Redemption Instruments***

The automatic redemption feature of Target Redemption Instruments, Pfandbrief Instruments or ACS Instruments may limit their market value. Due to the overall maximum amount of interest paid under Target Redemption Instruments, Pfandbrief Instruments or ACS Instruments, even in a favourable market/interest environment their market value may not rise substantially above the price at which they can be redeemed.

The automatic redemption may take place when the cost of borrowing is generally lower than at the issue date of the relevant Instruments, Pfandbrief Instruments or ACS Instruments. At those times, an investor generally would not be able to reinvest the redemption proceeds at an effective interest rate as high as the interest rate on the Target Redemption Instruments, Pfandbrief Instruments or ACS Instruments being redeemed and may only be able to do so at a significantly lower interest rate. Potential investors should consider reinvestment risk in light of other investments available at that time.

### ***Credit Linked Instruments***

The value of any Instruments, Pfandbrief Instruments or ACS Instruments linked to the credits of reference entities (the Reference Entities) may vary over time in accordance with the credit of the Reference Entities. An investment in Credit Linked Instruments, Pfandbrief Instruments or ACS Instruments involves a high degree of risk. In the event of the occurrence of a "Credit Event" (as specified in the relevant Final Terms) (the Credit Event) in respect of any one or more Reference Entities, the relevant Issuer may redeem the Instruments, Pfandbrief Instruments or ACS Instruments either by delivering to holders certain "Deliverable Obligations" (as set out in the relevant Final Terms) (the Deliverable Obligations) of any such Reference Entity that has suffered a Credit Event in full satisfaction of its obligations under the Instruments, Pfandbrief Instruments or ACS Instruments or, if "Cash Settlement" is specified in the relevant Final Terms, by the payment of an amount of cash as determined in accordance with the provisions of the relevant Final Terms. In certain circumstances, the Instruments, Pfandbrief Instruments or ACS Instruments cease to bear interest and, on redemption, the investor may be repaid nothing. Credit Linked Instruments, Pfandbrief Instruments or ACS Instruments may not benefit from the same ratings assigned to other Instruments, Pfandbrief Instruments or ACS Instruments to be issued under the Programme. Investors should note that no specific rating for the Credit Linked Instruments, Pfandbrief Instruments or ACS Instruments may be applied for or sought.

The relevant Issuer may issue Credit Linked Instruments, Pfandbrief Instruments or ACS Instruments linked to the performance of two or more Reference Entities where the obligation of the relevant Issuer to redeem the Credit Linked Instruments, Pfandbrief Instruments or ACS Instruments may be replaced by an obligation to pay other amounts calculated by reference to the



value of the Reference Entity or Reference Entities and/or to deliver the Reference Entity or Reference Entities, in each case, in relation to the first Reference Entity in respect of which a Credit Event has occurred ("First to Default Credit Linked Instruments, Pfandbrief Instruments or ACS Instruments"). The relevant Issuer may issue Credit Linked Instruments, Pfandbrief Instruments or ACS Instruments linked to the performance of a portfolio of Reference Entities where the amount of principal and interest (if any) payable by the relevant Issuer pursuant to such Credit Linked Instruments, Pfandbrief Instruments or ACS Instruments is dependent on whether a Credit Event in respect of one or more Reference Entities has occurred (Portfolio Credit Linked Instruments).

The relevant Issuer's obligations in respect of Credit Linked Instruments, Pfandbrief Instruments or ACS Instruments are irrespective of the existence or amount of the relevant Issuer's and/or any of its affiliate's credit exposure to a Reference Entity and the relevant Issuer and/or any of its affiliates needs not suffer any loss nor provide evidence of any loss as a result of the occurrence of a Credit Event.

By purchasing the Credit Linked Instruments, Pfandbrief Instruments or ACS Instruments, an investor will be deemed to represent: (i) that it understands the risks associated with the purchase of Credit Linked Instruments, Pfandbrief Instruments or ACS Instruments (in particular, that it may lose all or a substantial portion of its principal), (ii) that it understands that the Instruments are linked to and depend upon the performance of the obligations of the Reference Entities, (iii) that it is purchasing the Instruments, Pfandbrief Instruments or ACS Instruments for either investment, financial intermediation, hedging or other commercial purposes, (iv) that the relevant Issuer has not made any representation with respect to the Reference Entities, (v) that the investor has performed its own credit analysis of the Reference Entities, and (vi) that the investor understands that the Instruments, Pfandbrief Instruments or ACS Instruments shall, upon the occurrence of a Credit Event, be redeemed either (a) in exchange for (at the sole option of the relevant Issuer) one or more Deliverable Obligations as set out in the relevant Final Terms and that in such an event the investor's recourse under the Instruments, Pfandbrief Instruments or ACS Instruments will be limited to such Deliverable Obligations only, or (b) by the payment of an amount of cash calculated in the manner described in the relevant Final Terms which may amount to nothing.

### ***Pfandbriefe***

The Terms and Conditions of the Pfandbrief Instruments will not contain any events of default and will not be issued with the benefit of an investor put option. Furthermore, in the event of the imposition of a withholding or deduction by way of tax on interest payments under the Pfandbrief Instruments, no additional amounts will be paid to investors so that investors will receive interest payments net of such withholding or deduction.

### ***Loss of investment***

If, in the case of any particular Tranche of Instruments, Pfandbrief Instruments or ACS Instruments, the relevant Final Terms specify that the Instruments, Pfandbrief Instruments or ACS Instruments are Index, Credit or Variable Linked, there is a risk that any investor may lose the value of their entire investment or part of it.

### **Other Risks**

The past performance of Instruments, Pfandbrief Instruments and ACS Instruments by an Issuer may not be a reliable guide to future performance of Instruments, Pfandbrief Instruments and ACS Instruments.

Instruments, Pfandbrief Instruments and ACS Instruments may fall as well as rise in value.

Income or gains from Instruments, Pfandbrief Instruments and ACS Instruments may fluctuate in accordance with market conditions and taxation arrangements.

Where Instruments, Pfandbrief Instruments and ACS Instruments are denominated in a currency other than the reference currency used by the investor, changes in currency exchange rates may have an adverse effect on the value, price or income of Instruments, Pfandbrief Instruments, and ACS Instruments.

### **Risk relating to ACS Instruments**

#### ***Irish ACS legislation is untested.***

The ACS Act is a recent piece of legislation. The protection afforded to the holders of ACS Instruments by means of a preference on the Cover Assets included in the Pool maintained by DEPFA ACS is based only on the ACS Act. The first asset covered securities were issued by DEPFA ACS during March 2003. Since March 2003, DEPFA ACS has been a frequent issuer of asset covered securities and other issuers have joined the market. Nevertheless, there is still only a limited track record for asset covered securities issued in accordance with the ACS Act or in relation to the operation of the ACS Act with respect to DEPFA ACS or other designated credit institutions registered under the ACS Act.

## FORMS OF THE INSTRUMENTS

Each Tranche of Instruments will initially be in the form of either a temporary global instrument (the "Temporary Global Instrument"), without interest coupons, or a permanent global instrument (the "Permanent Global Instrument"), without interest coupons, in each case as specified in the relevant Final Terms. Each Temporary Global Instrument or, as the case may be, Permanent Global Instrument (each a "Global Instrument") which is not intended to be issued in new global instrument ("NGI") form, as specified in the relevant Final Terms, will be deposited on or around the issue date of the relevant Tranche of the Instruments with a depositary or a common depositary for Euroclear Bank SA/NV ("Euroclear") and/or Clearstream Banking, société anonyme, Luxembourg ("CBL") and/or Clearstream Banking AG, Frankfurt ("CBF") and/or any other relevant clearing system and each Global Instrument which is intended to be issued in NGI form, as specified in the relevant Final Terms, will be deposited on or around the issue date of the relevant Tranche of the Instruments with a common safe-keeper for Euroclear and/or CBL.

The NGI form has been introduced to allow for the possibility of Instruments being issued and held in a manner which will permit them to be recognised as eligible collateral for monetary policy of the central banking system for the euro (the "Eurosysteem") and intra-day credit operations by the Eurosysteem either upon issue or at any or all times during their life. However in any particular case such recognition will depend upon satisfaction of the Eurosysteem eligibility criteria at the relevant time.

The relevant Final Terms will also specify whether United States Treasury Regulation §1.163-5(c)(2)(i)(C) (the "TEFRA C Rules") or United States Treasury Regulation §1.163-5(c)(2)(i)(D) (the "TEFRA D Rules") are applicable in relation to the Instruments or, if the Instruments do not have a maturity of more than 365 days, that neither the TEFRA C Rules nor the TEFRA D Rules are applicable.

### **Temporary Global Instrument exchangeable for Permanent Global Instrument**

If the relevant Final Terms specifies the form of Instruments as being "Temporary Global Instrument exchangeable for a Permanent Global Instrument", then the Instruments will initially be in the form of a Temporary Global Instrument which will be exchangeable, in whole or in part, for interests in a Permanent Global Instrument, without interest coupons, not earlier than 40 days after the issue date of the relevant Tranche of the Instruments upon certification as to non-U.S. beneficial ownership. No payments will be made under the Temporary Global Instrument unless exchange for interests in the Permanent Global Instrument is improperly withheld or refused. In addition, interest payments in respect of the Instruments cannot be collected without such certification of non-U.S. beneficial ownership.

Whenever any interest in the Temporary Global Instrument is to be exchanged for an interest in a Permanent Global Instrument, the relevant Issuer shall procure (in the case of first exchange) the prompt delivery (free of charge to the bearer) of such Permanent Global Instrument to the bearer of the Temporary Global Instrument or (in the case of any subsequent exchange) an increase in the principal amount of the Permanent Global Instrument in accordance with its terms against:

- (i) in the case of a CGI, presentation and (in the case of final exchange) surrender of the Temporary Global Instrument at the Specified Office of the Fiscal Agent; and
- (ii) in the case of partial exchange of a NGI, confirmation from the common service provider that Euroclear and CBL have made appropriate entries in their records to reflect the relevant exchange and, in the case of final exchange of a NGI surrender of the Temporary Global Instrument at the Specified Office of the Fiscal Agent or destruction of the Temporary Global Instrument by the common safe-keeper in accordance with the Agency Agreement; and
- (iii) in either case, receipt by the Fiscal Agent of a certificate or certificates of non-U.S. beneficial ownership,

within 7 days of the bearer requesting such exchange.

The principal amount of the Permanent Global Instrument shall be equal to the aggregate of the principal amounts specified in the certificates of non-U.S. beneficial ownership; *provided, however, that* in no circumstances shall the principal amount of the Permanent Global Instrument exceed the initial principal amount of the Temporary Global Instrument.

The Permanent Global Instrument will be exchangeable in whole, but not in part, for Instruments in definitive form ("Definitive Instruments"):

- (i) on the expiry of such period of notice as may be specified in the relevant Final Terms; or
- (ii) at any time, if so specified in the relevant Final Terms; or
- (iii) if the relevant Final Terms specifies "in the limited circumstances described in the Permanent Global Instrument", then if (a) Euroclear or CBL or CBF or any other relevant clearing system is closed for business for a continuous period of 14 days (other than by reason of legal holidays) or announces an intention permanently to cease business or (b) any of the circumstances described in Condition 13 (*Events of Default*) occurs.

Whenever the Permanent Global Instrument is to be exchanged for Definitive Instruments, the relevant Issuer shall procure the prompt delivery (free of charge to the bearer) of such Definitive Instruments, duly authenticated and with Coupons and Talons attached (if so specified in the relevant Final Terms), in an aggregate principal amount equal to the principal amount of the Permanent Global Instrument to the bearer of the Permanent Global Instrument against the surrender of the Permanent Global Instrument at the Specified Office of the Fiscal Agent within 30 days of the bearer requesting such exchange.

### **Temporary Global Instrument exchangeable for Definitive Instruments**

If the relevant Final Terms specifies the form of Instruments as being "Temporary Global Instrument exchangeable for Definitive Instruments" and also specifies that the TEFRA C Rules are applicable or that neither the TEFRA C Rules or the TEFRA D Rules are applicable, then the Instruments will initially be in the form of a Temporary Global Instrument which will be exchangeable, in whole but not in part, for Definitive Instruments not earlier than 40 days after the issue date of the relevant Tranche of the Instruments.

If the relevant Final Terms specifies the form of Instruments as being "Temporary Global Instrument exchangeable for Definitive Instruments" and also specifies that the TEFRA D Rules are applicable, then the Instruments will initially be in the form of a Temporary Global Instrument which will be exchangeable, in whole or in part, for Definitive Instruments not earlier than 40 days after the issue date of the relevant Tranche of the Instruments upon certification as to non-U.S. beneficial ownership. Interest payments in respect of the Instruments cannot be collected without such certification of non-U.S. beneficial ownership.

Whenever the Temporary Global Instrument is to be exchanged for Definitive Instruments, the relevant Issuer shall procure the prompt delivery (free of charge to the bearer) of such Definitive Instruments, duly authenticated and with Coupons and Talons attached (if so specified in the relevant Final Terms), in an aggregate principal amount equal to the principal amount of the Temporary Global Instrument to the bearer of the Temporary Global Instrument against the surrender of the Temporary Global Instrument at the Specified Office of the Fiscal Agent within 30 days of the bearer requesting such exchange.

### **Permanent Global Instrument exchangeable for Definitive Instruments**

If the relevant Final Terms specifies the form of Instruments as being "Permanent Global Instrument exchangeable for Definitive Instruments", then the Instruments will initially be in the form of a Permanent Global Instrument which will be exchangeable in whole, but not in part, for Definitive Instruments:

- (i) on the expiry of such period of notice as may be specified in the relevant Final Terms; or
- (ii) at any time, if so specified in the relevant Final Terms; or
- (iii) if the relevant Final Terms specifies "in the limited circumstances described in the Permanent Global Instrument", then if (a) Euroclear or CBL or CBF or any other relevant clearing system is closed for business for a continuous period of 14 days (other than by reason of legal holidays) or announces an intention permanently to cease business or (b) any of the circumstances described in Condition 13 (Events of Default) occurs.

Whenever the Permanent Global Instrument is to be exchanged for Definitive Instruments, the relevant Issuer shall procure the prompt delivery (free of charge to the bearer) of such Definitive Instruments, duly authenticated and with Coupons and Talons attached (if so specified in the relevant Final Terms), in an aggregate principal amount equal to the principal amount of the Permanent Global Instrument to the bearer of the Permanent Global Instrument against the surrender of the Permanent Global Instrument at the Specified Office of the Fiscal Agent within 30 days of the bearer requesting such exchange.

### **Terms and Conditions applicable to the Instruments**

The terms and conditions applicable to any Definitive Instrument will be endorsed on that Instrument and will consist of the terms and conditions set out under "Terms and Conditions of the Instruments" below and the provisions of the relevant Final Terms which supplement, amend and/or replace those terms and conditions.

The terms and conditions applicable to any Instrument in global form will differ from those terms and conditions which would apply to the Instrument were it in definitive form to the extent described under "Summary of Provisions Relating to the Instruments while in Global Form" below.

### **Legend concerning United States persons**

In the case of any Tranche of Instruments having a maturity of more than 365 days, the Instruments in global form, the Instruments in definitive form and any Coupons and Talons appertaining thereto will bear a legend to the following effect:

"Any United States person who holds this obligation will be subject to limitations under the United States income tax laws, including the limitations provided in Sections 165(j) and 1287(a) of the Internal Revenue Code."

The sections referred to in such legend provide that a United States person who holds an Instrument, a Coupon or Talon will generally not be allowed to deduct any loss realised on the sale, exchange or redemption of such Instrument, Coupon or Talon and any gain (which might otherwise be characterised as capital gain) recognised on such sale, exchange or redemption will be treated as ordinary income.

## TERMS AND CONDITIONS OF THE INSTRUMENTS

*The following is the text of the terms and conditions which, as supplemented, amended and/or replaced by the relevant Final Terms, will be endorsed on each Instrument in definitive form issued under the Programme. The terms and conditions applicable to any Instrument in global form will differ from those terms and conditions which would apply to the Instrument were it in definitive form to the extent described under "Summary of Provisions Relating to the Instruments while in Global Form" below.*

### 1. Introduction

- (a) *Programme:* DEPFA BANK plc ("DEPFA plc"), DEPFA Deutsche Pfandbriefbank AG (the "Pfandbriefbank") and DEPFA ACS BANK ("DEPFA ACS" and, together with DEPFA plc and the Pfandbriefbank, the "Issuers" and each, an "Issuer") have established a programme (the "Programme") for the issuance of up to EUR 45,000,000,000 in aggregate principal amount of debt instruments, including Instruments of the Issuers (the "Instruments").
- (b) *Final Terms:* Instruments issued under the Programme are issued in series (each a "Series") and each Series may comprise one or more tranches (each a "Tranche") of Instruments. Each Tranche is the subject of final terms (the "Final Terms") which supplements these terms and conditions (the "Conditions"). The terms and conditions applicable to any particular Tranche of Instruments are these Conditions as supplemented, amended and/or replaced by the relevant Final Terms. In the event of any inconsistency between these Conditions and the relevant Final Terms, the relevant Final Terms shall prevail.
- (c) *Agency Agreement:* The Instruments are the subject of an amended and restated issue and paying agency agreement dated 9 May 2008 (as amended or supplemented from time to time, the "Agency Agreement") between the Issuers, Deutsche Bank AG, London Branch as fiscal agent (the "Fiscal Agent", which expression includes any successor fiscal agent appointed from time to time in connection with the Instruments), Deutsche Bank Aktiengesellschaft as German fiscal agent (the "German Fiscal Agent", which expression includes any successor German fiscal agent appointed from time to time in connection with the Instruments) and the paying agents named therein (together with the Fiscal Agent and the German Fiscal Agent, the "Paying Agents", which expression includes any successor or additional paying agents appointed from time to time in connection with the Instruments).
- (d) The Instruments have the benefit of a deed of covenant (the "Deed of Covenant") dated 9 May 2008 executed by the Issuers.
- (e) *The Instruments:* All subsequent references in these Conditions to "Instruments" are to the Instruments which are the subject of the relevant Final Terms. Copies of the relevant Final Terms are available for inspection by Instrumentholders (as defined below) during normal business hours at the registered office in Ireland of DEPFA plc, the Pfandbriefbank or DEPFA ACS, as applicable, and at the Specified Office of the Fiscal

Agent and the German Fiscal Agent, the initial Specified Offices of which are set out below.

- (f) *Summaries:* Certain provisions of these Conditions are summaries of the Agency Agreement and are subject to its detailed provisions. The holders of the Instruments (the "Instrumentholders") and the holders of the related interest coupons, if any, (the "Couponholders" and the "Coupons", respectively) are bound by, and are deemed to have notice of, all the provisions of the Agency Agreement applicable to them. Copies of the Agency Agreement are available for inspection by Instrumentholders during normal business hours at the registered office in Ireland of DEPPFA plc and at the Specified Offices of each of the Paying Agents, the initial Specified Offices of which are set out below.

## **2. Interpretation**

- (a) *Definitions:* In these Conditions the following expressions have the following meanings:

"Accrual Yield" has the meaning given in the relevant Final Terms;

"Additional Business Centre(s)" means the city or cities specified as such in the relevant Final Terms;

"Additional Financial Centre(s)" means the city or cities specified as such in the relevant Final Terms;

"Business Day" means:

- (i) in relation to any sum payable in Euro, a TARGET Settlement Day and a day on which commercial banks and foreign exchange markets settle payments generally in each (if any) Additional Business Centre; and
- (ii) in relation to any sum payable in a currency other than Euro, a day on which commercial banks and foreign exchange markets settle payments generally in the Principal Financial Centre of the relevant currency and in each (if any) Additional Business Centre;

"Business Day Convention", in relation to any particular date, has the meaning given in the relevant Final Terms and, if so specified in the relevant Final Terms, may have different meanings in relation to different dates and, in this context, the following expressions shall have the following meanings:

- (i) "Following Business Day Convention" means that the relevant date shall be postponed to the first following day that is a Business Day;
- (ii) "Modified Following Business Day Convention" or "Modified Business Day Convention" means that the relevant date shall be postponed to the first following day that is a Business Day unless that day falls in the next calendar month in which case that date will be the first preceding day that is a Business Day;



- (iii) "Preceding Business Day Convention" means that the relevant date shall be brought forward to the first preceding day that is a Business Day;
- (iv) "FRN Convention", "Floating Rate Convention" or "Eurodollar Convention" means that each relevant date shall be the date which numerically corresponds to the preceding such date in the calendar month which is the number of months specified in the relevant Final Terms as the Specified Period after the calendar month in which the preceding such date occurred *provided, however, that*:
  - (A) if there is no such numerically corresponding day in the calendar month in which any such date should occur, then such date will be the last day which is a Business Day in that calendar month;
  - (B) if any such date would otherwise fall on a day which is not a Business Day, then such date will be the first following day which is a Business Day unless that day falls in the next calendar month, in which case it will be the first preceding day which is a Business Day; and
  - (C) if the preceding such date occurred on the last day in a calendar month which was a Business Day, then all subsequent such dates will be the last day which is a Business Day in the calendar month which is the specified number of months after the calendar month in which the preceding such date occurred; and
- (v) "No Adjustment" means that the relevant date shall not be adjusted in accordance with any Business Day Convention;

"Calculation Agent" means the Fiscal Agent or such other Person specified in the relevant Final Terms as the party responsible for calculating the Rate(s) of Interest and Interest Amount(s) and/or such other amount(s) as may be specified in the relevant Final Terms;

"Calculation Amount" has the meaning given in the relevant Final Terms;

"Coupon Sheet" means, in respect of an Instrument, a coupon sheet relating to the Instrument;

"Day Count Fraction" means, in respect of the calculation of an amount for any period of time (the "Calculation Period"), such day count fraction as may be specified in these Conditions or the relevant Final Terms and:

- (i) if "Actual/Actual (ICMA)" is so specified, means:
  - (a) where the Calculation Period is equal to or shorter than the Regular Period during which it falls, the actual number of days in the Calculation Period divided by the product of (1) the actual number of days in such Regular Period and (2) the number of Regular Periods in any year; and

- (b) where the Calculation Period is longer than one Regular Period, the sum of:
  - (A) the actual number of days in such Calculation Period falling in the Regular Period in which it begins divided by the product of (1) the actual number of days in such Regular Period and (2) the number of Regular Periods in any year; and (B) the actual number of days in such Calculation Period falling in the next Regular Period divided by the product of (1) the actual number of days in such Regular Period and (2) the number of Regular Periods in any year;
- (ii) if "Actual/365" or "Actual/Actual (ISDA)" is so specified, means the actual number of days in the Calculation Period divided by 365 (or, if any portion of the Calculation Period falls in a leap year, the sum of (A) the actual number of days in that portion of the Calculation Period falling in a leap year divided by 366 and (B) the actual number of days in that portion of the Calculation Period falling in a non-leap year divided by 365);
- (iii) if "Actual/365 (Fixed)" is so specified, means the actual number of days in the Calculation Period divided by 365;
- (iv) if "Actual/360" is so specified, means the actual number of days in the Calculation Period divided by 360;
- (v) if "30/360" is so specified, means the number of days in the Calculation Period divided by 360 (the number of days to be calculated on the basis of a year of 360 days with 12 30-day months (unless (i) the last day of the Calculation Period is the 31st day of a month but the first day of the Calculation Period is a day other than the 30th or 31st day of a month, in which case the month that includes that last day shall not be considered to be shortened to a 30-day month, or (ii) the last day of the Calculation Period is the last day of the month of February, in which case the month of February shall not be considered to be lengthened to a 30-day month)); and
- (vi) if "30E/360" or "Eurobond Basis" is so specified means, the number of days in the Calculation Period divided by 360 (the number of days to be calculated on the basis of a year of 360 days with 12 30-day months, without regard to the date of the first day or last day of the Calculation Period unless, in the case of the final Calculation Period, the date of final maturity is the last day of the month of February, in which case the month of February shall not be considered to be lengthened to a 30-day month);

"Early Redemption Amount (Tax)" means, in respect of any Instrument, its principal amount or such other amount as may be specified in, or determined in accordance with, the relevant Final Terms;

"Early Termination Amount" means, in respect of any Instrument, its principal amount or such other amount as may be specified in, or determined in accordance with, these Conditions or the relevant Final Terms;

"Extraordinary Resolution" has the meaning given in the Agency Agreement;

"Final Redemption Amount" means, in respect of any Instrument, its principal amount or such other amount as may be specified in, or determined in accordance with, the relevant Final Terms;

"Fixed Coupon Amount" has the meaning given in the relevant Final Terms;

"Interest Amount" means, in relation to a Instrument and an Interest Period, the amount of interest payable in respect of that Instrument for that Interest Period;

"Interest Commencement Date" means the Issue Date of the Instruments or such other date as may be specified as the Interest Commencement Date in the relevant Final Terms;

"Interest Determination Date" has the meaning given in the relevant Final Terms;

"Interest Payment Date" means the date or dates specified as such in, or determined in accordance with the provisions of, the relevant Final Terms and, if a Business Day Convention is specified in the relevant Final Terms:

- (i) as the same may be adjusted in accordance with the relevant Business Day Convention; or
- (ii) if the Business Day Convention is the FRN Convention, Floating Rate Convention or Eurodollar Convention and an interval of a number of calendar months is specified in the relevant Final Terms as being the Specified Period, each of such dates as may occur in accordance with the FRN Convention, Floating Rate Convention or Eurodollar Convention at such Specified Period of calendar months following the Interest Commencement Date (in the case of the first Interest Payment Date) or the previous Interest Payment Date (in any other case);

"Interest Period" means each period beginning on (and including) the Interest Commencement Date or any Interest Payment Date and ending on (but excluding) the next Interest Payment Date;

"ISDA Definitions" means the 2000 ISDA Definitions (as amended and updated as at the date of issue of the first Tranche of the Instruments of the relevant Series (as specified in the relevant Final Terms) as published by the International Swaps and Derivatives Association, Inc.) or, if so specified in the relevant Final Terms, the 2006 ISDA Definitions (as amended and updated as at the date of issue of the First Tranche of Notes of the relevant Series (as specified in the relevant Final Terms) as published by the International Swaps and Derivatives Association, Inc.);

"Issue Date" has the meaning given in the relevant Final Terms;

"Margin" has the meaning given in the relevant Final Terms;

"Maturity Date" has the meaning given in the relevant Final Terms;

"Maximum Redemption Amount" has the meaning given in the relevant Final Terms;

"Minimum Redemption Amount" has the meaning given in the relevant Final Terms;

"Optional Redemption Amount (Call)" means, in respect of any Instrument, its principal amount or such other amount as may be specified in, or determined in accordance with, the relevant Final Terms;

"Optional Redemption Amount (Put)" means, in respect of any Instrument, its principal amount or such other amount as may be specified in, or determined in accordance with, the relevant Final Terms;

"Optional Redemption Date (Call)" has the meaning given in the relevant Final Terms;

"Optional Redemption Date (Put)" has the meaning given in the relevant Final Terms;

"Participating Member State" means a Member State of the European Communities which adopts the Euro as its lawful currency in accordance with the Treaty;

"Payment Business Day" means:

- (i) if the currency of payment is Euro, any day which is:
  - (A) a day on which banks in the relevant place of presentation are open for presentation and payment of bearer debt securities and for dealings in foreign currencies; and
  - (B) in the case of payment by transfer to an account, a TARGET Settlement Day and a day on which dealings in foreign currencies may be carried on in each (if any) Additional Financial Centre; or
- (ii) if the currency of payment is not Euro, any day which is:
  - (A) a day on which banks in the relevant place of presentation are open for presentation and payment of bearer debt securities and for dealings in foreign currencies; and
  - (B) in the case of payment by transfer to an account, a day on which dealings in foreign currencies may be carried on in the Principal Financial Centre of the currency of payment and in each (if any) Additional Financial Centre;

"Person" means any individual, company, corporation, firm, partnership, joint venture, association, organisation, state or agency of a state or other entity, whether or not having separate legal personality;

"Principal Financial Centre" means, in relation to any currency, the principal financial centre for that currency *provided, however, that:*

- (i) in relation to Euro, it means the principal financial centre of such Member State of the European Communities as is selected (in the case of a payment) by the payee or (in the case of a calculation) by the Calculation Agent; and

- (ii) in relation to Australian dollars, it means either Sydney or Melbourne and, in relation to New Zealand dollars, it means either Wellington or Auckland; in each case as is selected (in the case of a payment) by the payee or (in the case of a calculation) by the Calculation Agent;

"Put Option Notice" means a notice which must be delivered to a Paying Agent by any Instrumentholder wanting to exercise a right to redeem a Instrument at the option of the Instrumentholder;

"Put Option Receipt" means a receipt issued by a Paying Agent to a depositing Instrumentholder upon deposit of an Instrument with such Paying Agent by any Instrumentholder wanting to exercise a right to redeem an Instrument at the option of the Instrumentholder;

"Rate of Interest" means the rate or rates (expressed as a percentage per annum) of interest payable in respect of the Instruments specified in the relevant Final Terms or calculated or determined in accordance with the provisions of these Conditions and/or the relevant Final Terms;

"Ratings Agencies" means Fitch Ratings Ltd., Moody's Investors Service Inc. and Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, or any of their respective successors;

"Redemption Amount" means, as appropriate, the Final Redemption Amount, the Early Redemption Amount (Tax), the Optional Redemption Amount (Call), the Optional Redemption Amount (Put), the Early Termination Amount or such other amount in the nature of a redemption amount as may be specified in, or determined in accordance with the provisions of, the relevant Final Terms;

"Reference Banks" has the meaning given in the relevant Final Terms or, if none, four (or if the Principal Financial Centre is Helsinki, five) major banks selected by the Calculation Agent in the market that is most closely connected with the Reference Rate;

"Reference Price" has the meaning given in the relevant Final Terms;

"Reference Rate" has the meaning given in the relevant Final Terms;

"Regular Period" means:

- (i) in the case of Instruments where interest is scheduled to be paid only by means of regular payments, each period from and including the Interest Commencement Date to but excluding the first Interest Payment Date and each successive period from and including one Interest Payment Date to but excluding the next Interest Payment Date;
- (ii) in the case of Instruments where, apart from the first Interest Period, interest is scheduled to be paid only by means of regular payments, each period from and including a Regular Date falling in any year to but excluding the next Regular

Date, where "Regular Date" means the day and month (but not the year) on which any Interest Payment Date falls; and

- (iii) in the case of Instruments where, apart from one Interest Period other than the first Interest Period, interest is scheduled to be paid only by means of regular payments, each period from and including a Regular Date falling in any year to but excluding the next Regular Date, where "Regular Date" means the day and month (but not the year) on which any Interest Payment Date falls other than the Interest Payment Date falling at the end of the irregular Interest Period.

"Relevant Date" means, in relation to any payment, whichever is the later of (a) the date on which the payment in question first becomes due and (b) if the full amount payable has not been received in the Principal Financial Centre of the currency of payment by the Fiscal Agent or, as the case may be, the German Fiscal Agent on or prior to such due date, the date on which (the full amount having been so received) notice to that effect has been given to the Instrumentholders in accordance with Condition 20 (*Notices*);

"Relevant Financial Centre" has the meaning given in the relevant Final Terms;

"Relevant Screen Page" means the page, section or other part of a particular information service (including, without limitation, Reuters) specified as the Relevant Screen Page in the relevant Final Terms, or such other page, section or other part as may replace it on that information service or such other information service, in each case, as may be nominated by the Person providing or sponsoring the information appearing there for the purpose of displaying rates or prices comparable to the Reference Rate;

"Relevant Time" has the meaning given in the relevant Final Terms;

"Reserved Matter" means any proposal to change any date fixed for payment of principal or interest in respect of the Instruments, to reduce the amount of principal or interest payable on any date in respect of the Instruments, to alter the method of calculating the amount of any payment in respect of the Instruments or the date for any such payment, to change the currency of any payment under the Instruments or to change the quorum requirements relating to meetings or the majority required to pass an Extraordinary Resolution;

"Security Interest" means any mortgage, charge, pledge, lien or other security interest including, without limitation, anything analogous to any of the foregoing under the laws of any jurisdiction;

"Specified Currency" has the meaning given in the relevant Final Terms;

"Specified Denomination(s)" has the meaning given in the relevant Final Terms;

"Specified Office" has the meaning given in the Agency Agreement;

"Specified Period" has the meaning given in the relevant Final Terms;

"Subsidiary" means, in relation to any Person (the "first Person") at any particular time, any other Person (the "second Person"):

- (i) whose affairs and policies the first Person controls or has the power to control, whether by ownership of share capital, contract, the power to appoint or remove members of the governing body of the second Person or otherwise; or
- (ii) whose financial statements are, in accordance with applicable law and generally accepted accounting principles, consolidated with those of the first Person;

"Talon" means a talon for further Coupons;

"TARGET Settlement Day" means any day on which the Trans-European Automated Real-Time Gross Settlement Express Transfer (TARGET or TARGET2) System is open;

"Treaty" means the Treaty establishing the European Communities, as amended;

"Zero Coupon Instrument" means an Instrument specified as such in the relevant Final Terms;

(b) *Interpretation:* In these Conditions:

- (i) if the Instruments are Zero Coupon Instruments, references to Coupons and Couponholders are not applicable;
- (ii) if Talons are specified in the relevant Final Terms as being attached to the Instruments at the time of issue, references to Coupons shall be deemed to include references to Talons;
- (iii) if Talons are not specified in the relevant Final Terms as being attached to the Instruments at the time of issue, references to Talons are not applicable;
- (iv) any reference to principal shall be deemed to include the Redemption Amount, any additional amounts in respect of principal which may be payable under Condition 12 (*Taxation*), any premium payable in respect of an Instrument and any other amount in the nature of principal payable pursuant to these Conditions;
- (v) any reference to interest shall be deemed to include any additional amounts in respect of interest which may be payable under Condition 12 (*Taxation*) and any other amount in the nature of interest payable pursuant to these Conditions;
- (vi) references to Instruments being "outstanding" shall be construed in accordance with the Agency Agreement; and
- (vii) if an expression is stated in Condition 2(a) (*Interpretation — Definitions*) to have the meaning given in the relevant Final Terms, but the relevant Final Terms gives no such meaning or specifies that such expression is "not applicable" then such expression is not applicable to the Instruments.

### **3. Form, Denomination and Title**

- (a) The Instruments are in bearer form in the Specified Denomination(s) with Coupons and, if specified in the relevant Final Terms, Talons attached at the time of issue. In the case of a Series of Instruments with more than one Specified Denomination, Instruments of

one Specified Denomination will not be exchangeable for Instruments of another Specified Denomination. Title to the Instruments and the Coupons will pass by delivery. The holder of any Instrument or Coupon shall (except as otherwise required by law) be treated as its absolute owner for all purposes (whether or not it is overdue and regardless of any notice of ownership, trust or any other interest therein, any writing thereon or any notice of any previous loss or theft thereof) and no Person shall be liable for so treating such Instrumentholder or Couponholder. No person shall have any right to enforce any term or condition of any Instrument under the Contracts (Rights of Third Parties) Act 1999.

- (b) Instruments, the principal amount of which is repayable by instalments ("Instalment Instruments"), will have endorsed thereon a grid for recording the repayment of principal.

#### **4. Status — Unsubordinated Instruments**

- (a) This Condition 4 (*Status — Unsubordinated Instruments*) is applicable in relation to Instruments specified in the Final Terms as being unsubordinated or not specified as being subordinated ("Unsubordinated Instruments").
- (b) The Unsubordinated Instruments constitute direct, unconditional, unsubordinated and unsecured obligations of the Issuer which will at all times rank *pari passu* among themselves and at least *pari passu* with all other direct, unconditional, unsubordinated and unsecured obligations of the Issuer, present and future, save for (i) such obligations as may be preferred by provisions of law that are both mandatory and of general application, and (ii) in the case of Unsubordinated Instruments issued by DEPFA ACS and Pfandbriefbank, obligations having statutory priority.

#### **5. Status — Subordinated Instruments**

- (a) This Condition 5 (*Status — Subordinated Instruments*) is applicable only in relation to Instruments specified in the Final Terms as being subordinated ("Subordinated Instruments").
- (b) The Subordinated Instruments constitute direct, unconditional, unsecured and subordinated obligations of the Issuer which will at all times rank *pari passu* in priority of payment and in all other respects without any preference among themselves and at least *pari passu* with all other subordinated obligations of the Issuer, present and future, save for such obligations as may be preferred by provisions of law that are both mandatory and of general application or which by their terms rank subordinate to the Subordinated Instruments. Subordinated Instruments shall have a duration of at least five years.
- (c) The rights of holders of Subordinated Instruments are subordinated to the prior payment in full of the deposit liabilities and all other liabilities of the Issuer except those liabilities which by their terms rank equally or subordinate to the Subordinated Instruments (but only in the circumstances referred to in Condition 5(d) below) and shall rank at least *pari passu* with all other subordinated obligations of the Issuer (other than such subordinated obligations (if any) as may be preferred by provisions of law that are both mandatory and of general application or which by their terms rank subordinate to the Subordinated Instruments).



- (d) In the event of insolvency proceedings over the Issuer's estate or the liquidation, dissolution or winding-up of the Issuer or in the event of any proceedings as the result of which or in consequence of which the Issuer may be liquidated, dissolved or wound-up then no payments shall be made to the holders of the Subordinated Instruments until all claims of all unsubordinated creditors of the Issuer have been fully satisfied including the prior payment in full of the deposit liabilities of the Issuer, but, subject thereto, holders of Subordinated Instruments shall be entitled to claim payment in full of the principal amount, interest and any other amounts due in respect of the Subordinated Instruments at least *pari passu* and rateably with all other subordinated obligations of the Issuer (other than such subordinated obligations (if any) as may be preferred by provisions of law that are both mandatory and of general application or which by their terms rank subordinate to the Subordinated Instruments). The Issuer will pursuant to Condition 20 (*Notices*) inform the holders of the Subordinated Instruments of their entitlement hereunder.
- (e) No holder of a Subordinated Instrument may exercise (before any court or otherwise) any right of set-off or counterclaim in respect of any amounts due under any Subordinated Instrument.
- (f) No security of whatever kind is, or shall at any time be, provided by the Issuer or any other person securing the claims of the holders of the Subordinated Instruments under the Subordinated Instruments.
- (g) No subsequent agreement between the Issuer and the holders of the Subordinated Instruments may have the effect of limiting the provisions set out herein with regard to the subordination of the Subordinated Instruments or shortening the maturity of the Subordinated Instruments except that a change in taxation leads to the payment of additional amounts in accordance with Condition 12 (*Taxation*). If the Subordinated Instruments of the Pfandbriefbank are redeemed prior to their Maturity Date otherwise than in the circumstances described in Condition 5(d) above, then the amount so redeemed may be required to be returned to the Pfandbriefbank irrespective of any agreement to the contrary, unless such redemption takes place at least five years after the issue of the Subordinated Instruments or a statutory exemption in accordance with Section 10 paragraph 5a of the German Banking Act (*Kreditwesengesetz*) applies or the Pfandbriefbank shall have replaced the capital (*Haftendes Eigenkapital*) within the meaning of the German Banking Act created by the Subordinated Instruments with liable capital of equal or higher ranking or the German federal supervisory authority has given approval to the early redemption.
- (h) Holders of Subordinated Instruments shall have no right other than in the event of liquidation, dissolution or winding-up of the Issuer, upon default of any payment owing under the Subordinated Instruments or in the performance of any covenant of the Issuer or otherwise, to accelerate the maturity of their Subordinated Instruments.

## **6. Fixed Rate Instrument Provisions**

- (a) *Application:* This Condition 6 (*Fixed Rate Instrument Provisions*) is applicable to the Instruments only if the Fixed Rate Instrument Provisions are specified in the relevant Final Terms as being applicable.

- (b) *Accrual of Interest:* Interest shall accrue on the principal amount of each Instrument or, in the case of an Installment Instrument, on each installment of principal or, in the case of a partly paid Instrument, on the paid up principal amount of such Instrument or otherwise as indicated in the Final Terms. The Instruments bear interest from the Interest Commencement Date at the Rate of Interest payable in arrear on each Interest Payment Date, subject as provided in Condition 11 (*Payments*). Each Instrument will cease to bear interest from the due date for final redemption (or, in the case of an Installment Instrument, in respect of each installment of principal, on the due date for payment thereof) unless, upon due presentation, payment of the Redemption Amount (or the relevant installment) is improperly withheld or refused, in which case it will continue to bear interest in accordance with this Condition 6 (*Fixed Rate Instrument Provisions*) (as well after as before any demand or judgment) until whichever is the earlier of (i) the day on which all sums due in respect of such Instrument up to that day are received by or on behalf of the relevant Instrumentholder and (ii) the day which is seven days after the Fiscal Agent or, as the case may be, the German Fiscal Agent has notified the Instrumentholders in accordance with Condition 20 (*Notices*) that it has received all sums due in respect of the Instruments up to such seventh day (except to the extent that there is any subsequent default in payment).
- (c) *Fixed Coupon Amount:* The amount of interest payable in respect of each Instrument for any Interest Period shall be the relevant Fixed Coupon Amount and, if the Instruments are in more than one Specified Denomination, shall be the relevant Fixed Coupon Amount in respect of the relevant Specified Denomination.
- (d) *Calculation of Interest Amount:* The amount of interest payable in respect of each Instrument for any period for which a Fixed Coupon Amount is not specified shall be calculated by applying the Rate of Interest to the Calculation Amount, multiplying the product by the relevant Day Count Fraction, rounding the resulting figure to the nearest sub-unit of the Specified Currency (half a sub-unit being rounded upwards) and multiplying such rounded figure by a fraction equal to the Specified Denomination of such Instrument divided by the Calculation Amount. For this purpose a "sub-unit" means, in the case of any currency other than Euro, the lowest amount of such currency that is available as legal tender in the country of such currency and, in the case of Euro, means one cent.

## **7. Floating Rate Instrument and Index-Linked Interest Instrument Provisions**

- (a) *Application:* This Condition 7 (*Floating Rate Instrument and Index-Linked Interest Instrument Provisions*) is applicable to the Instruments only if the Floating Rate Instrument Provisions or the Index-Linked Interest Instrument Provisions are specified in the relevant Final Terms as being applicable.
- (b) *Accrual of interest:* Interest shall accrue on the principal amount of each Instrument or, in the case of an Installment Instrument, on each installment of principal or, in the case of a partly paid Instrument, on the paid up principal amount of such Instrument or otherwise as indicated in the Final Terms. The Instruments bear interest from the Interest Commencement Date at the Rate of Interest payable in arrear on each Interest Payment

Date, subject as provided in Condition 11 (*Payments*). Each Instrument will cease to bear interest from the due date for final redemption (or, in the case of an Installment Instrument, in respect of each installment of principal, on the due date for payment thereof) unless, upon due presentation, payment of the Redemption Amount (or the relevant installment) is improperly withheld or refused, in which case it will continue to bear interest in accordance with this Condition (after as well as before any demand or judgment) until whichever is the earlier of (i) the day on which all sums due in respect of such Instrument up to that day are received by or on behalf of the relevant Instrumentholder and (ii) the day which is seven days after the Fiscal Agent or, as the case may be, the German Fiscal Agent has notified the Instrumentholders in accordance with Condition 20 (*Notices*) that it has received all sums due in respect of the Instruments up to such seventh day (except to the extent that there is any subsequent default in payment).

- (c) *Screen Rate Determination:* If Screen Rate Determination is specified in the relevant Final Terms as the manner in which the Rate(s) of Interest is/are to be determined, the Rate of Interest applicable to the Instruments for each Interest Period will be determined by the Calculation Agent on the following basis:
- (i) if the Reference Rate is a composite quotation or customarily supplied by one entity, the Calculation Agent will determine the Reference Rate which appears on the Relevant Screen Page as of the Relevant Time on the relevant Interest Determination Date;
  - (ii) in any other case, the Calculation Agent will determine the arithmetic mean of the Reference Rates which appear on the Relevant Screen Page as of the Relevant Time on the relevant Interest Determination Date;
  - (iii) if, in the case of (i) above, such rate does not appear on that page or, in the case of (ii) above, fewer than two such rates appear on that page or if, in either case, the Relevant Screen Page is unavailable, the Calculation Agent will:
    - (A) request the principal Relevant Financial Centre office of each of the Reference Banks to provide a quotation of the Reference Rate at approximately the Relevant Time on the Interest Determination Date to prime banks in the Relevant Financial Centre interbank market in an amount that is representative for a single transaction in that market at that time; and
    - (B) determine the arithmetic mean of such quotations; and
  - (iv) if fewer than two such quotations are provided as requested, the Calculation Agent will determine the arithmetic mean of the rates (being the nearest to the Reference Rate, as determined by the Calculation Agent) quoted by major banks in the Principal Financial Centre of the Specified Currency, selected by the Calculation Agent, at approximately 11.00 a.m. (local time in the Principal Financial Centre of the Specified Currency) on the first day of the relevant Interest Period for loans in the Specified Currency to leading European banks for a period equal to the relevant Interest Period and in an amount that is representative for a single transaction in that market at that time,

and the Rate of Interest for such Interest Period shall be the sum of the Margin and the rate or (as the case may be) the arithmetic mean so determined; *provided, however, that* if the Calculation Agent is unable to determine a rate or (as the case may be) an arithmetic mean in accordance with the above provisions in relation to any Interest Period, the Rate of Interest applicable to the Instruments during such Interest Period will be the sum of the Margin and the rate or (as the case may be) the arithmetic mean last determined in relation to the Instruments in respect of a preceding Interest Period.

- (d) *ISDA Determination:* If ISDA Determination is specified in the relevant Final Terms as the manner in which the Rate(s) of Interest is/are to be determined, the Rate of Interest applicable to the Instruments for each Interest Period will be the sum of the Margin and the relevant ISDA Rate where "ISDA Rate" in relation to any Interest Period means a rate equal to the Floating Rate (as defined in the ISDA Definitions) that would be determined by the Calculation Agent under an interest rate swap transaction if the Calculation Agent were acting as Calculation Agent for that interest rate swap transaction under the terms of an agreement incorporating the ISDA Definitions and under which:
- (i) the Floating Rate Option (as defined in the ISDA Definitions) is as specified in the relevant Final Terms;
  - (ii) the Designated Maturity (as defined in the ISDA Definitions) is a period specified in the relevant Final Terms; and
  - (iii) the relevant Reset Date (as defined in the ISDA Definitions) is either (A) if the relevant Floating Rate Option is based on the London inter-bank offered rate (LIBOR) for a currency, the first day of that Interest Period or (B) in any other case, as specified in the relevant Final Terms.
- (e) *Index-Linked Interest:* If the Index-Linked Interest Instrument Provisions are specified in the relevant Final Terms as being applicable, the Rate(s) of Interest applicable to the Instruments for each Interest Period will be determined in the manner specified in the relevant Final Terms.
- (f) *Maximum or Minimum Rate of Interest:* If any Maximum Rate of Interest or Minimum Rate of Interest is specified in the relevant Final Terms, then the Rate of Interest shall in no event be greater than the maximum or be less than the minimum so specified.
- (g) *Calculation of Interest Amount:* The Calculation Agent will, as soon as practicable after the time at which the Rate of Interest is to be determined in relation to each Interest Period, calculate the Interest Amount payable in respect of each Instrument for such Interest Period. The Interest Amount will be calculated by applying the Rate of Interest for such Interest Period to the Calculation Amount, multiplying the product by the relevant Day Count Fraction, rounding the resulting figure to the nearest sub-unit of the Specified Currency (half a sub-unit being rounded upwards) and multiplying such rounded figure by a fraction equal to the Specified Denomination of the relevant Instrument divided by the Calculation Amount. For this purpose a "sub-unit" means, in the case of any currency other than euro, the lowest amount of such currency that is available as legal tender in the country of such currency and, in the case of euro means one cent.

- (h) *Calculation of other amounts:* If the relevant Final Terms specifies that any other amount is to be calculated by the Calculation Agent, the Calculation Agent will, as soon as practicable after the time or times at which any such amount is to be determined, calculate the relevant amount. The relevant amount will be calculated by the Calculation Agent in the manner specified in the relevant Final Terms.
- (i) *Publication:* The Calculation Agent will cause each Rate of Interest and Interest Amount determined by it, together with the relevant Interest Payment Date, and any other amount(s) required to be determined by it together with any relevant payment date(s) to be notified to the Issuer, the Paying Agents and each listing authority, stock exchange and/or quotation system (if any) by which the Instruments have then been admitted to listing, trading and/or quotation as soon as practicable after such determination but (in the case of each Rate of Interest, Interest Amount and Interest Payment Date) in any event not later than the first day of the relevant Interest Period. Notice thereof shall also promptly be given to the Instrumentholders. The Calculation Agent will be entitled to recalculate any Interest Amount (on the basis of the foregoing provisions) without notice in the event of an extension or shortening of the relevant Interest Period. If the Calculation Amount is less than the minimum Specified Denomination the Calculation Agent shall not be obliged to publish each Interest Amount but instead may publish only the Calculation Amount and the Interest Amount in respect of an Instrument having the minimum Specified Denomination.
- (j) *Notifications etc:* All notifications, opinions, determinations, certificates, calculations, quotations and decisions given, expressed, made or obtained for the purposes of this Condition by the Calculation Agent will (in the absence of manifest error) be binding on the Issuer, the Paying Agents, the Instrumentholders and the Couponholders and (subject as aforesaid) no liability to any such Person will attach to the Calculation Agent in connection with the exercise or non-exercise by it of its powers, duties and discretions for such purposes.

## **8. Zero Coupon Instrument Provisions**

- (a) *Application:* This Condition 8 (*Zero Coupon Instrument Provisions*) is applicable to the Instruments only if the Zero Coupon Instrument Provisions are specified in the relevant Final Terms as being applicable.
- (b) *Late payment on Zero Coupon Instruments:* If the Redemption Amount payable in respect of any Zero Coupon Instrument is improperly withheld or refused, the Redemption Amount shall thereafter be an amount equal to the sum of:
  - (i) the Reference Price; and
  - (ii) the product of the Accrual Yield (compounded annually) being applied to the Reference Price on the basis of the relevant Day Count Fraction from (and including) the Issue Date to (but excluding) whichever is the earlier of (i) the day on which all sums due in respect of such Instrument up to that day are received by or on behalf of the relevant Instrumentholder and (ii) the day which is seven days after the Fiscal Agent or, as the case may be, the German Fiscal Agent has

notified the Instrumentholders in accordance with Condition 20 (*Notices*) that it has received all sums due in respect of the Instruments up to such seventh day (except to the extent that there is any subsequent default in payment).

## **9. Dual Currency Instrument Provisions**

- (a) *Application:* This Condition 9 (*Dual Currency Instrument Provisions*) is applicable to the Instruments only if the Dual Currency Instrument Provisions are specified in the relevant Final Terms as being applicable.
- (b) *Rate of Interest:* If the rate or amount of interest fails to be determined by reference to an exchange rate, the rate or amount of interest payable shall be determined in the manner specified in the relevant Final Terms.

## **10. Redemption and Purchase**

- (a) *Scheduled redemption:* Unless previously redeemed, or purchased and cancelled, the Instruments will be redeemed at their Final Redemption Amount (or, in the case of Installment Instruments, in such number of installments and in such amounts as may be specified in the Final Terms) on the Maturity Date, subject as provided in Condition 11 (*Payments*).
- (b) *Redemption for tax reasons:* The Instruments may be redeemed at the option of the Issuer in whole, but not in part:
  - (i) at any time (if neither the Floating Rate Instrument Provisions or the Index-Linked Interest Instrument Provisions are specified in the relevant Final Terms as being applicable); or
  - (ii) on any Interest Payment Date (if the Floating Rate Instrument Provisions or the Index-Linked Interest Instrument Provisions are specified in the relevant Final Terms as being applicable),

on giving not less than 30 nor more than 60 days' notice to the Instrumentholders (which notice shall be irrevocable), at their Early Redemption Amount (Tax), less, in the case of any Installment Instrument, the aggregate amount of all installments that shall have become due and payable in respect of such Installment Instrument under any other Condition prior to the date fixed for redemption (which amount, if and to the extent not then paid, remains due and payable), together with interest accrued (if any) to the date fixed for redemption, if:

- (A) the Issuer has or will become obliged to pay additional amounts as provided or referred to in Condition 12 (*Taxation*) as a result of any change in, or amendment to, the laws or regulations of the Issuer's jurisdiction of incorporation or any political subdivision or any authority or agency thereof or therein having power to tax, or any change in the application or official interpretation of such laws or regulations (including a holding by a court of competent jurisdiction), which

change or amendment becomes effective on or after the date of issue of the first Tranche of the Instruments; and

- (B) such obligation cannot be avoided by the Issuer taking reasonable measures available to it,

*provided, however, that* no such notice of redemption shall be given earlier than:

- (1) where the Instruments may be redeemed at any time, 90 days prior to the earliest date on which the Issuer would be obliged to pay such additional amounts if a payment in respect of the Instruments were then due; or
- (2) where the Instruments may be redeemed only on an Interest Payment Date, 60 days prior to the Interest Payment Date occurring immediately before the earliest date on which the Issuer would be obliged to pay such additional amounts if a payment in respect of the Instruments were then due.

Prior to the publication of any notice of redemption pursuant to this paragraph, the Issuer shall deliver to the Fiscal Agent or, as the case may be, the German Fiscal Agent (A) a certificate signed by two directors of the Issuer stating that the Issuer is entitled to effect such redemption and setting forth a statement of facts showing that the conditions precedent to the right of the Issuer so to redeem have occurred of and (B) an opinion of independent legal advisers of recognised standing to the effect that the Issuer has or will become obliged to pay such additional amounts as a result of such change or amendment. Upon the expiry of any such notice as is referred to in this Condition 10(b), the Issuer shall be bound to redeem the Instruments in accordance with this Condition 10(b).

- (c) *Redemption at the option of the Issuer:* If the Call Option is specified in the relevant Final Terms as being applicable, the Instruments may be redeemed at the option of the Issuer in whole or, if so specified in the relevant Final Terms, in part on any Optional Redemption Date (Call) at the relevant Optional Redemption Amount (Call) less, in the case of any Installment Instrument, the aggregate amount of all installments that shall have become due and payable in respect of such Installment Instrument under any other Condition prior to the date fixed for redemption (which amount, if and to the extent not then paid, remains due and payable), on the Issuer's giving not less than 30 days' notice to the Instrumentholders (which notice shall be irrevocable and shall oblige the Issuer to redeem the Instruments or, as the case may be, the Instruments specified in such notice on the relevant Optional Redemption Date (Call) at the Optional Redemption Amount (Call) plus accrued interest (if any) to such date). This Condition 10(c) does not apply to Subordinated Instruments, except in the circumstances described under Condition 5(g) (*Status Subordinated Instruments*) and Condition 10(b) (*Redemption for tax reasons*).
- (d) *Partial redemption:* If the Instruments are to be redeemed in part only on any date in accordance with Condition 10(c) (*Redemption at the option of the Issuer*), the Instruments to be redeemed shall be selected by the drawing of lots in such place as the Fiscal Agent or, as the case may be, the German Fiscal Agent approves and in such manner as the Fiscal Agent or, as the case may be, the German Fiscal Agent considers appropriate, subject to compliance with applicable law and the rules of each listing

authority, stock exchange and/or quotation system (if any) by which the Instruments have then been admitted to listing, trading and/or quotation and, if applicable, the rules and procedures of Euroclear Bank SA/NV ("Euroclear") and Clearstream Banking Societe Anonyme ("Clearstream, Luxembourg") (to be reflected in the records of Euroclear and Clearstream, Luxembourg as either a pool factor or a reduction in nominal amount, at their discretion), and the notice to Instrumentholders referred to in Condition 10(c) (*Redemption at the option of the Issuer*) shall specify the serial numbers of the Instruments so to be redeemed. If any Maximum Redemption Amount or Minimum Redemption Amount is specified in the relevant Final Terms, then the Optional Redemption Amount (Call) shall in no event be greater than the maximum or be less than the minimum so specified.

- (e) *Redemption at the option of Instrumentholders:* If the Put Option is specified in the relevant Final Terms as being applicable, the Issuer shall, at the option of the holder of any Instrument redeem such Instrument on the Optional Redemption Date (Put) specified in the relevant Put Option Notice at the relevant Optional Redemption Amount (Put) less, in the case of any Installment Instrument, the aggregate amount of all installments that shall have become due and payable in respect of such Installment Instrument under any other Condition prior to the date fixed for redemption (which amount, if and to the extent not then paid, remains due and payable), together with interest (if any) accrued to such date. In order to exercise the option contained in this Condition 10(e), the holder of an Instrument must, not less than 45 days before the relevant Optional Redemption Date (Put), deposit with any Paying Agent such Instrument together with all unmatured Coupons relating thereto and a duly completed Put Option Notice in the form obtainable from any Paying Agent. The Paying Agent with which a Instrument is so deposited shall deliver a duly completed Put Option Receipt to the depositing Instrumentholder. No Instrument, once deposited with a duly completed Put Option Notice in accordance with this Condition 10(e), may be withdrawn; *provided, however, that* if, prior to the relevant Optional Redemption Date (Put), any such Instrument becomes immediately due and payable or, upon due presentation of any such Instrument on the relevant Optional Redemption Date (Put), payment of the redemption moneys is improperly withheld or refused, the relevant Paying Agent shall mail notification thereof to the depositing Instrumentholder at such address as may have been given by such Instrumentholder in the relevant Put Option Notice and shall hold such Instrument at its Specified Office for collection by the depositing Instrumentholder against surrender of the relevant Put Option Receipt. For so long as any outstanding Instrument is held by a Paying Agent in accordance with this Condition 10(e), the depositor of such Instrument and not such Paying Agent shall be deemed to be the holder of such Instrument for all purposes. This Condition 10(e) applies to Subordinated Instruments only to the extent specified under Condition 13(c) (*Subordinated Instruments*).
- (f) *No other redemption:* The Issuer shall not be entitled to redeem the Instruments otherwise than as provided in paragraphs (a) to (e) above.



- (g) *Early redemption of Zero Coupon Instruments:* Unless otherwise specified in the relevant Final Terms, the Redemption Amount payable on redemption of a Zero Coupon Instrument at any time before the Maturity Date shall be an amount equal to the sum of:
- (i) the Reference Price; and
  - (ii) the product of the Accrual Yield (compounded annually) being applied to the Reference Price from (and including) the Issue Date to (but excluding) the date fixed for redemption or (as the case may be) the date upon which the Instrument becomes due and payable.

Where such calculation is to be made for a period which is not a whole number of years, the calculation in respect of the period of less than a full year shall be made on the basis of such Day Count Fraction as may be specified in the Final Terms for the purposes of this Condition 10(g) or, if none is so specified, a Day Count Fraction of 30E/360.

- (h) *Purchase:* The Issuer or any of its Subsidiaries may at any time purchase Instruments in the open market or otherwise and at any price, provided that all unmatured Coupons are purchased therewith. Instruments so purchased may be held or resold or surrendered for cancellation.
- (i) *Cancellation:* All unmatured Instruments so redeemed or purchased by the Issuer or any of its Subsidiaries which are to be surrendered for cancellation and any unmatured Coupons attached to or surrendered with them shall be cancelled forthwith and may not be reissued or resold.

## **11. Payments**

- (a) *Principal:* Payments of principal shall be made only against presentation and (save in the case of a partial redemption which includes, in the case of an Installment Instrument, payment of any installment other than the final installment) surrender of Instruments at the Specified Office of any Paying Agent outside the United States by cheque (in the case of payment in Japanese Yen to a non-resident of Japan, drawn on an authorised foreign exchange bank) drawn in the currency in which the payment is due on, or by transfer to an account (in the case of payment in Japanese Yen to a non-resident of Japan, a non-resident account with an authorised foreign exchange bank specified by the payee) denominated in that currency (or, if that currency is Euro, any other account to which Euro may be credited or transferred) and maintained by the payee with a bank in the Principal Financial Centre of that currency (in the case of a sterling cheque, a town clearing branch of a bank in the City of London).
- (b) *Interest:* Payments of interest shall, subject to paragraph (h) below, be made only against presentation and (provided that payment is made in full) surrender of the appropriate Coupons at the Specified Office of any Paying Agent outside the United States in the manner described in paragraph (a) above.
- (c) *Payments in New York City:* Payments of principal or interest may be made at the Specified Office of a Paying Agent in New York City if (i) the Issuer has appointed

Paying Agents outside the United States with the reasonable expectation that such Paying Agents will be able to make payment of the full amount of the interest on the Instruments in the currency in which the payment is due when due, (ii) payment of the full amount of such interest at the specified offices of all such Paying Agents is illegal or effectively precluded by exchange controls or other similar restrictions and (iii) payment is permitted by applicable United States law. If (i), (ii) and (iii) of the previous sentence apply, the Issuer shall forthwith appoint a Paying Agent with a Specified Office in New York City.

- (d) *Payments subject to fiscal laws:* All payments in respect of the Instruments are subject in all cases to any applicable fiscal or other laws and regulations in the place of payment, but without prejudice to the provisions of Condition 12 (*Taxation*). No commissions or expenses shall be charged to the Instrumentholders or Couponholders in respect of such payments.
- (e) *Deductions for unmatured Coupons:* If the relevant Final Terms specifies that the Fixed Rate Instrument Provisions are applicable and an Instrument is presented without all unmatured Coupons relating thereto:
  - (i) if the aggregate amount of the missing Coupons is less than or equal to the amount of principal due for payment, a sum equal to the aggregate amount of the missing Coupons will be deducted from the amount of principal due for payment; *provided, however, that* if the gross amount available for payment is less than the amount of principal due for payment, the sum deducted will be that proportion of the aggregate amount of such missing Coupons which the gross amount actually available for payment bears to the amount of principal due for payment;
  - (ii) if the aggregate amount of the missing Coupons is greater than the amount of principal due for payment:
    - (A) so many of such missing Coupons shall become void (in inverse order of maturity) as will result in the aggregate amount of the remainder of such missing Coupons (the "Relevant Coupons") being equal to the amount of principal due for payment; *provided, however, that* where this subparagraph would otherwise require a fraction of a missing Coupon to become void, such missing Coupon shall become void in its entirety; and
    - (B) a sum equal to the aggregate amount of the Relevant Coupons (or, if less, the amount of principal due for payment) will be deducted from the amount of principal due for payment; *provided, however, that*, if the gross amount available for payment is less than the amount of principal due for payment, the sum deducted will be that proportion of the aggregate amount of the Relevant Coupons (or, as the case may be, the amount of principal due for payment) which the gross amount actually available for payment bears to the amount of principal due for payment.

Each sum of principal so deducted shall be paid in the manner provided in paragraph (a) above against presentation and (provided that payment is made in full) surrender of the relevant missing Coupons.

- (f) *Unmatured Coupons void:* If the relevant Final Terms specifies that this Condition 11(f) is applicable or that the Floating Rate Instrument Provisions or the Index-Linked Interest Instrument Provisions are applicable, on the due date for final redemption of any Instrument or early redemption of such Instrument pursuant to Condition 10(b) (*Redemption for tax reasons*), Condition 10(e) (*Redemption at the option of Instrumentholders*), Condition 10(c) (*Redemption at the option of the Issuer*) or Condition 13 (*Events of Default*), all unmatured Coupons relating thereto (whether or not still attached) shall become void and no payment will be made in respect thereof.
- (g) *Payments on business days:* If the due date for payment of any amount in respect of any Instrument or Coupon is not a Payment Business Day in the place of presentation, the Instrumentholder or Couponholder shall not be entitled to payment in such place of the amount due until the next succeeding Payment Business Day in such place and shall not be entitled to any further interest or other payment in respect of any such delay.
- (h) *Payments other than in respect of matured Coupons:* Payments of interest other than in respect of matured Coupons shall be made only against presentation of the relevant Instruments at the Specified Office of any Paying Agent outside the United States (or in New York City if permitted by paragraph (c) above).
- (i) *Partial payments:* If a Paying Agent makes a partial payment in respect of any Instrument or Coupon presented to it for payment, such Paying Agent will endorse thereon a statement indicating the amount and date of such payment.
- (j) *Exchange of Talons:* On or after the Maturity Date of the final Coupon which is (or was at the time of issue) part of a Coupon Sheet relating to the Instruments, the Talon forming part of such Coupon Sheet may be exchanged at the Specified Office of the Fiscal Agent or, as the case may be, the German Fiscal Agent for a further Coupon Sheet (including, if appropriate, a further Talon but excluding any Coupons in respect of which claims have already become void pursuant to Condition 14 (*Prescription*)). Upon the due date for redemption of any Instrument, any unexchanged Talon relating to such Instrument shall become void and no Coupon will be delivered in respect of such Talon.

## 12. Taxation

- (a) *Gross up:* All payments of principal and interest in respect of the Instruments and the Coupons by or on behalf of the Issuer shall be made free and clear of, and without withholding or deduction for, any present or future taxes, duties, assessments or governmental charges of whatsoever nature imposed, levied, collected, withheld or assessed by the jurisdiction of incorporation of the Issuer or any political subdivision or any authority or agency thereof or therein having power to tax, unless such withholding or deduction is required by law. In that event, the Issuer shall pay such additional amounts as will result in the receipt by the Instrumentholders and the Couponholders of such amounts as would have been received by them if no such withholding or deduction had been required, except that no such additional amounts shall be payable in respect of any Instrument or Coupon:
- (i) presented for payment in Germany; or
  - (ii) presented for payment in Ireland; or
  - (iii) presented for payment by or on behalf of a holder and in case of any payment to, or to a third party on behalf of, a holder which is liable to such taxes, duties, assessments or governmental charges in respect of such Instrument or Coupon by reason of its having some connection with the jurisdiction of incorporation of the Issuer other than the mere holding of such Instrument or Coupon; or
  - (iv) by reason of a change in law that becomes effective more than 30 days after the Relevant Date and notice thereof is published in accordance with Condition 20 (*Notices*), whichever occurs later; or
  - (v) which is deducted or withheld by a Paying Agent from a payment if the payment could have been made by another Paying Agent without such deduction or withholding; or
  - (vi) which would not be payable if the Instruments or Coupons had been kept in safe custody with, and the payments had been collected by, a banking institution; or
  - (vii) where such withholding or deduction is imposed on a payment to an individual and is required to be made pursuant to European Council Directive 2003/48/EC or any other Directive implementing the conclusions of the ECOFIN Council meeting of 26-27 November 2000 on the taxation or savings income or any law implementing or complying with, or introduced in order to conform to, such Directive; or
  - (viii) presented for payment by or on behalf of a holder who would have been able to avoid such withholding or deduction by presenting the relevant Instrument or Coupon to another Paying Agent in a Member State of the European Union; or
  - (ix) presented for payment more than 30 days after the Relevant Date except to the extent that the relevant holder would have been entitled to such additional amounts if it had presented such Instrument or Coupon on the last day of such period of 30 days.
- (b) *Taxing jurisdiction:* If the Issuer becomes subject at any time to any taxing jurisdiction other than the Issuer's jurisdiction of incorporation, references in these Conditions to the

Issuer's jurisdiction of incorporation shall be construed as references to the Issuer's jurisdiction of incorporation and/or such other jurisdiction.

### **13. Events of Default**

- (a) *Unsubordinated Instruments:* Unless otherwise specified in the Final Terms, the following events or circumstances (each an "Event of Default") shall be acceleration events in relation to the Unsubordinated Instruments of any Series, namely:
- (i) default is made in the payment of any amount of principal in respect of the Unsubordinated Instruments of the relevant Series or any of them on the due date for payment thereof or in the payment of any amount of interest in respect of the Unsubordinated Instruments of the relevant Series or any of them within 30 days of the due date for payment thereof; or
  - (ii) the Issuer defaults in the performance of observance of any of its other obligations under or in respect of the Unsubordinated Instruments or the Agency Agreement and such default remains unremedied for 45 days after written notice requiring such default to be remedied has been delivered to the Issuer at the Specified Office of the Fiscal Agent or, as the case may be, the German Fiscal Agent by the holder of any such Instrument; or
  - (iii) the Issuer suspends its payments or announces its insolvency; or
  - (iv) a court opens bankruptcy or other insolvency proceedings against the Issuer, such proceedings are instituted and have not been discharged or stayed within 60 days, or the Issuer applies for or institutes such proceedings or offers or makes an arrangement for the benefit of its creditors generally; or
  - (v) the Issuer goes into liquidation unless this is done in connection with a merger, consolidation, restructuring or other form of combination with another company or in connection with a transformation and such other or new company assumes all property and assets of the Issuer and all obligations contracted by the Issuer, as the case may be, in connection with the issue of the Unsubordinated Instruments.
- (b) *Acceleration:* If any Event of Default shall occur in relation to any Series of Unsubordinated Instruments, any holder of an Unsubordinated Instrument of such Series may, by written notice to the relevant Issuer, at the Specified Office of the Fiscal Agent or, as the case may be, the German Fiscal Agent, declare that such Unsubordinated Instrument and (if the Unsubordinated Instrument is interest-bearing) all interest then accrued on such Unsubordinated Instrument shall be forthwith due and payable, whereupon the same shall become immediately due and payable at its Early Termination Amount less, in the case of any Installment Instrument, the aggregate amount of all installments that shall have become due and payable in respect of such Unsubordinated Instrument under any other Condition prior to the date fixed for redemption (which amount, if and to the extent not then paid, remains due and payable), together with all interest (if any) accrued thereon without presentment, demand, protest or other notice of any kind, all of which the Issuer will expressly waive, anything contained in such Unsubordinated Instruments to the contrary notwithstanding, unless, prior thereto, all

Events of Default in respect of the Unsubordinated Instruments of the relevant Series shall have been cured.

- (c) *Subordinated Instruments*: Subordinated Instruments may not be prematurely repaid at the request of the holders thereof. If no period has been determined for the repayment of such Subordinated Instruments a notice period of not less than five years shall be agreed. In case of insolvency proceedings over the Issuer's assets or if the Issuer is dissolved, liquidated or wound-up for any reason, the Issuer shall promptly inform the holders of Subordinated Instruments of such event pursuant to Condition 20 (*Notices*) and, so long as such insolvency proceedings, dissolution, liquidation or winding-up is continuing, the principal of the Subordinated Instruments together with all unpaid accrued interest shall become payable in accordance with Condition 5 (*Status — Subordinated Instruments*) without any further action by the holders thereof.

#### **14. Prescription**

Claims for principal shall become void unless the relevant Instruments are presented for payment within ten years of the appropriate Relevant Date. Claims for interest shall become void unless the relevant Coupons are presented for payment within five years of the appropriate Relevant Date.

#### **15. Replacement of Instruments and Coupons**

If any Instrument or Coupon is lost, stolen, mutilated, defaced or destroyed, it may be replaced at the Specified Office of the Fiscal Agent or, as the case may be, the German Fiscal Agent (and, if the Instruments are then admitted to listing, trading and/or quotation by any listing authority, stock exchange and/or quotation system which requires the appointment of a Paying Agent in any particular place, the Paying Agent having its Specified Office in the place required by such listing authority, stock exchange and/or quotation system), subject to all applicable laws and listing authority, stock exchange and/or quotation system requirements, upon payment by the claimant of the expenses incurred in connection with such replacement and on such terms as to evidence, security, indemnity and otherwise as the Issuer may reasonably require. Mutilated or defaced Instruments or Coupons must be surrendered before replacements will be issued.

#### **16. Agents**

- (a) In acting under the Agency Agreement and in connection with the Instruments and the Coupons, the Paying Agents act solely as agents of the Issuer and do not assume any obligations towards or relationship of agency or trust for or with any of the Instrumentholders or Couponholders.
- (b) The initial Paying Agents and their initial Specified Offices are listed below. The initial Calculation Agent (if any) is specified in the relevant Final Terms. The Issuer reserves the right at any time to vary or terminate the appointment of any Paying Agent and to appoint a successor fiscal agent or successor German fiscal agent or Calculation Agent and additional or successor paying agents; *provided, however, that*:
- (i) the Issuer shall at all times maintain a Fiscal Agent and a German Fiscal Agent; and

- (ii) the Issuer shall at all times maintain a Paying Agent (which may be the Fiscal Agent) with a Specified Office in continental Europe; and
- (iii) the Issuer will ensure that it maintains a Paying Agent in an EU member state that will not be obliged to withhold or deduct tax pursuant to European Council Directive 2003/48/EC or any other Directive implementing the conclusions of the ECOFIN Council meeting of 26-27 November 2000 or any law implementing or complying with, or introduced to conform to, such Directive; and
- (iv) if a Calculation Agent is specified in the relevant Final Terms, the Issuer shall at all times maintain a Calculation Agent; and
- (v) if and for so long as the Instruments are admitted to listing, trading and/or quotation by any listing authority, stock exchange and/or quotation system which requires the appointment of a Paying Agent in any particular place, the Issuer shall maintain a Paying Agent having its Specified Office in the place required by such listing authority, stock exchange and/or quotation system; and
- (vi) in the circumstances described in Condition 11(c) (*Payments in New York City*), the Issuer shall maintain a Paying Agent with a Specified Office in New York City.

Notice of any change in any of the Paying Agents or in their Specified Offices shall promptly be given to the Instrumentholders.

#### **17. Meetings of Instrumentholders; Modification and Waiver**

- (a) *Meetings of Instrumentholders:* The Agency Agreement contains provisions (which shall have effect as if incorporated herein) for convening meetings of Instrumentholders to consider matters relating to the Instruments, including the modification of any provision of these Conditions. Any such modification may be made if sanctioned by an Extraordinary Resolution. Any Extraordinary Resolution duly passed at any such meeting shall be binding on all the Instrumentholders and Couponholders, whether present or not.
- (b) *Modification:* The Instruments and these Conditions may be amended without the consent of the Instrumentholders or the Couponholders to correct a manifest error. In addition, the parties to the Agency Agreement may agree to modify any provision thereof, but the Issuer shall not agree, without the consent of the Instrumentholders, to any such modification unless it is of a formal, minor or technical nature, it is made to correct a manifest error or it is, in the opinion of such parties, not materially prejudicial to the interests of the Instrumentholders.

## 18. Substitution of Principal Debtor

- (a) Each of DEPFA plc, the Pfandbriefbank or DEPFA ACS, or any of their respective Subsidiaries, successors or assigns or the parent company from time to time of DEPFA plc (if any), the Pfandbriefbank or DEPFA ACS may, without the consent of the Instrumentholders, assume liability as the principal debtor in respect of the Instruments, the Coupons and the Talons (the "Substituted Debtor"), provided that:
- (i) a deed poll and such other documents (if any) shall be executed by the Substituted Debtor as may be necessary to give full effect to the substitution (the "Documents") and (without limiting the generality of the foregoing) pursuant to which the Substituted Debtor shall undertake in favour of each Instrumentholder to be bound by these Conditions and the provisions of the Agency Agreement as fully as if the Substituted Debtor had been named in the Instruments and the Agency Agreement as the principal debtor in respect of the Instruments in place of the Issuer;
  - (ii) without prejudice to the generality of Condition 18(a)(i), if the Substituted Debtor is incorporated, domiciled or resident for taxation purposes in a territory other than Ireland or Germany the Documents shall contain a covenant and/or such other provisions as may be necessary to ensure that each Instrumentholder has the benefit of a covenant in terms corresponding to the provisions of Condition 12 (*Taxation*), with, where applicable, the addition to the references to Ireland or Germany of references to the territory in which the Substituted Debtor is incorporated, domiciled and/or resident for taxation purposes;
  - (iii) the Documents shall contain a warranty and representation (aa) that the Substituted Debtor has obtained all necessary governmental and regulatory approvals and consents for such substitution, (bb) that the Substituted Debtor has obtained all necessary governmental and regulatory approvals and consents for the performance by the Substituted Debtor of its obligations under the Documents and that all such approvals and consents are in full force and effect and (cc) that the obligations assumed by the Substituted Debtor are valid and binding in accordance with their respective terms and enforceable by each Instrumentholder; and
  - (iv) either (A) each of the Ratings Agencies has confirmed in writing that the substitution of the relevant Issuer with the Substituted Debtor will not result in a downgrading of the then current credit rating by such Ratings Agencies of the Instruments issued by the relevant Issuer; or (at the discretion of the relevant Issuer) (B) the obligations of the Substituted Debtor in respect of the Instruments issued by the relevant Issuer (and any Coupons or Talons) are guaranteed pursuant to a deed of guarantee (the "Guarantee") issued by DEPFA plc (or, if DEPFA plc is not the parent company of the group of companies including DEPFA plc and its Subsidiaries at the time of the relevant substitution, such parent company); and
  - (v) a legal opinion shall have been delivered to the Fiscal Agent or, as the case may be, the German Fiscal Agent (from whom copies will be available) (aa) from lawyers of recognised standing as to matters of Irish law, (bb) from lawyers of



recognised standing as to matters of German law, (cc) in the case of (iv) (B) above, if the Guarantee is expressed to be governed by English law, from lawyers of recognised standing as to matters of English law, and (dd) if the Substituted Debtor is incorporated, domiciled or resident in a country other than Ireland or Germany from lawyers of recognised standing in the country of incorporation of the Substituted Debtor, confirming, as appropriate, that upon the substitution taking place (x) the requirements of this Condition 18, save as to the giving of notice to the Instrumentholders have been met and (y) the Instruments, Coupons and Talons are legal, valid and binding obligations of the Substituted Debtor and, if applicable, the Guarantee constitutes legal, valid and binding obligations of DEPFA plc or such other parent company as has issued the Guarantee, as the case may be, enforceable in accordance with their terms.

For the purposes of this Condition 18(a), the term "parent company" means, in relation to the relevant Issuer, (a) the Person who controls or has the power to control the affairs and policies of such Issuer, whether by ownership of share capital, contract, the power to appoint or remove members of the governing body of such Issuer or otherwise, or (b) the Person with whose financial statements the relevant Issuer's financial statements are consolidated in accordance with applicable law and generally accepted accounting principles.

- (b) Upon the execution of the Documents and the delivery of the legal opinions as referred to in Condition 18(a) the Substituted Debtor shall be deemed to be named in the Instruments as the principal debtor in place of the Issuer and the Instruments shall thereupon be deemed to be amended to give effect to the substitution. The execution of the Documents shall, in the case of the substitution of a Substituted Debtor as principal debtor, operate to release the Issuer or the previous substitute as aforesaid from all of its obligations as principal debtor in respect of the Instruments.
- (c) The Documents shall be deposited with and held by the Fiscal Agent or, as the case may be, the German Fiscal Agent for so long as any of the Instruments remains outstanding and for so long as any claim made against the Substituted Debtor by any Instrumentholder in relation to the Instruments or the Documents shall not have been finally adjudicated, settled or discharged. The Substituted Debtor shall acknowledge in the Documents the right of every Instrumentholder to the production of the Documents for the enforcement of any of the Instruments or the Documents.
- (d) Not later than 20 days after the execution of the Documents the Substituted Debtor together with the Issuer shall give notice thereof to the Instrumentholders in accordance with Condition 20 (*Notices*).
- (e) At any time after a substitution pursuant to Condition 18(a), the Substituted Debtor may, without the consent of the Instrumentholders, substitute the Issuer or any other Subsidiary of the Issuer as the Principal Debtor in respect of the Instruments to undertake its obligations in respect of the Instruments provided that all the provisions specified in Condition 18(a), (b), (c) and (d) above shall apply *mutatis mutandis* and, without limitation, references in this Condition 18 to the Issuer shall, where the context so requires, be deemed to be or include references to any such Substituted Debtor.

## **19. Further Issues**

The Issuer may from time to time, without the consent of the Instrumentholders or the Couponholders, create and issue further instruments having the same terms and conditions as the Instruments in all respects (or in all respects except for the first payment of interest) so as to form a single series with the Instruments.

## **20. Notices**

Notices to the Instrumentholders shall be delivered to CBF, Euroclear and CBL or any other relevant clearing system for communication to the persons shown in their records as having interests therein provided that, if the Instruments are admitted to listing on the Official List of the Irish Stock Exchange Limited, notices to Instrument Holders shall be valid if published in a leading English language daily newspaper having general circulation in Ireland and approved by the Irish Stock Exchange Limited (which is expected to be *The Irish Times*) or, if such publication is not practicable, in a leading English language daily newspaper having general circulation in Europe. If the Instruments are admitted to listing, trading and/or quotation by any other listing authority, stock exchange and/or quotation system, notices to Instrumentholders shall also be valid if published in compliance with the requirements of such listing authority, stock exchange and/or quotation system. Any such notice shall be deemed to have been given on the date of first publication (or if required to be published in more than one newspaper, on the first date on which publication shall have been made in all the required newspapers). All notices issued to Instrumentholders of Instruments which are admitted to the Official List of the Irish Stock Exchange shall be copied to the Companies Announcement Office of the Irish Stock Exchange.

## **21. Currency Indemnity**

- (a) If any sum due from the Issuer in respect of the Instruments or the Coupons or any order or judgment given or made in relation thereto has to be converted from the currency (the "first currency") in which the same is payable under these Conditions or such order or judgment into another currency (the "second currency") for the purpose of (a) making or filing a claim or proof against the Issuer, (b) obtaining an order or judgment in any court or other tribunal or (c) enforcing any order or judgment given or made in relation to the Instruments, the Issuer shall indemnify each Instrumentholder, on the written demand of such Instrumentholder addressed to the Issuer and delivered to the Issuer or to the Specified Office of the Fiscal Agent or, as the case may be, the German Fiscal Agent, against any loss suffered as a result of any discrepancy between (i) the rate of exchange used for such purpose to convert the sum in question from the first currency into the second currency and (ii) the rate or rates of exchange at which such Instrumentholder may in the ordinary course of business purchase the first currency with the second currency upon receipt of a sum paid to it in satisfaction, in whole or in part, of any such order, judgment, claim or proof.
- (b) This indemnity constitutes a separate and independent obligation of the Issuer and shall give rise to a separate and independent cause of action.

## 22. Rounding

For the purposes of any calculations referred to in these Conditions (unless otherwise specified in these Conditions or the relevant Final Terms), (a) all percentages resulting from such calculations will be rounded, if necessary, to the nearest one hundred-thousandth of a percentage point (with 0.000005 per cent. being rounded up to 0.00001 per cent.), (b) all United States dollar amounts used in or resulting from such calculations will be rounded to the nearest cent (with one half cent being rounded up), (c) all Japanese Yen amounts used in or resulting from such calculations will be rounded downwards to the next lower whole Japanese Yen amount, and (d) all amounts denominated in any other currency used in or resulting from such calculations will be rounded to the nearest two decimal places in such currency, with 0.005 being rounded upwards.

## 23. Redenomination, Renominalisation and Reconventioning

- (a) *Application:* This Condition 23 (*Redenomination, Renominalisation and Reconventioning*) is applicable to the Instruments only if it is specified in the relevant Final Terms as being applicable.
- (b) *Notice of redenomination:* If the country of the Specified Currency becomes or, announces its intention to become, a Participating Member State, the Issuer may, without the consent of the Instrumentholders and Couponholders, on giving at least 30 days' prior notice to the Instrumentholders and the Paying Agents, designate a date (the "Redenomination Date"), being an Interest Payment Date under the Instruments falling on or after the date on which such country becomes a Participating Member State.
- (c) *Redenomination:* Notwithstanding the other provisions of these Conditions, with effect from the Redenomination Date:
  - (i) the Instruments shall be deemed to be redenominated into Euro in the denomination of Euro 0.01 with a principal amount for each Instrument equal to the principal amount of that Instrument in the Specified Currency, converted into Euro at the rate for conversion of such currency into Euro established by the Council of the European Union pursuant to the Treaty (including compliance with rules relating to rounding in accordance with European Community regulations); *provided, however, that*, if the Issuer determines, with the agreement of the Fiscal Agent that market practice in respect of the redenomination into Euro 0.01 of internationally offered securities is different from that specified above, such provisions shall be deemed to be amended so as to comply with such market practice and the Issuer shall promptly notify the Instrumentholders and Couponholders, each listing authority, stock exchange and/or quotation system (if any) by which the Instruments have then been admitted to listing, trading and/or quotation and the Paying Agents of such deemed amendments;
  - (ii) if Instruments have been issued in definitive form:
    - (A) all unmatured Coupons denominated in the Specified Currency (whether or not attached to the Instruments) will become void with effect from the date (the "Euro Exchange Date") on which the Issuer gives notice (the

- "Euro Exchange Notice") to the Instrumentholders that replacement Instruments and Coupons denominated in Euro are available for exchange (provided that such Instruments and Coupons are available) and no payments will be made in respect thereof;
- (B) the payment obligations contained in all Instruments denominated in the Specified Currency will become void on the Euro Exchange Date but all other obligations of the Issuer thereunder (including the obligation to exchange such Instruments in accordance with this Condition 23) shall remain in full force and effect; and
  - (C) new Instruments and Coupons denominated in Euro will be issued in exchange for Instruments and Coupons denominated in the Specified Currency in such manner as the Fiscal Agent may specify and as shall be notified to the Instrumentholders in the Euro Exchange Notice; and
- (iii) all payments in respect of the Instruments (other than, unless the Redenomination Date is on or after such date as the Specified Currency ceases to be a sub-division of the Euro, payments of interest in respect of periods commencing before the Redenomination Date) will be made solely in Euro by cheque drawn on, or by credit or transfer to a Euro account (or any other account to which Euro may be credited or transferred) maintained by the payee with, a bank in the principal financial centre of any Member State of the European Communities.
- (d) *Interest:* Following redenomination of the Instruments pursuant to this Condition 23, where Instruments have been issued in definitive form, the amount of interest due in respect of the Instruments will be calculated by reference to the aggregate principal amount of the Instruments presented (or, as the case may be, in respect of which Coupons are presented) for payment by the relevant holder.
- (e) *Interest Determination Date:* If the Floating Rate Instrument Provisions are specified in the relevant Final Terms as being applicable and Screen Rate Determination is specified in the relevant Final Terms as the manner in which the Rate(s) of Interest is/are to be determined, with effect from the Redenomination Date the Interest Determination date shall be deemed to be the second TARGET Settlement Day before the first day of the relevant Interest Period.

#### **24. Waiver and Remedies**

No failure to exercise, and no delay in exercising, on the part of any Instrumentholder, any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or future exercise thereof or the exercise of any other right. Rights hereunder shall be in addition to all other rights provided by law. No notice or demand given in any cash shall constitute a waiver of rights to take other action in the same, similar or other instances without such notice or demand.

#### **25. Governing Law and Jurisdiction**

- (a) *Governing law:* The Instruments are governed by, and shall be construed in accordance with, English law, except for Condition 5 (*Status — Subordinated Instruments*) which

shall be governed by, and construed in accordance with, German law (in respect of Subordinated Instruments issued by the Pfandbriefbank) or Irish law (in respect of Subordinated Instruments issued by DEPFA plc or DEPFA ACS).

- (b) *Jurisdiction:* The Issuer agrees for the benefit of the Instrumentholders that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings, and to settle any disputes, which may arise out of or in connection with the Instruments (respectively, "Proceedings" and "Disputes") and, for such purposes, irrevocably submits to the jurisdiction of such courts.
- (c) *Appropriate forum:* The Issuer irrevocably waives any objection which it might now or hereafter have to the courts of England 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.
- (d) *Process agent:* The Issuer agrees that the process by which any Proceedings in England are begun may be served on it by being delivered to it at the offices of DEPFA BANK plc, London Branch, 105 Wigmore Street, London W1U 1QU or at any address of the Issuer in Great Britain at which service of process may be served on it in accordance with Part XXIII of the Companies Act 1985. If the appointment of the person mentioned in this Condition 25(d) ceases to be effective, the Issuer shall forthwith appoint a further person in England to accept service of process on its behalf in England and notify the name and address of such person to the Fiscal Agent or, as the case may be, German Fiscal Agent and, failing such appointment within 15 days, any Instrumentholder shall be entitled to appoint such a person by written notice addressed to the Issuer and delivered to the Issuer or to the Specified Office of the Fiscal Agent or, as the case may be, German Fiscal Agent. Nothing in this paragraph shall affect the right of any Instrumentholder to serve process in any other manner permitted by law.
- (e) *Non-exclusivity:* The submission to the jurisdiction of the courts of England shall not (and shall not be construed so as to) limit the right of any Instrumentholder 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.

## **SUMMARY OF PROVISIONS RELATING TO THE INSTRUMENTS WHILE IN GLOBAL FORM**

### **Clearing System Accountholders**

Each Global Instrument will be in bearer form. Consequently, in relation to any Tranche of Instruments represented by a Global Instrument, references in the Terms and Conditions of the Instruments to "Instrumentholder" are references to the bearer of the relevant Global Instrument which, for so long as the Global Instrument is held by a depositary or a common depositary, in the case of a CGI, or a common safe-keeper, in the case of a NGI for Euroclear and/or CBL and/or CBF and/or any other relevant clearing system, will be that depositary or common depositary or, as the case may be, common safe-keeper.

Each of the persons shown in the records of Euroclear and/or CBL and/or CBF and/or any other relevant clearing system as being entitled to an interest in a Global Instrument (each an "Accountholder") must look solely to Euroclear and/or CBL and/or CBF and/or such other relevant clearing system (as the case may be) for such Accountholder's share of each payment made by the relevant Issuer to the bearer of such Global Instrument and in relation to all other rights arising under the Global Instrument. The extent to which, and the manner in which, Accountholders may exercise any rights arising under the Global Instrument will be determined by the respective rules and procedures of Euroclear and CBL and CBF and any other relevant clearing system from time to time. For so long as the relevant Instruments are represented by the Global Instrument, Accountholders shall have no claim directly against the relevant Issuer in respect of payments due under the Instruments and such obligations of the relevant Issuer will be discharged by payment to the bearer of the Global Instrument.

### **Exchange of Temporary Global Instruments**

Whenever any interest in a Temporary Global Instrument is to be exchanged for an interest in a Permanent Global Instrument, the relevant Issuer shall procure:

- (a) in the case of first exchange, the prompt delivery (free of charge to the bearer) of such Permanent Global Instrument, duly authenticated and, in the case of a NGI, effectuated, to the bearer of the Temporary Global Instrument; or
- (b) in the case of any subsequent exchange, an increase in the principal amount of such Permanent Global Instrument in accordance with its terms,

in each case in an aggregate principal amount equal to the aggregate of the principal amounts specified in the certificates issued by Euroclear and/or CBL and/or CBF and/or any other relevant clearing system and received by the Fiscal Agent or, as the case may be, the German Fiscal Agent against, in the case of a CGI, presentation and (in the case of final exchange) surrender of the Temporary Global Instrument at the Specified Office of the Fiscal Agent or, as the case may be, the German Fiscal Agent or, in the case of partial exchange of a NGI, confirmation from the common service provider that Euroclear and CBL have made appropriate entries in their records to reflect the relevant exchange and, in the case of final exchange of a NGI, surrender of the Temporary Global Instrument at the Specified Office of the Fiscal Agent or destruction of the Temporary Global Instrument by the common safe-keeper in accordance

with the Agency Agreement, in any such case within 7 days of the bearer requesting such exchange.

Whenever a Temporary Global Instrument is to be exchanged for Definitive Instruments, the relevant Issuer shall procure the prompt delivery (free of charge to the bearer) of such Definitive Instruments, duly authenticated and with Coupons and Talons attached (if so specified in the relevant Final Terms), in an aggregate principal amount equal to the principal amount of the Temporary Global Instrument to the bearer of the Temporary Global Instrument against the surrender of the Temporary Global Instrument at the Specified Office of the Fiscal Agent within 30 days of the bearer requesting such exchange.

If:

- (a) a Permanent Global Instrument has not been delivered or the principal amount thereof increased by 5.00 p.m. (London time) on the seventh day after the bearer of a Temporary Global Instrument has requested exchange of an interest in the Temporary Global Instrument for an interest in a Permanent Global Instrument; or
- (b) Definitive Instruments have not been delivered by 5.00 p.m. (London time) on the thirtieth day after the bearer of a Temporary Global Instrument has requested exchange of the Temporary Global Instrument for Definitive Instruments; or
- (c) a Temporary Global Instrument (or any part thereof) has become due and payable in accordance with the Terms and Conditions of the Instruments or the date for final redemption of a Temporary Global Instrument has occurred and, in either case, payment in full of the amount of principal falling due with all accrued interest thereon has not been made to the bearer of the Temporary Global Instrument in accordance with the terms of the Temporary Global Instrument on the due date for payment, then the Temporary Global Instrument (including the obligation to deliver a Permanent Global Instrument or increase the principal amount thereof or deliver Definitive Instruments, as the case may be) will become void at 5.00 p.m. (London time) on such seventh day (in the case of (a) above) or at 5.00 p.m. (London time) on such thirtieth day (in the case of (b) above) or at 5.00 p.m. (London time) on such due date (in the case of (c) above) and the bearer of the Temporary Global Instrument will have no further rights thereunder (but without prejudice to the rights which the bearer of the Temporary Global Instrument or others may have under a deed of covenant dated 9 May 2008 (the "Deed of Covenant") executed by DEPFA plc, the Pfandbriefbank and DEPFA ACS). Under the Deed of Covenant, persons shown in the records of Euroclear and/or CBL and/or CBF and/or any other relevant clearing system as being entitled to an interest in a Temporary Global Instrument will acquire directly against the relevant Issuer all those rights to which they would have been entitled if, immediately before the Temporary Global Instrument became void, they had been the holders of Definitive Instruments in an aggregate principal amount equal to the principal amount of Instruments they were shown as holding in the records of Euroclear and/or CBL and/or CBF and/or any other relevant clearing system.

### **Exchange of Permanent Global Instruments**

Whenever a Permanent Global Instrument is to be exchanged for Definitive Instruments, the relevant Issuer shall procure the prompt delivery (free of charge to the bearer) of such Definitive Instruments, duly authenticated and with Coupons and Talons attached (if so specified

in the relevant Final Terms), in an aggregate principal amount equal to the principal amount of the Permanent Global Instrument to the bearer of the Permanent Global Instrument against the surrender of the Permanent Global Instrument at the Specified Office of the Fiscal Agent or, as the case may be, German Fiscal Agent within 30 days of the bearer requesting such exchange.

If:

- (a) Definitive Instruments have not been delivered by 5.00 p.m. (London time) on the thirtieth day after the bearer of a Permanent Global Instrument has duly requested exchange of the Permanent Global Instrument for Definitive Instruments; or
- (b) a Permanent Global Instrument (or any part of it) has become due and payable in accordance with the Terms and Conditions of the Instruments or the date for final redemption of the Instruments has occurred and, in either case, payment in full of the amount of principal falling due with all accrued interest thereon has not been made to the bearer of the Permanent Global Instrument in accordance with the terms of the Permanent Global Instrument on the due date for payment,

then the Permanent Global Instrument (including the obligation to deliver Definitive Instruments) will become void at 5.00 p.m. (London time) on such thirtieth day (in the case of (a) above) or at 5.00 p.m. (London time) on such due date (in the case of (b) above) and the bearer of the Permanent Global Instrument will have no further rights thereunder (but without prejudice to the rights which the bearer of the Permanent Global Instrument or others may have under the Deed of Covenant. Under the Deed of Covenant, persons shown in the records of Euroclear and/or CBL and/or CBF and/or any other relevant clearing system as being entitled to an interest in a Permanent Global Instrument will acquire directly against the relevant Issuer all those rights to which they would have been entitled if, immediately before the Permanent Global Instrument became void, they had been the holders of Definitive Instruments in an aggregate principal amount equal to the principal amount of Instruments they were shown as holding in the records of Euroclear and/or CBL and/or CBF and/or any other relevant clearing system.

### **Conditions applicable to Global Instruments**

Each Global Instrument will contain provisions which modify the Terms and Conditions of the Instruments as they apply to the Global Instrument. The following is a summary of certain of those provisions:

*Payments:* All payments in respect of the Global Instrument will be made against presentation and (in the case of payment of principal in full with all interest accrued thereon) surrender of the Global Instrument at the Specified Office of any Paying Agent and will be effective to satisfy and discharge the corresponding liabilities of the relevant Issuer in respect of the Instruments. On each occasion on which a payment of principal or interest is made in respect of the Global Instrument, the relevant Issuer shall procure that the same is noted in a schedule thereto.

*Exercise of put option:* In order to exercise the option contained in Condition 10(e) (*Redemption at the option of Instrumentholders*) the bearer of the Permanent Global Instrument must, within the period specified in the Conditions for the deposit of the relevant Instrument and put notice, give written notice of such exercise to the Fiscal Agent or, as the case may be,



German Fiscal Agent specifying the principal amount of Instruments in respect of which such option is being exercised. Any such notice will be irrevocable and may not be withdrawn.

*Partial exercise of call option:* In connection with an exercise of the option contained in Condition 10(c) (*Redemption at the option of the Issuer*) in relation to some only of the Instruments, the Permanent Global Instrument may be redeemed in part in the principal amount specified by the Issuer in accordance with the Conditions and the Instruments to be redeemed will not be selected as provided in the Conditions.

*Notices:* Notwithstanding Condition 20 (*Notices*), while all the Instruments are represented by a Permanent Global Instrument (or by a Permanent Global Instrument and/or a Temporary Global Instrument) and the Permanent Global Instrument is (or the Permanent Global Instrument and/or the Temporary Global Instrument are) deposited with a depositary or a common depositary for Euroclear and/or CBL and/or CBF and/or any other relevant clearing system, notices to Instrumentholders may be given by delivery of the relevant notice to Euroclear and/or CBL and/or CBF and/or any other relevant clearing system and, in any case, such notices shall be deemed to have been given to the Instrumentholders in accordance with Condition 20 (*Notices*) on the date of delivery to Euroclear and/or CBL and/or CBF and/or any other relevant clearing system.

*Redenomination:* If the Instruments are redenominated pursuant to Condition 23 (*Redenomination, Renominalisation and Reconventioning*), then following redenomination:

- (a) if Definitive Instruments are required to be issued, they shall be issued at the expense of the relevant Issuer in the denominations of Euro 0.01, Euro 1,000, Euro 10,000, Euro 100,000 and such other denominations as the Fiscal Agent shall determine and notify to the Instrumentholders; and
- (b) the amount of interest due in respect of Instruments represented by a Permanent Global Instrument and/or a Temporary Global Instrument will be calculated by reference to the aggregate principal amount of such Instruments and the amount of such payment shall be rounded down to the nearest Euro 0.01.

## TERMS AND CONDITIONS OF THE PFANDBRIEF INSTRUMENTS

*The following is the text of the terms and conditions which, as supplemented, amended and/or replaced by the relevant Final Terms, will be applicable to the Pfandbrief Instruments issued under the Programme.*

### 1. Introduction

- (a) *Programme:* DEPFA Deutsche Pfandbriefbank AG (the "Issuer"), DEPFA BANK plc ("DEPFA plc") and DEPFA ACS Bank ("DEPFA ACS") have established a programme (the "Programme") for the issuance of up to EUR 45,000,000,000 in aggregate principal amount of debt instruments, including Pfandbrief Instruments of the Issuer (the "Pfandbrief Instruments").
- (b) *Final Terms:* Pfandbrief Instruments issued under the Programme are issued in series (each a "Series") and each Series may comprise one or more tranches (each a "Tranche") of Pfandbrief Instruments. Each Tranche is the subject of final terms (the "Final Terms") which supplements these terms and conditions (the "Pfandbrief Conditions"). The terms and conditions applicable to any particular Tranche of Pfandbrief Instruments are these Pfandbrief Conditions as supplemented, amended and/or replaced by the relevant Final Terms. In the event of any inconsistency between these Pfandbrief Conditions and the relevant Final Terms, the relevant Final Terms shall prevail.
- (c) *Agency Agreement:* The Pfandbrief Instruments are the subject of an amended and restated issue and paying agency agreement dated 9 May 2008 (as amended or supplemented from time to time, the "Agency Agreement") between the Issuer, DEPFA plc, DEPFA ACS, Deutsche Bank AG London as fiscal agent (the "Fiscal Agent", which expression includes any successor fiscal agent appointed from time to time in connection with the Pfandbrief Instruments), Deutsche Bank Aktiengesellschaft as German fiscal agent (the "German Fiscal Agent", which expression includes any successor German fiscal agent appointed from time to time in connection with the Pfandbrief Instruments) and the paying agents named therein (together with the Fiscal Agent and the German Fiscal Agent, the "Paying Agents", which expression includes any successor or additional paying agents appointed from time to time in connection with the Pfandbrief Instruments).
- (d) *The Pfandbrief Instruments:* All subsequent references in these Pfandbrief Conditions to "Pfandbrief Instruments" are to the Pfandbrief Instruments which are the subject of the relevant Final Terms. Copies of the relevant Final Terms are available for inspection by Instrument Holders (as defined below) during normal business hours at the Specified Offices of the Fiscal Agent and the German Fiscal Agent, the initial Specified Offices of which are set out below.
- (e) *Summaries:* Certain provisions of these Pfandbrief Conditions are summaries of the Agency Agreement and are subject to its detailed provisions. The holders of the Pfandbrief Instruments (the "Instrument Holders") and the holders of the related interest coupons, if any, (the "Couponholders" and the "Coupons", respectively) are bound by,

and are deemed to have notice of, all the provisions of the Agency Agreement applicable to them. Copies of the Agency Agreement are available for inspection by Instrument Holders during normal business hours at the Specified Offices of each of the Paying Agents, the initial Specified Offices of which are set out below.

## **2. Interpretation**

(a) *Definitions:* In these Conditions the following expressions have the following meanings:

"Accrual Yield" has the meaning given in the relevant Final Terms;

"Additional Business Centre(s)" means the city or cities specified as such in the relevant Final Terms;

"Additional Financial Centre(s)" means the city or cities specified as such in the relevant Final Terms;

"Business Day" means:

- (i) in relation to any sum payable in Euro, a TARGET Settlement Day and a day on which commercial banks and foreign exchange markets settle payments generally in each (if any) Additional Business Centre; and
- (ii) in relation to any sum payable in a currency other than Euro, a day on which commercial banks and foreign exchange markets settle payments generally in London, in the Principal Financial Centre of the relevant currency and in each (if any) Additional Business Centre;

"Business Day Convention", in relation to any particular date, has the meaning given in the relevant Final Terms and, if so specified in the relevant Final Terms, may have different meanings in relation to different dates and, in this context, the following expressions shall have the following meanings:

- (i) "Following Business Day Convention" means that the relevant date shall be postponed to the first following day that is a Business Day;
- (ii) "Modified Following Business Day Convention" or "Modified Business Day Convention" means that the relevant date shall be postponed to the first following day that is a Business Day unless that day falls in the next calendar month in which case that date will be the first preceding day that is a Business Day;
- (iii) "Preceding Business Day Convention" means that the relevant date shall be brought forward to the first preceding day that is a Business Day;

- (iv) "FRN Convention", "Floating Rate Convention" or "Eurodollar Convention" means that each relevant date shall be the date which numerically corresponds to the preceding such date in the calendar month which is the number of months specified in the relevant Final Terms as the Specified Period after the calendar month in which the preceding such date occurred *provided, however, that*:
- (A) if there is no such numerically corresponding day in the calendar month in which any such date should occur, then such date will be the last day which is a Business Day in that calendar month;
  - (B) if any such date would otherwise fall on a day which is not a Business Day, then such date will be the first following day which is a Business Day unless that day falls in the next calendar month, in which case it will be the first preceding day which is a Business Day; and
  - (C) if the preceding such date occurred on the last day in a calendar month which was a Business Day, then all subsequent such dates will be the last day which is a Business Day in the calendar month which is the specified number of months after the calendar month in which the preceding such date occurred; and
- (v) "No Adjustment" means that the relevant date shall not be adjusted in accordance with any Business Day Convention;

"Calculation Agent" means the Fiscal Agent or, as the case may be, the German Fiscal Agent or such other Person specified in the relevant Final Terms as the party responsible for calculating the Rate(s) of Interest and Interest Amount(s) and/or such other amount(s) as may be specified in the relevant Final Terms;

"Day Count Fraction" means, in respect of the calculation of an amount for any period of time (the "Calculation Period"), such day count fraction as may be specified in these Pfandbrief Conditions or the relevant Final Terms and:

- (i) if "Actual/Actual (ICMA)" is so specified, means:
- (a) where the Calculation Period is equal to or shorter than the Regular Period during which it falls, the actual number of days in the Calculation Period divided by the product of (1) the actual number of days in such Regular Period and (2) the number of Regular Periods in any year; and
  - (b) where the Calculation Period is longer than one Regular Period, the sum of:
    - (A) the actual number of days in such Calculation Period falling in the Regular Period in which it begins divided by the product of (1) the actual number of days in such Regular Period and (2) the number of Regular Periods in any year; and
    - (B) the actual number of days in such Calculation Period falling in the next Regular Period divided by the product of (1) the actual number of days in such Regular Period and (2) the number of Regular Periods in any year;

- (ii) if "Actual/365" or "Actual/Actual (ISDA)" is so specified, means the actual number of days in the Calculation Period divided by 365 (or, if any portion of the Calculation Period falls in a leap year, the sum of (A) the actual number of days in that portion of the Calculation Period falling in a leap year divided by 366 and (B) the actual number of days in that portion of the Calculation Period falling in a non-leap year divided by 365);
- (iii) if "Actual/365 (Fixed)" is so specified, means the actual number of days in the Calculation Period divided by 365;
- (iv) if "Actual/360" is so specified, means the actual number of days in the Calculation Period divided by 360;
- (v) if "30/360" is so specified, means the number of days in the Calculation Period divided by 360 (the number of days to be calculated on the basis of a year of 360 days with 12 30-day months (unless (i) the last day of the Calculation Period is the 31st day of a month but the first day of the Calculation Period is a day other than the 30th or 31st day of a month, in which case the month that includes that last day shall not be considered to be shortened to a 30-day month, or (ii) the last day of the Calculation Period is the last day of the month of February, in which case the month of February shall not be considered to be lengthened to a 30-day month)); and
- (vi) if "30E/360" or "Eurobond Basis" is so specified means, the number of days in the Calculation Period divided by 360 (the number of days to be calculated on the basis of a year of 360 days with 12 30-day months, without regard to the date of the first day or last day of the Calculation Period unless, in the case of the final Calculation Period, the date of final maturity is the last day of the month of February, in which case the month of February shall not be considered to be lengthened to a 30-day month);

"Early Redemption Amount (Tax)" means, in respect of any Pfandbrief Instrument, its principal amount or such other amount as may be specified in, or determined in accordance with, the relevant Final Terms;

"Early Termination Amount" means, in respect of any Pfandbrief Instrument, its principal amount or such other amount as may be specified in, or determined in accordance with, these Conditions or the relevant Final Terms;

"Extraordinary Resolution" has the meaning given in the Agency Agreement;

"Final Redemption Amount" means, in respect of any Pfandbrief Instrument, its principal amount or such other amount as may be specified in, or determined in accordance with, the relevant Final Terms;

"Interest Amount" means, in relation to a Pfandbrief Instrument and an Interest Period, the amount of interest payable in respect of that Pfandbrief Instrument for that Interest Period;

"Interest Commencement Date" means the Issue Date of the Pfandbrief Instruments or such other date as may be specified as the Interest Commencement Date in the relevant Final Terms;

"Interest Determination Date" has the meaning given in the relevant Final Terms;

"Interest Payment Date" means the date or dates specified as such in, or determined in accordance with the provisions of, the relevant Final Terms and, if a Business Day Convention is specified in the relevant Final Terms:

- (i) as the same may be adjusted in accordance with the relevant Business Day Convention; or
- (ii) if the Business Day Convention is the FRN Convention, Floating Rate Convention or Eurodollar Convention and an interval of a number of calendar months is specified in the relevant Final Terms as being the Specified Period, each of such dates as may occur in accordance with the FRN Convention, Floating Rate Convention or Eurodollar Convention at such Specified Period of calendar months following the Interest Commencement Date (in the case of the first Interest Payment Date) or the previous Interest Payment Date (in any other case);

"Interest Period" means each period beginning on (and including) the Interest Commencement Date or any Interest Payment Date and ending on (but excluding) the next Interest Payment Date;

"ISDA Definitions" means the 2000 ISDA Definitions (as amended and updated as at the date of issue of the first Tranche of the Pfandbrief Instruments of the relevant Series (as specified in the relevant Final Terms) as published by the International Swaps and Derivatives Association, Inc.) or, if so specified in the relevant Final Terms, the 2006 ISDA Definitions (as amended and updated as at the date of issue of the First Tranche of Pfandbrief Instruments of the relevant Series (as specified in the relevant Final Terms) as published by the International Swaps and Derivatives Association Inc.;

"Issue Date" has the meaning given in the relevant Final Terms;

"Margin" has the meaning given in the relevant Final Terms;

"Maturity Date" has the meaning given in the relevant Final Terms;

"Maximum Redemption Amount" has the meaning given in the relevant Final Terms;

"Minimum Redemption Amount" has the meaning given in the relevant Final Terms;

"Optional Redemption Amount (Call)" means, in respect of any Pfandbrief Instrument, its principal amount or such other amount as may be specified in, or determined in accordance with, the relevant Final Terms;

"Optional Redemption Date (Call)" has the meaning given in the relevant Final Terms;

"Participating Member State" means a Member State of the European Communities which adopts the Euro as its lawful currency in accordance with the Treaty;

"Payment Business Day" means:

- (i) if the currency of payment is Euro, any day which is:
  - (A) a day on which banks in the relevant place of presentation are open for presentation and payment of bearer debt securities and for dealings in foreign currencies; and
  - (B) in the case of payment by transfer to an account, a TARGET Settlement Day and a day on which dealings in foreign currencies may be carried on in each (if any) Additional Financial Centre; or
- (ii) if the currency of payment is not Euro, any day which is:
  - (A) a day on which banks in the relevant place of presentation are open for presentation and payment of bearer debt securities and for dealings in foreign currencies; and
  - (B) in the case of payment by transfer to an account, a day on which dealings in foreign currencies may be carried on in the Principal Financial Centre of the currency of payment and in each (if any) Additional Financial Centre;

"Person" means any individual, company, corporation, firm, partnership, joint venture, association, organisation, state or agency of a state or other entity, whether or not having separate legal personality;

"Principal Financial Centre" means, in relation to any currency, the principal financial centre for that currency *provided, however, that:*

- (i) in relation to Euro, it means the principal financial centre of such Member State of the European Communities as is selected (in the case of a payment) by the payee or (in the case of a calculation) by the Calculation Agent; and
- (ii) in relation to Australian dollars, it means either Sydney or Melbourne and, in relation to New Zealand dollars, it means either Wellington or Auckland; in each case as is selected (in the case of a payment) by the payee or (in the case of a calculation) by the Calculation Agent;

"Rate of Interest" means the rate or rates (expressed as a percentage per annum) of interest payable in respect of the Pfandbrief Instruments specified in the relevant Final Terms or calculated or determined in accordance with the provisions of these Conditions and/or the relevant Final Terms;

"Redemption Amount" means, as appropriate, the Final Redemption Amount, the Early Redemption Amount (Tax), the Optional Redemption Amount (Call), the Early Termination Amount or such other amount in the nature of a redemption amount as may

be specified in, or determined in accordance with the provisions of, the relevant Final Terms;

"Reference Banks" has the meaning given in the relevant Final Terms or, if none, four (or if the Principal Financial Centre is Helsinki, five) major banks selected by the Calculation Agent in the market that is most closely connected with the Reference Rate;

"Reference Price" has the meaning given in the relevant Final Terms;

"Reference Rate" has the meaning given in the relevant Final Terms;

"Regular Period" means:

- (i) in the case of Pfandbrief Instruments where interest is scheduled to be paid only by means of regular payments, each period from and including the Interest Commencement Date to but excluding the first Interest Payment Date and each successive period from and including one Interest Payment Date to but excluding the next Interest Payment Date;
- (ii) in the case of Pfandbrief Instruments where, apart from the first Interest Period, interest is scheduled to be paid only by means of regular payments, each period from and including a Regular Date falling in any year to but excluding the next Regular Date, where "Regular Date" means the day and month (but not the year) on which any Interest Payment Date falls; and
- (iii) in the case of Pfandbrief Instruments where, apart from one Interest Period other than the first Interest Period, interest is scheduled to be paid only by means of regular payments, each period from and including a Regular Date falling in any year to but excluding the next Regular Date, where "Regular Date" means the day and month (but not the year) on which any Interest Payment Date falls other than the Interest Payment Date falling at the end of the irregular Interest Period.

"Relevant Date" means, in relation to any payment, whichever is the later of (a) the date on which the payment in question first becomes due and (b) if the full amount payable has not been received in the Principal Financial Centre of the currency of payment by the Fiscal Agent or, as the case may be, the German Fiscal Agent on or prior to such due date, the date on which (the full amount having been so received) notice to that effect has been given to the Instrument Holders in accordance with Condition 15 (*Notices*);

"Relevant Financial Centre" has the meaning given in the relevant Final Terms;

"Relevant Screen Page" means the page, section or other part of a particular information service (including, without limitation, Reuters) specified as the Relevant Screen Page in the relevant Final Terms, or such other page, section or other part as may replace it on that information service or such other information service, in each case, as may be nominated by the Person providing or sponsoring the information appearing there for the purpose of displaying rates or prices comparable to the Reference Rate;

"Relevant Time" has the meaning given in the relevant Final Terms;



"Reserved Matter" means any proposal to change any date fixed for payment of principal or interest in respect of the Pfandbrief Instruments, to reduce the amount of principal or interest payable on any date in respect of the Pfandbrief Instruments, to alter the method of calculating the amount of any payment in respect of the Pfandbrief Instruments or the date for any such payment, to change the currency of any payment under the Pfandbrief Instruments or to change the quorum requirements relating to meetings or the majority required to pass an Extraordinary Resolution;

"Security Interest" means any mortgage, charge, pledge, lien or other security interest including, without limitation, anything analogous to any of the foregoing under the laws of any jurisdiction;

"Specified Currency" has the meaning given in the relevant Final Terms;

"Specified Denomination(s)" has the meaning given in the relevant Final Terms;

"Specified Office" has the meaning given in the Agency Agreement;

"Specified Period" has the meaning given in the relevant Final Terms;

"Subsidiary" means, in relation to any Person (the "first Person") at any particular time, any other Person (the "second Person"):

- (i) whose affairs and policies the first Person controls or has the power to control, whether by ownership of share capital, contract, the power to appoint or remove members of the governing body of the second Person or otherwise; or
- (ii) whose financial statements are, in accordance with applicable law and generally accepted accounting principles, consolidated with those of the first Person;

"Talon" means a talon for further Coupons;

"TARGET Settlement Day" means any day on which the Trans-European Automated Real-Time Gross Settlement Express Transfer (TARGET or TARGET2) System is open;

"Treaty" means the Treaty establishing the European Communities, as amended;

"Zero Coupon Pfandbrief Instrument" means a Pfandbrief Instrument specified as such in the relevant Final Terms;

(b) *Interpretation:* In these Conditions:

- (i) if the Pfandbrief Instruments are Zero Coupon Pfandbrief Instruments, references to Coupons and Couponholders are not applicable;
- (ii) if Talons are specified in the relevant Final Terms as being attached to the Pfandbrief Instruments at the time of issue, references to Coupons shall be deemed to include references to Talons;

- (iii) if Talons are not specified in the relevant Final Terms as being attached to the Pfandbrief Instruments at the time of issue, references to Talons are not applicable;
- (iv) any reference to principal shall be deemed to include the Redemption Amount, any additional amounts in respect of principal which may be payable under Condition 12 (*Taxation*), any premium payable in respect of a Pfandbrief Instrument and any other amount in the nature of principal payable pursuant to these Conditions;
- (v) any reference to interest shall be deemed to include any additional amounts in respect of interest which may be payable under Condition 12 (*Taxation*) and any other amount in the nature of interest payable pursuant to these Conditions;
- (vi) references to Pfandbrief Instruments being "outstanding" shall be construed in accordance with the Agency Agreement; and
- (vii) if an expression is stated in Condition 2(a) (*Interpretation — Definitions*) to have the meaning given in the relevant Final Terms, but the relevant Final Terms gives no such meaning or specifies that such expression is "not applicable" then such expression is not applicable to the Pfandbrief Instruments.

### 3. Form, Denomination and Title

- (a) *Form of the Pfandbrief Instruments:* The Final Terms shall specify if the Pfandbrief Instruments are issued as Public Sector Pfandbriefe (*Öffentliche Pfandbriefe*) in bearer form and may be represented by one or more global Pfandbrief(e) (each a "Global Pfandbrief Instrument") (which expression shall mean where the Final Terms applicable to a Tranche specifies that TEFRA D Rules apply any temporary global Pfandbrief ("Temporary Global Pfandbrief Instrument") and permanent global Pfandbrief ("Permanent Global Pfandbrief Instrument") and where the Final Terms applicable to a Tranche specifies that TEFRA C Rules apply any permanent global Pfandbrief ("Permanent Global Pfandbrief Instrument"). Neither Pfandbrief Instruments in definitive form nor interest coupons shall be issued in respect of the Pfandbrief Instruments.
- (b) *Clearing System:* Each Global Pfandbrief Instrument will be deposited with Clearstream Banking, AG Frankfurt am Main ("CBF"), or a common depositary for Euroclear Bank SA/NV ("Euroclear") and Clearstream Banking, société anonyme, Luxembourg ("CBL") or with any other clearing system(s) as specified in the relevant Final Terms.
- (c) *Authorisation:* Each Global Pfandbrief Instrument will bear the signatures of two authorised signatories on behalf of the Issuer (which signatories may be facsimile signatures) and the manual signature of the statutory trustee (*Treuhänder*) for the Issuer appointed by the Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*) or (if any) any other competent German federal supervisory authority. Each Global Pfandbrief Instrument to be deposited with a common depositary for Euroclear and CBL will also bear the manual signature of an authorised officer of the Fiscal Agent.
- (d) *Issue:* The Pfandbrief Instruments are represented upon issue where the Final Terms specifies that TEFRA D Rules apply by a Temporary Global Pfandbrief Instrument or

where the Final Terms specifies that TEFRA C Rules apply by a Permanent Global Pfandbrief Instrument.

- (e) *Where the Final Terms specifies that TEFRA D Rules apply:*
- (i) Exchanges of a Temporary Global Pfandbrief Instrument for a Permanent Global Pfandbrief Instrument will be made only on or after the Exchange Date as specified in the Final Terms provided certification as to the beneficial ownership thereof as required by U.S. Treasury regulations (in substantially the form set out in the Temporary Global Pfandbrief Instrument or in such other form as is customarily issued in such circumstances by the relevant clearing system) has been received.
  - (ii) The bearer of any Temporary Global Pfandbrief Instrument shall not (unless, upon due presentation of such Temporary Global Pfandbrief Instrument for exchange (in whole but not in part only) for a Permanent Global Pfandbrief Instrument, such exchange or delivery is improperly withheld or refused and such withholding or refusal is continuing at the relevant payment date) be entitled to receive any payment in respect of the Pfandbrief Instruments represented by such Temporary Global Pfandbrief Instrument which falls due on or after the Exchange Date or be entitled to exercise any option on a date after the Exchange Date.
  - (iii) If any date on which payment of interest on the Pfandbrief Instruments of a Tranche occurs whilst any of the Pfandbrief Instruments of that Tranche are represented by a Temporary Global Pfandbrief Instrument, the related interest payment will be made on the Temporary Global Pfandbrief Instrument only to the extent that certification as to the beneficial ownership thereof as required by U.S. Treasury regulations (in substantially the form set out in the Temporary Global Pfandbrief Instrument or in such other form as is customarily issued in such circumstances by the relevant clearing system) has been received by CBF or a common depository for Euroclear and CBL or any other relevant clearing system. Payments of amounts due in respect of a Temporary Global Pfandbrief Instrument or a Permanent Global Pfandbrief Instrument or a Permanent Global Pfandbrief Instrument will be made through CBF, Euroclear and CBL or any other relevant clearing system without any requirement for certification.
- (f) *Denominations:* The Pfandbrief Instruments will be the Specified Denomination specified in the relevant Final Terms. In the case of a Series of Pfandbrief Instruments with more than one Specified Denomination, Pfandbrief Instruments of one Specified Denomination will not be exchangeable for Pfandbrief Instruments of another Specified Denomination.
- (g) *Title:* Title to the Pfandbrief Instruments will pass by agreement to transfer of title and delivery. The holder of any Pfandbrief Instrument shall (except as otherwise required by law) be treated as its absolute owner for all purposes (whether or not it is overdue and regardless of any notice of ownership, trust or any other interest therein, any writing thereon or any notice of any previous loss or theft thereof) and no Person shall be liable

for so treating such holder. No person shall have any right to enforce any term or condition of any Pfandbrief Instrument under the Contracts (Rights of Third Parties) Act 1999.

- (h) *Instalment Pfandbrief Instruments:* Pfandbrief Instruments, the principal amount of which is repayable by instalments ("Instalment Pfandbrief Instruments"), will have endorsed thereon a grid for recording the repayment of principal.

#### **4. Status**

The Pfandbrief Instruments constitute direct, unconditional and unsubordinated obligations of the Issuer which will at all times rank *pari passu* without any preference among themselves. The Pfandbrief Instruments are covered in accordance with the German Pfandbrief Act (*Pfandbriefgesetz*) and rank *pari passu* with all other obligations of the Issuer arising from Public Sector Pfandbriefe (*Öffentliche Pfandbriefe*).

#### **5. Fixed Rate Pfandbrief Instrument Provisions**

- (a) *Application:* This Condition 5 (*Fixed Rate Pfandbrief Instrument Provisions*) is applicable to the Pfandbrief Instruments only if the Fixed Rate Pfandbrief Instrument Provisions are specified in the relevant Final Terms as being applicable.
- (b) *Accrual of Interest:* Interest shall accrue on the principal amount of each Pfandbrief Instrument or, in the case of an Instalment Pfandbrief Instrument, on each installment of principal or, in the case of a partly paid Pfandbrief Instrument, on the paid up principal amount of such Pfandbrief Instrument or otherwise as indicated in the Final Terms. The Pfandbrief Instruments bear interest from the Interest Commencement Date at the Rate of Interest payable in arrear on each Interest Payment Date, subject as provided in Condition 10 (*Payments*). Each Pfandbrief Instrument will cease to bear interest from the due date for final redemption (or, in the case of an Instalment Pfandbrief Instrument, in respect of each installment of principal, on the due date for payment thereof) unless, upon due presentation, payment of the Redemption Amount (or the relevant installment) is improperly withheld or refused, in which case it will continue to bear interest in accordance with this Condition 5 (*Fixed Rate Pfandbrief Instrument Provisions*) (as well after as before any demand or judgment) until whichever is the earlier of (i) the day on which all sums due in respect of such Pfandbrief Instrument up to that day are received by or on behalf of the relevant Instrumentholder and (ii) the day which is seven days after the Fiscal Agent or, as the case may be, the German Fiscal Agent has notified the relevant Instrument Holders in accordance with Condition 15 (*Notices*) that it has received all sums due in respect of the Pfandbrief Instruments up to such seventh day (except to the extent that there is any subsequent default in payment).
- (c) *Fixed Coupon Amount:* The amount of interest payable in respect of each Pfandbrief Instrument for any Interest Period shall be the relevant Fixed Coupon Amount and, if the Pfandbrief Instruments are in more than one Specified Denomination, shall be the relevant Fixed Coupon Amount in respect of the relevant Specified Denomination.

- (d) *Calculation of Interest Amount:* The amount of interest payable in respect of each Pfandbrief Instrument for any period for which a Fixed Coupon Amount is not specified shall be calculated by applying the Rate of Interest to the principal amount of such Pfandbrief Instrument, multiplying the product by the relevant Day Count Fraction and rounding the resulting figure to the nearest sub-unit of the Specified Currency (half a sub-unit being rounded upwards). For this purpose a "sub-unit" means, in the case of any currency other than Euro, the lowest amount of such currency that is available as legal tender in the country of such currency and, in the case of Euro, means one cent.

**6. Floating Rate Pfandbrief Instrument and Index-Linked Interest Pfandbrief Instrument Provisions**

- (a) *Application:* This Condition 6 (*Floating Rate Pfandbrief Instrument and Index-Linked Interest Pfandbrief Instrument Provisions*) is applicable to the Pfandbrief Instruments only if the Floating Rate Pfandbrief Instrument Provisions or the Index-Linked Interest Pfandbrief Instrument Provisions are specified in the relevant Final Terms as being applicable.
- (b) *Accrual of interest:* Interest shall accrue on the principal amount of each Pfandbrief Instrument or, in the case of an Instalment Pfandbrief Instrument, on each installment of principal or, in the case of a partly paid Pfandbrief Instrument, on the paid-up principal amount at such Pfandbrief Instrument or otherwise as indicated in the Final Terms. The Pfandbrief Instruments bear interest from the Interest Commencement Date at the Rate of Interest payable in arrear on each Interest Payment Date, subject as provided in Condition 10 (*Payments*). Each Pfandbrief Instrument will cease to bear interest from the due date for final redemption (or, in the case of an Instalment Pfandbrief Instrument, in respect of each installment of principal on the due date for payment thereof) unless, upon due presentation, payment of the Redemption Amount (or the relevant installment) is improperly withheld or refused, in which case it will continue to bear interest in accordance with this Condition (as well after as before any demand or judgment) until whichever is the earlier of (i) the day on which all sums due in respect of such Pfandbrief Instrument up to that day are received by or on behalf of the relevant Instrumentholder and (ii) the day which is seven days after the Fiscal Agent or, as the case may be, the German Fiscal Agent has notified the relevant Instrument Holders in accordance with Condition 15 (*Notices*) that it has received all sums due in respect of the Pfandbrief Instruments up to such seventh day (except to the extent that there is any subsequent default in payment).
- (c) *Screen Rate Determination:* If Screen Rate Determination is specified in the relevant Final Terms as the manner in which the Rate(s) of Interest is/are to be determined, the Rate of Interest applicable to the Pfandbrief Instruments for each Interest Period will be determined by the Calculation Agent on the following basis:
- (i) if the Reference Rate is a composite quotation or customarily supplied by one entity, the Calculation Agent will determine the Reference Rate which appears on the Relevant Screen Page as of the Relevant Time on the relevant Interest Determination Date;

- (ii) in any other case, the Calculation Agent will determine the arithmetic mean of the Reference Rates which appear on the Relevant Screen Page as of the Relevant Time on the relevant Interest Determination Date;
- (iii) if, in the case of (i) above, such rate does not appear on that page or, in the case of (ii) above, fewer than two such rates appear on that page or if, in either case, the Relevant Screen Page is unavailable, the Calculation Agent will:
  - (A) request the principal Relevant Financial Centre office of each of the Reference Banks to provide a quotation of the Reference Rate at approximately the Relevant Time on the Interest Determination Date to prime banks in the Relevant Financial Centre interbank market in an amount that is representative for a single transaction in that market at that time; and
  - (B) determine the arithmetic mean of such quotations; and
- (iv) if fewer than two such quotations are provided as requested, the Calculation Agent will determine the arithmetic mean of the rates (being the nearest to the Reference Rate, as determined by the Calculation Agent) quoted by major banks in the Principal Financial Centre of the Specified Currency, selected by the Calculation Agent, at approximately 11.00 a.m. (local time in the Principal Financial Centre of the Specified Currency) on the first day of the relevant Interest Period for loans in the Specified Currency to leading European banks for a period equal to the relevant Interest Period and in an amount that is representative for a single transaction in that market at that time,

and the Rate of Interest for such Interest Period shall be the sum of the Margin and the rate or (as the case may be) the arithmetic mean so determined; *provided, however, that* if the Calculation Agent is unable to determine a rate or (as the case may be) an arithmetic mean in accordance with the above provisions in relation to any Interest Period, the Rate of Interest applicable to the Pfandbrief Instruments during such Interest Period will be the sum of the Margin and the rate or (as the case may be) the arithmetic mean last determined in relation to the Pfandbrief Instruments in respect of a preceding Interest Period.

- (d) *ISDA Determination:* If ISDA Determination is specified in the relevant Final Terms as the manner in which the Rate(s) of Interest is/are to be determined, the Rate of Interest applicable to the Pfandbrief Instruments for each Interest Period will be the sum of the Margin and the relevant ISDA Rate where "ISDA Rate" in relation to any Interest Period means a rate equal to the Floating Rate (as defined in the ISDA Definitions) that would be determined by the Calculation Agent under an interest rate swap transaction if the Calculation Agent were acting as Calculation Agent for that interest rate swap transaction under the terms of an agreement incorporating the ISDA Definitions and under which:
  - (i) the Floating Rate Option (as defined in the ISDA Definitions) is as specified in the relevant Final Terms;
  - (ii) the Designated Maturity (as defined in the ISDA Definitions) is a period specified in the relevant Final Terms; and

- (iii) the relevant Reset Date (as defined in the ISDA Definitions) is either (A) if the relevant Floating Rate Option is based on the London inter-bank offered rate (LIBOR) for a currency, the first day of that Interest Period or (B) in any other case, as specified in the relevant Final Terms.
- (e) *Index-Linked Interest:* If the Index-Linked Interest Pfandbrief Instrument Provisions are specified in the relevant Final Terms as being applicable, the Rate(s) of Interest applicable to the Pfandbrief Instruments for each Interest Period will be determined in the manner specified in the relevant Final Terms.
- (f) *Maximum or Minimum Rate of Interest:* If any Maximum Rate of Interest or Minimum Rate of Interest is specified in the relevant Final Terms, then the Rate of Interest shall in no event be greater than the maximum or be less than the minimum so specified.
- (g) *Calculation of Interest Amount:* The Calculation Agent will, as soon as practicable after the time at which the Rate of Interest is to be determined in relation to each Interest Period, calculate the Interest Amount payable in respect of each Pfandbrief Instrument for such Interest Period. The Interest Amount will be calculated by applying the Rate of Interest for such Interest Period to the principal amount of such Pfandbrief Instrument during such Interest Period and multiplying the product by the relevant Day Count Fraction.
- (h) *Calculation of other amounts:* If the relevant Final Terms specifies that any other amount is to be calculated by the Calculation Agent, the Calculation Agent will, as soon as practicable after the time or times at which any such amount is to be determined, calculate the relevant amount. The relevant amount will be calculated by the Calculation Agent in the manner specified in the relevant Final Terms.
- (i) *Publication:* The Calculation Agent will cause each Rate of Interest and Interest Amount determined by it, together with the relevant Interest Payment Date, and any other amount(s) required to be determined by it together with any relevant payment date(s) to be notified to the Issuer, the Paying Agents and each listing authority, stock exchange and/or quotation system (if any) by which the Pfandbrief Instruments have then been admitted to listing, trading and/or quotation as soon as practicable after such determination but (in the case of each Rate of Interest, Interest Amount and Interest Payment Date) in any event not later than the first day of the relevant Interest Period. Notice thereof shall also promptly be given to the Instrument Holders. The Calculation Agent will be entitled to recalculate any Interest Amount (on the basis of the foregoing provisions) without notice in the event of an extension or shortening of the relevant Interest Period.
- (j) *Notifications etc:* All notifications, opinions, determinations, certificates, calculations, quotations and decisions given, expressed, made or obtained for the purposes of this Condition by the Calculation Agent will (in the absence of manifest error) be binding on the Issuer, the Paying Agents and the Instrument Holders and (subject as aforesaid) no liability to any such Person will attach to the Calculation Agent in connection with the exercise or non-exercise by it of its powers, duties and discretions for such purposes.

## **7. Zero Coupon Pfandbrief Instrument Provisions**

- (a) *Application:* This Condition 7 (*Zero Coupon Pfandbrief Instrument Provisions*) is applicable to the Pfandbrief Instruments only if the Zero Coupon Pfandbrief Instrument Provisions are specified in the relevant Final Terms as being applicable.
- (b) *Late payment on Zero Coupon Pfandbrief Instruments:* If the Redemption Amount payable in respect of any Zero Coupon Pfandbrief Instrument is improperly withheld or refused, the Redemption Amount shall thereafter be an amount equal to the sum of:
  - (i) the Reference Price; and
  - (ii) the product of the Accrual Yield (compounded annually) being applied to the Reference Price on the basis of the relevant Day Count Fraction from (and including) the Issue Date to (but excluding) whichever is the earlier of (i) the day on which all sums due in respect of such Pfandbrief Instrument up to that day are received by or on behalf of the relevant Instrumentholder and (ii) the day which is seven days after the Fiscal Agent or, as the case may be, the German Fiscal Agent has notified the relevant Instrument Holders in accordance with Condition 15 (*Notices*) that it has received all sums due in respect of the Pfandbrief Instruments up to such seventh day (except to the extent that there is any subsequent default in payment).

## **8. Dual Currency Pfandbrief Instrument Provisions**

- (a) *Application:* This Condition 8 (*Dual Currency Pfandbrief Instrument Provisions*) is applicable to the Pfandbrief Instruments only if the Dual Currency Pfandbrief Instrument Provisions are specified in the relevant Final Terms as being applicable.
- (b) *Rate of Interest:* If the rate or amount of interest fails to be determined by reference to an exchange rate, the rate or amount of interest payable shall be determined in the manner specified in the relevant Final Terms.

## **9. Redemption and Purchase**

- (a) *Scheduled redemption:* Unless previously redeemed, or purchased and cancelled, the Pfandbrief Instruments will be redeemed at their Final Redemption Amount (or, in the case of Instalment Pfandbrief Instruments, in such number of installments and in such amounts as may be specified in the Final Terms) on the Maturity Date, subject as provided in Condition 10 (*Payments*).
- (b) *Redemption at the option of the Issuer:* If the Call Option is specified in the relevant Final Terms as being applicable, the Pfandbrief Instruments may be redeemed at the option of the Issuer in whole or, if so specified in the relevant Final Terms, in part on any Optional Redemption Date (Call) at the relevant Optional Redemption Amount (Call) less, in the case of any Instalment Pfandbrief Instrument, the aggregate amount of all installments that shall have become due and payable in respect of such Instalment Pfandbrief Instrument under any other Condition prior to the date fixed for redemption



(which amount, if and to the extent not then paid, remains due and payable), on the Issuer's giving not less than 30 days' notice to the relevant Instrument Holders (which notice shall be irrevocable and shall oblige the Issuer to redeem the Pfandbrief Instruments or, as the case may be, the Pfandbrief Instruments specified in such notice on the relevant Optional Redemption Date (Call) at the Optional Redemption Amount (Call) plus accrued interest (if any) to such date).

- (c) *Partial redemption:* If the Pfandbrief Instruments are to be redeemed in part only on any date in accordance with Condition 9(b) (*Redemption at the option of the Issuer*), the Pfandbrief Instruments to be redeemed shall be selected by the drawing of lots in such place as the Fiscal Agent or, as the case may be, the German Fiscal Agent approves and in such manner as the Fiscal Agent or, as the case may be, the German Fiscal Agent considers appropriate, subject to compliance with applicable law and the rules of each listing authority, stock exchange and/or quotation system (if any) by which the Pfandbrief Instruments have then been admitted to listing, trading and/or quotation, and the notice to the relevant Instrument Holders referred to in Condition 9 (b) (*Redemption at the option of the Issuer*) shall specify the serial numbers of the Pfandbrief Instruments so to be redeemed. If any Maximum Redemption Amount or Minimum Redemption Amount is specified in the relevant Final Terms, then the Optional Redemption Amount (Call) shall in no event be greater than the maximum or be less than the minimum so specified.
- (d) *No other redemption:* The Issuer shall not be entitled to redeem the Pfandbrief Instruments otherwise than as provided in paragraphs (a) to (c) above.
- (e) *Early redemption of Zero Coupon Pfandbrief Instruments:* Unless otherwise specified in the relevant Final Terms, the Redemption Amount payable on redemption of a Zero Coupon Pfandbrief Instrument at any time before the Maturity Date shall be an amount equal to the sum of:
  - (i) the Reference Price; and
  - (ii) the product of the Accrual Yield (compounded annually) being applied to the Reference Price from (and including) the Issue Date to (but excluding) the date fixed for redemption or (as the case may be) the date upon which the Pfandbrief Instrument becomes due and payable.

Where such calculation is to be made for a period which is not a whole number of years, the calculation in respect of the period of less than a full year shall be made on the basis of such Day Count Fraction as may be specified in the Final Terms for the purposes of this Condition 9(e) or, if none is so specified, a Day Count Fraction of 30E/360.

- (f) *Purchase:* The Issuer may at any time purchase Pfandbrief Instruments in the open market or otherwise and at any price.
- (g) *Cancellation:* All unmatured Pfandbrief Instruments so redeemed or purchased by the Issuer shall be cancelled forthwith and may not be reissued or resold.

## **10. Payments**

- (a) *Principal:* Payments of principal shall be made only against presentation and (save in the case of a partial redemption which includes, in the case of an Instalment Pfandbrief Instrument, payment of any installment other than the final installment) surrender of Pfandbrief Instruments at the head office of the Issuer in the case of Pfandbrief Instruments held by CBF or, in the case of other Pfandbrief Instruments, at the Specified Office of any Paying Agent outside the United States by cheque (in the case of payment in Japanese Yen to a nonresident of Japan, drawn on an authorised foreign exchange bank) drawn in the currency in which the payment is due on, or by transfer to an account (in the case of payment in Japanese Yen to a non-resident of Japan, a non-resident account with an authorised foreign exchange bank specified by the payee) denominated in that currency (or, if that currency is Euro, any other account to which Euro may be credited or transferred) and maintained by the payee with a bank in the Principal Financial Centre of that currency (in the case of a sterling cheque, a town clearing branch of a bank in the City of London).
- (b) *Interest:* Payment of amounts in respect of interest on the Pfandbrief Instruments will be made where the relevant Final Terms specifies that the TEFRA D Rules apply against presentation of the Temporary Global Pfandbrief Instrument (upon due certification as required herein) or the Permanent Global Pfandbrief Instrument or, where the relevant Final Terms specifies that the TEFRA C Rules apply, against presentation of the Permanent Global Pfandbrief Instrument at the head office of the Issuer in the case of Pfandbrief Instruments held by CBF or, in the case of Pfandbrief Instruments not to be listed or quoted on any listing authority, stock exchange and/or quotation system in Germany, at the specified office of any of the Paying Agents outside the United States in the manner described in paragraph (a) above.
- (c) *Payments in New York City:* Payments of principal or interest may be made at the Specified Office of a Paying Agent in New York City if (i) the relevant Pfandbrief Instruments are denominated or payable in U.S. dollars (except for Pfandbrief Instruments held by CBF and listed or quoted on a listing authority stock exchange and/or quotation system in Germany) (ii) the Issuer has appointed Paying Agents outside the United States with the reasonable expectation that such Paying Agents will be able to make payment of the full amount of the interest on the Pfandbrief Instruments in the currency in which the payment is due when due, (iii) payment of the full amount of such interest at the specified offices of all such Paying Agents is illegal or effectively precluded by exchange controls or other similar restrictions and (iv) payment is permitted by applicable United States law. If (ii), (iii) and (iv) of the previous sentence apply, the Issuer shall forthwith appoint a Paying Agent with a Specified Office in New York City.
- (d) *Payments subject to fiscal laws:* All payments in respect of the Pfandbrief Instruments are subject in all cases to any applicable fiscal or other laws and regulations in the place of payment, but without prejudice to the provisions of Condition 12 (*Taxation*). No commissions or expenses shall be charged to the Instrument Holders in respect of such payments.
- (e) *Payments on business days:* If the due date for payment of any amount in respect of any Pfandbrief Instrument is not a Payment Business Day in the place of presentation, the

Instrumentholder shall not be entitled to payment in such place of the amount due until the next succeeding Payment Business Day in such place and shall not be entitled to any further interest or other payment in respect of any such delay.

- (f) *Partial payments:* If a Paying Agent makes a partial payment in respect of any Pfandbrief Instrument presented to it for payment, such Paying Agent will endorse thereon a statement indicating the amount and date of such payment.

## **11. Presentation**

- (a) The period for presentation of the Pfandbrief Instruments provided in § 801 paragraph 1 sentence 1 of the German Civil Code is reduced to ten years.
- (b) The Issuer may deposit with the Local Court (*Amtsgericht*) of Frankfurt am Main principal and interest not claimed by the relevant Instrument Holders within twelve months after the Relevant Date with the waiver of the right to withdraw such deposit. Such deposit will be at the risk and cost of such holders.

## **12. Taxation**

All payments of principal and interest in respect of the Pfandbrief Instruments by or on behalf of the Issuer shall be made free and clear of, and without withholding or deduction for, any present or future taxes, duties, assessments or governmental charges of whatsoever nature imposed, levied, collected, withheld or assessed by the jurisdiction of incorporation of the Issuer or any political subdivision or any authority or agency thereof or therein having power to tax, unless such withholding or deduction is required by law.

## **13. Agents**

- (a) In acting under the Agency Agreement and in connection with the Pfandbrief Instruments, the Paying Agents act solely as agents of the Issuer and do not assume any obligations towards or relationship of agency or trust for or with any of the Instrument Holders.
- (b) The initial Paying Agents and their initial Specified Offices are listed below. The initial Calculation Agent (if any) is specified in the relevant Final Terms. The Issuer reserves the right at any time to vary or terminate the appointment of any Paying Agent and to appoint a successor fiscal agent or successor German fiscal agent or Calculation Agent and additional or successor paying agents; *provided, however, that:*
  - (i) the Issuer shall at all times maintain a Fiscal Agent and a German Fiscal Agent; and
  - (ii) the Issuer shall at all times maintain a Paying Agent (which may be the Fiscal Agent or, as the case may be, the German Fiscal Agent) with a Specified Office in continental Europe; and
  - (iii) the Issuer will ensure that it maintains a Paying Agent in an EU member state that will not be obliged to withhold or deduct tax pursuant to European Council Directive 2003/48/EC or any other Directive implementing the conclusions of the ECOFIN Council meeting of 26-27 November 2000 or any law implementing or complying with, or introduced to conform to, such Directive; and

- (iv) if a Calculation Agent is specified in the relevant Final Terms, the Issuer shall at all times maintain a Calculation Agent; and
- (v) if and for so long as the Pfandbrief Instruments are admitted to listing, trading and/or quotation by any listing authority, stock exchange and/or quotation system which requires the appointment of a Paying Agent in any particular place, the Issuer shall maintain a Paying Agent having its Specified Office in the place required by such listing authority, stock exchange and/or quotation system; and
- (vi) in the circumstances described in Condition 10(c) (*Payments in New York City*), the Issuer shall maintain a Paying Agent with a Specified Office in New York City.

Notice of any change in any of the Paying Agents or in their Specified Offices shall promptly be given to the Instrument Holders.

#### **14. Further Issues**

The Issuer may from time to time, without the consent of the Instrument Holders, create and issue further Pfandbrief instruments having the same terms and conditions as the Pfandbrief Instruments in all respects (or in all respects except for the first payment of interest) so as to form a single series with the Pfandbrief Instruments.

#### **15. Notices**

Notices to the Instrument Holders shall be delivered to CBF, Euroclear and CBL or any other relevant clearing system for communication to the persons shown in their records as having interests therein provided that, if the Pfandbrief Instruments are admitted to listing on the Official List of the Irish Stock Exchange Limited, notices to Instrument Holders shall be valid if published in a leading English language daily newspaper having general circulation in Ireland and approved by the Irish Stock Exchange Limited (which is expected to be *The Irish Times*) or, if such publication is not practicable, in a leading English language daily newspaper having general circulation in Europe. If the Pfandbrief Instruments are admitted to listing, trading and/or quotation by any other listing authority, stock exchange and/or quotation system, notices to Instrument Holders shall also be valid if published in compliance with the requirements of such listing authority, stock exchange and/or quotation system. All notices issued to Instrument Holders of Pfandbrief Instruments which are admitted to the Official List of the Irish Stock Exchange shall be copied to the Companies Announcement Office of the Irish Stock Exchange. Any such notice shall be deemed to have been given on the date of first publication (or if required to be published in more than one newspaper, on the first date on which publication shall have been made in all the required newspapers). Couponholders shall be deemed for all purposes to have notice of the contents of any notice given to the Instrument Holders.

#### **16. Governing Law and Jurisdiction**

- (a) *Governing law:* The Pfandbrief Instruments are governed by, and shall be construed in accordance with, German law.
- (b) *Jurisdiction:* The Issuer and each Instrumentholder irrevocably agrees that the District Court (*Landgericht*) of Frankfurt am Main shall have exclusive jurisdiction to hear and determine any suit, action or proceedings, and to settle any disputes, which may arise out

of or in connection with the Pfandbrief Instruments (respectively, "Proceedings" and "Disputes") and, for such purposes, irrevocably submits to the jurisdiction of such court. The Issuer irrevocably waives any objection which it might now or hereafter have to the District Court of Frankfurt am Main 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.

- (c) *Non-exclusivity:* The submission to the jurisdiction of the District Court of Frankfurt am Main shall not (and shall not be construed so as to) limit the right of the Instrument Holders or any of them to take Proceedings in any 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 applicable law.

## TERMS AND CONDITIONS OF THE ACS INSTRUMENTS

*The following is the text of the terms and conditions which, as supplemented, amended and/or replaced by the relevant Final Terms, will be applicable to the ACS Instruments issued under the Programme.*

THE ACS INSTRUMENTS (AS DEFINED BELOW) ARE PUBLIC CREDIT COVERED SECURITIES ISSUED IN ACCORDANCE WITH THE ACS ACT (AS DEFINED BELOW). THE ISSUER (AS DEFINED BELOW) HAS BEEN REGISTERED BY THE IRISH FINANCIAL SERVICES REGULATORY AUTHORITY AS PART OF THE CENTRAL BANK AND FINANCIAL SERVICES AUTHORITY OF IRELAND (FORMERLY THE CENTRAL BANK OF IRELAND) AS A DESIGNATED PUBLIC CREDIT INSTITUTION PURSUANT TO THE ACS ACT. THE FINANCIAL OBLIGATIONS OF THE ISSUER UNDER THE ACS INSTRUMENTS ARE SECURED ON THE COVER ASSETS THAT COMPRISE A COVER ASSETS POOL MAINTAINED BY THE ISSUER IN ACCORDANCE WITH THE ACS ACT.

### **1. Introduction**

- 1.1 *Programme:* DEPFA BANK plc ("DEPFA plc"), DEPFA Deutsche Pfandbriefbank AG (the "Pfandbriefbank") and DEPFA ACS BANK (the "Issuer") have established a programme (the "Programme") for the issuance of up to EUR 45,000,000,000 in aggregate principal amount of debt instruments, including public credit covered securities (the "ACS Instruments") of the Issuer, issued in accordance with the Asset Covered Securities Acts 2001 and 2007 of Ireland (together and as amended from time to time, the "ACS Act").
- 1.2 *Final Terms:* ACS Instruments issued under the Programme are issued in series (each a "Series") and each Series may comprise one or more tranches (each a "Tranche") of ACS Instruments. Each Tranche is the subject of final terms (the "Final Terms") which supplements these terms and conditions (the "Conditions"). The terms and conditions applicable to any particular Tranche of ACS Instruments are these Conditions as supplemented, amended and/or replaced by the relevant Final Terms. In the event of any inconsistency between these Conditions and the relevant Final Terms, the relevant Final Terms shall prevail.
- 1.3 *Agency Agreement:* The ACS Instruments are the subject of an amended and restated paying agency agreement dated 9 May 2008 (as amended or supplemented from time to time, the "Agency Agreement") between DEPFA plc, the Pfandbriefbank, the Issuer, Deutsche Bank AG London as fiscal agent (the "Fiscal Agent" which expression includes any successor fiscal agent appointed from time to time in connection with the ACS Instruments), Deutsche Bank Aktiengesellschaft as German fiscal agent (the "German Fiscal Agent", which expression includes any successor German fiscal agent appointed from time to time in connection with the ACS Instruments) and the paying agents named therein (together with the Fiscal Agent and the German Fiscal Agent, the "Paying

Agents", which expression includes any successor or additional paying agents appointed from time to time in connection with the ACS Instruments.

- 1.4 *The ACS Instruments:* All subsequent references in these Conditions to "ACS Instruments" are to the ACS Instruments which are the subject of the relevant Final Terms. Copies of the relevant Final Terms are available for inspection by Instrument Holders (as defined below) during normal business hours at the registered office of DEPFA ACS in Ireland and at the Specified Offices of the Fiscal Agent and the German Fiscal Agent, the initial Specified Offices of which are set out below.
- 1.5 *Summaries:* Certain provisions of these Conditions are summaries of the Agency Agreement and are subject to its detailed provisions. The holders of the ACS Instruments (the "Instrument Holders") are bound by, and are deemed to have notice of, all the provisions of the Agency Agreement applicable to them. Copies of the Agency Agreement are available for inspection by Instrument Holders during normal business hours at the registered office of DEPFA ACS in Ireland and at the Specified Offices of each of the Paying Agents, the initial Specified Offices of which are set out below.

## **2. Interpretation**

- 2.1 *Definitions:* In these Conditions the following expressions have the following meanings:-

"Accrual Yield" has the meaning given in the relevant Final Terms;

"Additional Business Centre(s)" means the city or cities specified as such in the relevant Final Terms;

"Additional Financial Centre(s)" means the city or cities specified as such in the relevant Final Terms;

"Business Day" means:-

- (a) in relation to any sum payable in euro, a TARGET Settlement Day and a day on which commercial banks and foreign exchange markets settle payments generally in each (if any) Additional Business Centre; and
- (b) in relation to any sum payable in a currency other than euro, a day on which commercial banks and foreign exchange markets settle payments generally in London, the Principal Financial Centre for the relevant currency and in each (if any) Additional Business Centre;

"Business Day Convention", in relation to any particular date, has the meaning given in the relevant Final Terms and, if so specified in the relevant Final Terms, may have different meanings in relation to different dates and, in this context, the following expressions shall have the following meanings:-

- (a) "Following Business Day Convention" means that the relevant date shall be postponed to the first following day that is a Business Day;

- (b) "Modified Following Business Day Convention" or "Modified Business Day Convention" means that the relevant date shall be postponed to the first following day that is a Business Day unless that day falls in the next calendar month in which case that date will be the first preceding day that is a Business Day;
- (c) "Preceding Business Day Convention" means that the relevant date shall be brought forward to the first preceding day that is a Business Day;
- (d) "FRN Convention", "Floating Rate Convention" or "Eurodollar Convention" means that each relevant date shall be the date which numerically corresponds to the preceding such date in the calendar month which is the number of months specified in the relevant Final Terms as the Specified Period after the calendar month in which the preceding such date occurred *provided, however that*:
  - (i) if there is no such numerically corresponding day in the calendar month in which any such date should occur, then such date will be the last day which is a Business Day in that calendar month;
  - (ii) if any such date would otherwise fall on a day which is not a Business Day, then such date will be the first following day which is a Business Day, unless that day falls in the next calendar month, in which case it will be the first preceding day which is a Business Day; and
  - (iii) if the preceding such date occurred on the last day in a calendar month which was a Business Day, then all subsequent such dates will be the last day which is a Business Day in the calendar month which is the specified number of months after the calendar month in which the preceding such date occurred; and
- (e) "No Adjustment" means that the relevant date shall not be adjusted in accordance with any Business Day Convention;

"Calculation Agent" means the Fiscal Agent or such other Person specified in the relevant Final Terms as the party responsible for calculating the Rate(s) of Interest and Interest Amount(s) and/or such other amount(s) as may be specified in the relevant Final Terms;

"Calculation Amount" has the meaning given in the relevant Final Terms;

"Day Count Fraction" means, in respect of the calculation of an amount for any period of time (the "Calculation Period"), such day count fraction as may be specified in these Conditions or the relevant Final Terms and:-

- (a) if "Actual/Actual (ICMA)" is so specified, means:-
  - (i) where the Calculation Period is equal to or shorter than the Regular Period during which it falls, the actual number of days in the Calculation Period divided by the product of (1) the actual number of days in such Regular Period and (2) the number of Regular Periods in any year; and



- (ii) where the Calculation Period is longer than one Regular Period, the sum of:
  - (A) the actual number of days in such Calculation Period falling in the Regular Period in which it begins divided by the product of (1) the actual number of days in such Regular Period and (2) the number of Regular Periods in any year; and
  - (B) the actual number of days in such Calculation Period falling in the next Regular Period divided by the product of (1) the actual number of days in such Regular Period and (2) the number of Regular Periods in any year;
- (b) if "Actual/365" or "Actual/Actual (ISDA)" is so specified, means the actual number of days in the Calculation Period divided by 365 (or, if any portion of the Calculation Period falls in a leap year, the sum of (A) the actual number of days in that portion of the Calculation Period falling in a leap year divided by 366 and (B) the actual number of days in that portion of the Calculation Period falling in a non-leap year divided by 365);
- (c) if "Actual/365 (Fixed)" is so specified, means the actual number of days in the Calculation Period divided by 365;
- (d) if "Actual/360" is so specified, means the actual number of days in the Calculation Period divided by 360;
- (e) if "30/360" is so specified, means the number of days in the Calculation Period divided by 360 (the number of days to be calculated on the basis of a year of 360 days with 12 30-day months (unless (i) the last day of the Calculation Period is the 31st day of a month but the first day of the Calculation Period is a day other than the 30th or 31st day of a month, in which case the month that includes that last day shall not be considered to be shortened to a 30-day month, or (ii) the last day of the Calculation Period is the last day of the month of February, in which case the month of February shall not be considered to be lengthened to a 30-day month)); and
- (f) if "30E/360" or "Eurobond Basis" is so specified means, the number of days in the Calculation Period divided by 360 (the number of days to be calculated on the basis of a year of 360 days with 12 30-day months, without regard to the date of the first day or last day of the Calculation Period unless, in the case of the final Calculation Period, the date of final maturity is the last day of the month of February, in which case the month of February shall not be considered to be lengthened to a 30-day month);

"Early Termination Amount" means, in respect of any ACS Instrument, its principal amount or such other amount as may be specified in, or determined in accordance with, these Conditions or the relevant Final Terms;

"Extraordinary Resolution" has the meaning given in the Agency Agreement;

"Final Redemption Amount" means, in respect of any ACS Instrument, its principal amount or such other amount as may be specified in, or determined in accordance with, the relevant Final Terms;

"Interest Amount" means, in relation to an ACS Instrument and an Interest Period, the amount of interest payable in respect of that ACS Instrument for that Interest Period;

"Interest Commencement Date" means the Issue Date of the ACS Instrument or such other date as may be specified as the Interest Commencement Date in the relevant Final Terms;

"Interest Determination Date" has the meaning given in the relevant Final Terms;

"Interest Payment Date" means the date or dates specified as such in, or determined in accordance with the provisions of, the relevant Final Terms and, if a Business Day Convention is specified in the relevant Final Terms:

- (a) as the same may be adjusted in accordance with the relevant Business Day Convention; or
- (b) if the Business Day Convention is the FRN Convention, Floating Rate Convention or Eurodollar Convention and an interval of a number of calendar months is specified in the relevant Final Terms as being the Specified Period, each of such dates as may occur in accordance with the FRN Convention, Floating Rate Convention or Eurodollar Convention at such Specified Period of calendar months following the Interest Commencement Date (in the case of the first Interest Payment Date) or the previous Interest Payment Date (in any other case);

"Interest Period" means each period beginning on (and including) the Interest Commencement Date or any Interest Payment Date and ending on (but excluding) the next Interest Payment Date;

"ISDA Definitions" means the 2000 ISDA Definitions (as amended and updated as at the date of issue of the first Tranche of the ACS Instruments of the relevant Series (as specified in the relevant Final Terms) as published by the International Swaps and Derivatives Association, Inc.) or, if so specified in the relevant Final Terms, the 2006 ISDA Definitions (as amended and updated as at the date of issue of the First Tranche of Notes of the relevant Series (as specified in the relevant Final Terms) as published by the International Swaps and Derivatives Association, Inc.);

"Issue Date" has the meaning given in the relevant Final Terms;

"Margin" has the meaning given in the relevant Final Terms;

"Maturity Date" has the meaning given in the relevant Final Terms;

"Maximum Redemption Amount" has the meaning given in the relevant Final Terms;

"Minimum Redemption Amount" has the meaning given in the relevant Final Terms;

"Optional Redemption Amount (Call)" means, in respect of any ACS Instrument, its principal amount or such other amount as may be specified in, or determined in accordance with, the relevant Final Terms;

"Optional Redemption Date (Call)" has the meaning given in the relevant Final Terms;

"Optional Redemption Amount (Put)" means, in respect of any ACS Instrument, its principal amount or such other amount as may be specified in, or determined in accordance with, the relevant Final Terms;

"Optional Redemption Date (Put)" has the meaning given in the relevant Final Terms;

"Participating Member State" means a member state of the European Communities which adopts the Euro as its lawful currency in accordance with the Treaty;

"Payment Business Day" means:

- (a) if the currency of payment is Euro, any day which is:
  - (i) a day on which banks in the relevant place of presentation are open for presentation and payment of bearer debt securities and for dealings in foreign currencies; and
  - (ii) in the case of payment by transfer to an account, a TARGET Settlement Day and a day on which dealings in foreign currencies may be carried on in each (if any) Additional Financial Centre; or
- (b) if the currency of payment is not Euro, any day which is:
  - (i) a day on which banks in the relevant place of presentation are open for presentation and payment of bearer debt securities and for dealings in foreign currencies; and
  - (ii) in the case of payment by transfer to an account, a day on which dealings in foreign currencies may be carried on in the Principal Financial Centre of the currency of payment and in each (if any) Additional Financial Centre;

"Person" means any individual, company, corporation, firm, partnership, joint venture, association, organisation, state or agency of a state or other entity, whether or not having separate legal personality;

"Principal Financial Centre" means, in relation to any currency, the principal financial centre for that currency *provided, however, that:*

- (a) in relation to Euro, it means the principal financial centre of such member state of the European Communities as is selected (in the case of a payment) by the payee or (in the case of a calculation) by the Calculation Agent; and

- (b) in relation to Australian dollars, it means either Sydney or Melbourne and, in relation to New Zealand dollars, it means either Wellington or Auckland; in each case as is selected (in the case of a payment) by the payee or (in the case of a calculation) by the Calculation Agent;

"Put Option Notice" means a notice which must be delivered to a Paying Agent by any ACS Instrumentholder wanting to exercise a right to redeem an ACS Instrument at the option of the ACS Instrumentholder;

"Rate of Interest" means the rate or rates (expressed as a percentage per annum) of interest payable in respect of the ACS Instruments specified in the relevant Final Terms or calculated or determined in accordance with the provisions of these Conditions and/or the relevant Final Terms;

"Redemption Amount" means, as appropriate, the Final Redemption Amount, the Early Redemption Amount (Tax), the Optional Redemption Amount (Call), the Early Termination Amount or such other amount in the nature of a redemption amount as may be specified in, or determined in accordance with the provisions of, the relevant Final Terms;

"Reference Banks" has the meaning given in the relevant Final Terms or, if none, four (or if the Principal Financial Centre is Helsinki, five) major banks selected by the Calculation Agent in the market that is most closely connected with the Reference Rate;

"Reference Price" has the meaning given in the relevant Final Terms;

"Reference Rate" has the meaning given in the relevant Final Terms;

"Regular Period" means:

- (a) in the case of ACS Instruments where interest is scheduled to be paid only by means of regular payments, each period from and including the Interest Commencement Date to but excluding the first Interest Payment Date and each successive period from and including one Interest Payment Date to but excluding the next Interest Payment Date;
- (b) in the case of ACS Instruments where, apart from the first Interest Period, interest is scheduled to be paid only by means of regular payments, each period from and including a Regular Date falling in any year to but excluding the next Regular Date, where "Regular Date" means the day and month (but not the year) on which any Interest Payment Date falls; and
- (c) in the case of ACS Instruments where, apart from one Interest Period other than the first Interest Period, interest is scheduled to be paid only by means of regular payments, each period from and including a Regular Date falling in any year to but excluding the next Regular Date, where "Regular Date" means the day and month (but not the year) on which any Interest Payment Date falls other than the Interest Payment Date falling at the end of the irregular Interest Period.

"Relevant Date" means, in relation to any payment, whichever is the later of (a) the date on which the payment in question first becomes due and (b) if the full amount payable has not been received in the Principal Financial Centre of the currency of payment by the Fiscal Agent on or prior to such due date, the date on which (the full amount having been so received) notice to that effect has been given to the Instrument Holders in accordance with Condition 15 (*Notices*);

"Relevant Financial Centre" has the meaning given in the relevant Final Terms;

"Relevant Screen Page" means the page, section or other part of a particular information service (including, without limitation, the Reuters Money 3000 Service and Moneyline Telerate Service) specified as the Relevant Screen Page in the relevant Final Terms, or such other page, section or other part as may replace it on that information service or such other information service, in each case, as may be nominated by the Person providing or sponsoring the information appearing there for the purpose of displaying rates or prices comparable to the Reference Rate;

"Relevant Time" has the meaning given in the relevant Final Terms;

"Reserved Matter" means any proposal to change any date fixed for payment of principal or interest in respect of the ACS Instruments, to reduce the amount of principal or interest payable on any date in respect of the ACS Instruments, to alter the method of calculating the amount of any payment in respect of the ACS Instruments or the date for any such payment, to change the currency of any payment under the ACS Instruments or to change the quorum requirements relating to meetings or the majority required to pass an Extraordinary Resolution;

"Security Interest" means any mortgage, charge, pledge, lien or other security interest including, without limitation, anything analogous to any of the foregoing under the laws of any jurisdiction;

"Specified Currency" has the meaning given in the relevant Final Terms;

"Specified Denomination(s)" has the meaning given in the relevant Final Terms;

"Specified Office" has the meaning given in the Agency Agreement;

"Specified Period" has the meaning given in the relevant Final Terms;

"Subsidiary" means, in relation to any Person (the "first Person") at any particular time, any other Person (the "second Person"):

- (a) whose affairs and policies the first Person controls or has the power to control, whether by ownership of share capital, contract, the power to appoint or remove members of the governing body of the second Person or otherwise; or
- (b) whose financial statements are, in accordance with applicable law and generally accepted accounting principles, consolidated with those of the first Person;

"TARGET Settlement Day" means any day on which the Trans-European Automated Real-Time Gross Settlement Express Transfer (TARGET or TARGET2) System is open;

"Treaty" means the Treaty establishing the European Communities, as amended; and

"Zero Coupon ACS Instrument" means an ACS Instrument specified as such in the relevant Final Terms.

2.2 *Interpretation:* In these Conditions:

- (a) any reference to principal shall be deemed to include the Redemption Amount, any additional amounts in respect of principal which may be payable under Condition 12 (*Taxation*), any premium payable in respect of an ACS Instrument and any other amount in the nature of principal payable pursuant to these Conditions;
- (b) any reference to interest shall be deemed to include any additional amounts in respect of interest which may be payable under Condition 12 (*Taxation*) and any other amount in the nature of interest payable pursuant to these Conditions;
- (c) references to ACS Instruments being "outstanding" shall be construed in accordance with the Agency Agreement; and
- (d) if an expression is stated in Condition 2(a) (*Interpretation – Definitions*) to have the meaning given in the relevant Final Terms, but the relevant Final Terms gives no such meaning or specifies that such expression is "not applicable" then such expression is not applicable to the ACS Instruments.

**3. Form, Denomination and Title**

3.1 *Form of the ACS Instruments:* The Final Terms shall specify that the ACS Instruments are issued as public credit covered securities pursuant to the ACS Act, in bearer form and may be represented by one or more global instruments (each a "Global ACS Instrument") (which expression shall mean, where the Final Terms applicable to a Tranche specifies that TEFRA D Rules apply, any temporary global instrument ("Temporary Global ACS Instrument") and permanent global instrument ("Permanent Global ACS Instrument") and, where the Final Terms applicable to a Tranche specifies that TEFRA C Rules apply, any permanent global instrument ("Permanent Global ACS Instrument"). Neither ACS Instruments in definitive form nor interest coupons shall be issued in respect of the ACS Instruments.

3.2 *Clearing System:* Each Global ACS Instrument will be deposited with Clearstream Banking AG, Frankfurt am Main ("CBF"), or a common depositary for Euroclear Bank SA/NV ("Euroclear") and Clearstream Banking, société anonyme, Luxembourg ("CBL") or with any other clearing system(s) as specified in the relevant Final Terms.

3.3 *Authorisation:* Each Global ACS Instrument will be executed under seal and will bear the signatures of two authorised signatories on behalf of the Issuer, such two authorised signatories being either two directors of the Issuer or one director of the Issuer and the company secretary of the Issuer. Each Global ACS Instrument to be deposited with a

common depository for Euroclear and CBL will also bear the manual signature of an authorised officer of the Fiscal Agent.

- 3.4 *Issue:* The ACS Instruments are represented upon issue, where the Final Terms specifies that TEFRA D Rules apply, by a Temporary Global ACS Instrument or, where the Final Terms specifies that TEFRA C Rules apply, by a Permanent Global ACS Instrument.
- 3.5 Where the Final Terms specifies that TEFRA D Rules apply:
- (a) Exchanges of a Temporary Global ACS Instrument for a Permanent Global ACS Instrument will be made only on or after the Exchange Date as specified in the Final Terms provided certification as to the beneficial ownership thereof as required by U.S. Treasury regulations (in substantially the form set out in the Temporary Global ACS Instrument or in such other form as is customarily issued in such circumstances by the relevant clearing system) has been received.
  - (b) The bearer of any Temporary Global ACS Instrument shall not (unless, upon due presentation of such Temporary Global ACS Instrument for exchange (in whole but not in part only) for a Permanent Global ACS Instrument, such exchange or delivery is improperly withheld or refused and such withholding or refusal is continuing at the relevant payment date) be entitled to receive any payment in respect of the ACS Instruments represented by such Temporary Global ACS Instrument which falls due on or after the Exchange Date or be entitled to exercise any option on a date after the Exchange Date.
  - (c) If any date on which payment of interest on the ACS Instruments of a Tranche occurs whilst any of the ACS Instruments of that Tranche are represented by a Temporary Global ACS Instrument, the related interest payment will be made on the Temporary Global ACS Instrument only to the extent that certification as to the beneficial ownership thereof as required by U.S. Treasury regulations (in substantially the form set out in the Temporary Global ACS Instrument or in such other form as is customarily issued in such circumstances by the relevant clearing system) has been received by CBF or a common depository for Euroclear and CBL or any other relevant clearing system. Payments of amounts due in respect of a Temporary Global ACS Instrument or a Permanent Global ACS Instrument will be made through CBF, Euroclear and CBL or any other relevant clearing system without any requirement for certification.
- 3.6 *Denominations:* The ACS Instruments will be the Specified Denomination(s) specified in the relevant Final Terms. In the case of a Series of ACS Instruments with more than one Specified Denomination, ACS Instruments of one Specified Denomination will not be exchangeable for ACS Instruments of another Specified Denomination.
- 3.7 *Title:* Title to the ACS Instruments will pass by agreement to transfer of title and delivery. The holder of any ACS Instrument shall (except as otherwise required by law) be treated as its absolute owner for all purposes (whether or not it is overdue and regardless of any notice of ownership, trust or any other interest therein, any writing thereon or any notice of any previous loss or theft thereof) and no Person shall be liable for so treating such holder.

3.8 *Instalment ACS Instruments:* ACS Instruments, the principal amount of which is repayable by installments ("Instalment ACS Instruments"), will have endorsed thereon a grid for recording the repayment of principal.

#### **4. Status**

The ACS Instruments constitute direct, unconditional and unsubordinated obligations of the Issuer which will at all times rank *pari passu* without any preference among themselves. The ACS Instruments are public credit covered securities issued in accordance with the ACS Act and rank *pari passu* with all other public credit covered securities of the Issuer issued under the ACS Act.

#### **5. Fixed Rate ACS Instruments Provisions**

5.1 *Application:* This Condition 5 (*Fixed Rate ACS Instruments Provisions*) is applicable to the ACS Instruments only if the Fixed Rate ACS Instruments Provisions are specified in the relevant Final Terms as being applicable.

5.2 *Accrual of Interest:* Interest shall accrue on the principal amount of each ACS Instrument or, in the case of an Instalment ACS Instrument, on each installment of principal or, in the case of a partly paid ACS Instrument, on the paid up principal amount of such ACS Instrument or otherwise as indicated in the Final Terms. The ACS Instruments bear interest from the Interest Commencement Date at the Rate of Interest payable in arrears on each Interest Payment Date, subject as provided in Condition 10 (*Payments*). Each ACS Instrument will cease to bear interest from the due date for final redemption (or, in the case of an Instalment ACS Instrument, in respect of each installment of principal, on the due date for payment thereof) unless, upon due presentation, payment of the Redemption Amount (or the relevant installment) is improperly withheld or refused, in which case it will continue to bear interest in accordance with this Condition 5 (*Fixed Rate ACS Instrument Provisions*) (as well after as before any demand or judgment) until whichever is the earlier of (i) the day on which all sums due in respect of such ACS Instrument up to that day are received by or on behalf of the relevant Instrument Holder and (ii) the day which is seven days after the Fiscal Agent or, as the case may be, the German Fiscal Agent has notified the relevant Instrument Holders in accordance with Condition 15 (*Notices*) that it has received all sums due in respect of the ACS Instruments up to such seventh day (except to the extent that there is any subsequent default in payment).

5.3 *Fixed Coupon Amount:* The amount of interest payable in respect of each ACS Instrument for any Interest Period shall be the relevant Fixed Coupon Amount and, if the ACS Instruments are in more than one Specified Denomination, shall be the relevant Fixed Coupon Amount in respect of the relevant Specified Denomination.

5.4 *Calculation of Interest Amount:* The amount of interest payable in respect of each ACS Instrument for any period for which a Fixed Coupon Amount is not specified shall be calculated by applying the Rate of Interest to the Calculation Amount, multiplying the product by the relevant Day Count Fraction and rounding the resulting figure to the nearest sub-unit of the Specified Currency (half a sub-unit being rounded upwards) and



multiplying such rounded figure by a fraction equal to the Specified Denomination of such ACS Instrument divided by the Calculation Amount. For this purpose a "sub-unit" means, in the case of any currency other than Euro, the lowest amount of such currency that is available as legal tender in the country of such currency and, in the case of Euro, means one cent.

## **6. Floating Rate ACS Instrument and Index-Linked Interest ACS Instrument Provisions**

6.1 *Application:* This Condition 6 (*Floating Rate ACS Instrument and Index-Linked Interest ACS Instrument Provisions*) is applicable to the ACS Instruments only if the Floating Rate ACS Instrument Provisions or the Index-Linked Interest ACS Instrument Provisions are specified in the relevant Final Terms as being applicable.

6.2 *Accrual of interest:* Interest shall accrue on the principal amount of each ACS Instrument or, in the case of an Instalment ACS Instrument, on each installment of principal or, in the case of a partly paid ACS Instrument, on the paid-up principal amount of such ACS Instrument or otherwise as indicated in the Final Terms. The ACS Instruments bear interest from the Interest Commencement Date at the Rate of Interest payable in arrears on each Interest Payment Date, subject as provided in Condition 10 (*Payments*). Each ACS Instrument will cease to bear interest from the due date for final redemption (or, in the case of an Instalment ACS Instrument, in respect of each installment of principal on the due date for payment thereof) unless, upon due presentation, payment of the Redemption Amount (or the relevant installment) is improperly withheld or refused, in which case it will continue to bear interest in accordance with this Condition (as well after as before any demand or judgment) until whichever is the earlier of (i) the day on which all sums due in respect of such ACS Instrument up to that day are received by or on behalf of the relevant Instrument Holder and (ii) the day which is seven days after the Fiscal Agent or, as the case may be, the German Fiscal Agent has notified the relevant Instrument Holder in accordance with Condition 15 (*Notices*) that it has received all sums due in respect of the ACS Instruments up to such seventh day (except to the extent that there is any subsequent default in payment).

6.3 *Screen Rate Determination:* If Screen Rate Determination is specified in the relevant Final Terms as the manner in which the Rate(s) of Interest is/are to be determined, the Rate of Interest applicable to the ACS Instruments for each Interest Period will be determined by the Calculation Agent on the following basis:

- (a) if the Reference Rate is a composite quotation or customarily supplied by one entity, the Calculation Agent will determine the Reference Rate which appears on the Relevant Screen Page as of the Relevant Time on the relevant Interest Determination Date;
- (b) in any other case, the Calculation Agent will determine the arithmetic mean of the Reference Rates which appear on the Relevant Screen Page as of the Relevant Time on the relevant Interest Determination Date;

- (c) if, in the case of (i) above, such rate does not appear on that page or, in the case of (ii) above, fewer than two such rates appear on that page or if, in either case, the Relevant Screen Page is unavailable, the Calculation Agent will:
  - (i) request the principal Relevant Financial Centre office of each of the Reference Banks to provide a quotation of the Reference Rate at approximately the Relevant Time on the Interest Determination Date to prime banks in the Relevant Financial Centre interbank market in an amount that is Representative for a single transaction in that market at that time; and
  - (ii) determine the arithmetic mean of such quotations; and
- (d) if fewer than two such quotations are provided as requested, the Calculation Agent will determine the arithmetic mean of the rates (being the nearest to the Reference Rate, as determined by the Calculation Agent) quoted by major banks in the Principal Financial Centre of the Specified Currency, selected by the Calculation Agent, at approximately 11.00 a.m. (local time in the Principal Financial Centre of the Specified Currency) on the first day of the relevant Interest Period for loans in the Specified Currency to leading European banks for a period equal to the relevant Interest Period and in an amount that is representative for a single transaction in that market at that time,

and the Rate of Interest for such Interest Period shall be the sum of the Margin and the rate or (as the case may be) the arithmetic mean so determined; *provided, however, that* if the Calculation Agent is unable to determine a rate or (as the case may be) an arithmetic mean in accordance with the above provisions in relation to any Interest Period, the Rate of Interest applicable to the ACS Instruments during such Interest Period will be the sum of the Margin and the rate or (as the case may be) the arithmetic mean last determined in relation to the ACS Instruments in respect of a preceding Interest Period.

6.4 *ISDA Determination:* If ISDA Determination is specified in the relevant Final Terms as the manner in which the Rate(s) of Interest is/are to be determined, the Rate of Interest applicable to the ACS Instruments for each Interest Period will be the sum of the Margin and the relevant ISDA Rate where "ISDA Rate" in relation to any Interest Period means a rate equal to the Floating Rate (as defined in the ISDA Definitions) that would be determined by the Calculation Agent under an interest rate swap transaction if the Calculation Agent were acting as Calculation Agent for that interest rate swap transaction under the terms of an agreement incorporating the ISDA Definitions and under which:

- (a) the Floating Rate Option (as defined in the ISDA Definitions) is as specified in the relevant Final Terms;
- (b) the Designated Maturity (as defined in the ISDA Definitions) is a period specified in the relevant Final Terms; and
- (c) the relevant Reset Date (as defined in the ISDA Definitions) is either (A) if the relevant Floating Rate Option is based on the London inter-bank offered rate (LIBOR) for a currency, the first day of that Interest Period or (B) in any other case, as specified in the relevant Final Terms.

- 6.5 *Index-Linked Interest:* If the Index-Linked Interest ACS Instrument Provisions are specified in the relevant Final Terms as being applicable, the Rate(s) of Interest applicable to the ACS Instrument for each Interest Period will be determined in the manner specified in the relevant Final Terms.
- 6.6 *Maximum or Minimum Rate of Interest:* If any Maximum Rate of Interest or Minimum Rate of Interest is specified in the relevant Final Terms, then the Rate of Interest shall in no event be greater than the maximum or be less than the minimum so specified.
- 6.7 *Calculation of Interest Amount:* The Calculation Agent will, as soon as practicable after the time at which the Rate of Interest is to be determined in relation to each Interest Period, calculate the Interest Amount payable in respect of each ACS Instrument for such Interest Period. The Interest Amount will be calculated by applying the Rate of Interest for such Interest Period to the Calculation Amount, multiplying the product by the relevant Day Count Fraction, rounding the resulting figure to the nearest sub-unit of the Specified Currency (half a sub-unit being rounded upwards) and multiplying such rounded figure by a fraction equal to the Specified Denomination of the relevant ACS Instrument divided by the Calculation Amount. For this purpose a "sub-unit" means, in the case of any currency other than euro, the lowest amount of such currency that is available as legal tender in the country of such currency and, in the case of euro means one cent.
- 6.8 *Calculation of other amounts:* If the relevant Final Terms specifies that any other amount is to be calculated by the Calculation Agent, the Calculation Agent will, as soon as practicable after the time or times at which any such amount is to be determined, calculate the relevant amount. The relevant amount will be calculated by the Calculation Agent in the manner specified in the relevant Final Terms.
- 6.9 *Publication:* The Calculation Agent will cause each Rate of Interest and Interest Amount determined by it, together with the relevant Interest Payment Date, and any other amount(s) required to be determined by it together with any relevant payment date(s) to be notified to the Issuer, the Paying Agents and each listing authority, stock exchange and/or quotation system (if any) by which the ACS Instruments have then been admitted to listing, trading and/or quotation as soon as practicable after such determination but (in the case of each Rate of Interest, Interest Amount and Interest Payment Date) in any event not later than the first day of the relevant Interest Period. Notice thereof shall also promptly be given to the Instrument Holders. The Calculation Agent will be entitled to recalculate any Interest Amount (on the basis of the foregoing provisions) without notice in the event of an extension or shortening of the relevant Interest Period. If the Calculation Amount is less than the minimum Specified Denomination the Calculation Agent shall not be obliged to publish each Interest Amount but instead may publish only the Calculation Amount and the Interest Amount in respect of an ACS Instrument having the minimum Specified Denomination.
- 6.10 *Notifications etc:* All notifications, opinions, determinations, certificates, calculations, quotations and decisions given, expressed, made or obtained for the purposes of this Condition by the Calculation Agent will (in the absence of manifest error) be binding on

the Issuer, the Paying Agents and the Instrument Holders and (subject as aforesaid) no liability to any such Person will attach to the Calculation Agent in connection with the exercise or non-exercise by it of its powers, duties and discretions for such purposes.

## **7. Zero Coupon ACS Instrument Provisions**

7.1 *Application:* This Condition 7 (*Zero Coupon ACS Instruments Provisions*) is applicable to the ACS Instruments only if the Zero Coupon ACS Instrument Provisions are specified in the relevant Final Terms as being applicable.

7.2 *Late payment on Zero Coupon ACS Instruments:* If the Redemption Amount payable in respect of any Zero Coupon ACS Instrument is improperly withheld or refused, the Redemption Amount shall thereafter be an amount equal to the sum of:

- (a) the Reference Price; and
- (b) the product of the Accrual Yield (compounded annually) being applied to the Reference Price on the basis of the relevant Day Count Fraction from (and including) the Issue Date to (but excluding) whichever is the earlier of (i) the day on which all sums due in respect of such ACS Instrument up to that day are received by or on behalf of the relevant Instrument Holder and (ii) the day which is seven days after the Fiscal Agent or, as the case may be, the German Fiscal Agent has notified the relevant Instrument Holders in accordance with Condition 15 (*Notices*) that it has received all sums due in respect of the ACS Instruments up to such seventh day (except to the extent that there is any subsequent default in payment).

## **8. Dual Currency ACS Instrument Provisions**

8.1 *Application:* This Condition 8 (*Dual Currency ACS Instrument Provisions*) is applicable to the ACS Instruments only if the Dual Currency ACS Instrument Provisions are specified in the relevant Final Terms as being applicable.

8.2 *Rate of Interest:* If the rate or amount of interest fails to be determined by reference to an exchange rate, the rate or amount of interest payable shall be determined in the manner specified in the relevant Final Terms.

## **9. Redemption and Purchase**

9.1 *Scheduled redemption:* Unless previously redeemed, or purchased and cancelled, the ACS Instruments will be redeemed at their Final Redemption Amount (or, in the case of Instalment ACS Instruments, in such number of installments and in such amounts as may be specified in the Final Terms) on the Maturity Date, subject as provided in Condition 10 (*Payments*).

9.2 *Redemption at the option of the Issuer:* If the Call Option is specified in the relevant Final Terms as being applicable, the ACS Instruments may be redeemed at the option of the Issuer in whole or, if so specified in the relevant Final Terms, in part on any Optional Redemption Date (Call) at the relevant Optional Redemption Amount (Call) less, in the

case of any Instalment ACS Instrument, the aggregate amount of all installments that shall have become due and payable in respect of such Instalment ACS Instrument under any other Condition prior to the date fixed for redemption (which amount, if and to the extent not then paid, remains due and payable), on the Issuer's giving not less than 30 days' notice to the relevant Instrument Holders (which notice shall be irrevocable and shall oblige the Issuer to redeem the ACS Instruments or, as the case may be, the ACS Instruments specified in such notice on the relevant Optional Redemption Date (Call) at the Optional Redemption Amount (Call) plus accrued interest (if any) to such date).

- 9.3 *Partial redemption:* If the ACS Instruments are to be redeemed in part only on any date in accordance with Condition 9.2 (*Redemption at the option of the Issuer*), the ACS Instruments to be redeemed shall be selected by the drawing of lots in such place as the Fiscal Agent approves and in such manner as the Fiscal Agent considers appropriate, subject to compliance with applicable law and the rules of each listing authority, stock exchange and/or quotation system (if any) by which the ACS Instruments have then been admitted to listing, trading and/or quotation and, if applicable, the rules and procedures of Euroclear Bank SA/NV ("Euroclear") and Clearstream Banking Societe Anonyme ("Clearstream, Luxembourg") (to be reflected in the records of Euroclear and Clearstream, Luxembourg as either a pool factor or a reduction in nominal amount, at their discretion), and the notice to the relevant Instrument Holders referred to in Condition 9.2 (*Redemption at the option of the Issuer*) shall specify the serial numbers of the ACS Instruments so to be redeemed. If any Maximum Redemption Amount or Minimum Redemption Amount is specified in the relevant Final Terms, then the Optional Redemption Amount (Call) shall in no event be greater than the maximum or be less than the minimum so specified.
- 9.4 *Redemption at the option of Instrumentholders:* If the Put Option is specified in the relevant Final Terms as being applicable, the Issuer shall, at the option of the Holder of any ACS Instrument redeem such ACS Instrument on the Optional Redemption Date (Put) specified in the relevant Put Option Notice at the relevant Optional Redemption Amount (Put) together with interest (if any) accrued to such date. In order to exercise the option contained in this Condition 9.4, the Holder of an ACS Instrument must, not less than 45 days before the relevant Optional Redemption Date (Put), deposit with any Paying Agent such ACS Instrument together with all unmatured Coupons relating thereto and a duly completed Put Option Notice in the form obtainable from any Paying Agent. The Paying Agent with which an ACS Instrument is so deposited shall deliver a duly completed Put Option Receipt to the depositing Instrumentholder. No ACS Instrument, once deposited with a duly completed Put Option Notice in accordance with this Condition 9.4, may be withdrawn; *provided, however, that* if, prior to the relevant Optional Redemption Date (Put), any such ACS Instrument becomes immediately due and payable or, upon due presentation of any such ACS Instrument on the relevant Optional Redemption Date (Put), payment of the redemption moneys is improperly withheld or refused, the relevant Paying Agent shall mail notification thereof to the depositing Instrumentholder at such address as may have been given by such Instrumentholder in the relevant Put Option Notice and shall hold such Instrument at its Specified Office for collection by the depositing Instrumentholder against surrender of the relevant Put Option Receipt. For so long as any outstanding ACS Instrument is held

by a Paying Agent in accordance with this Condition 9.4, the depositor of such ACS Instrument and not such Paying Agent shall be deemed to be the Holder of such ACS Instrument for all purposes.

- 9.5 *No other redemption:* The Issuer shall not be entitled to redeem the ACS Instruments otherwise than as provided in paragraphs 9.1 to 9.2 above.
- 9.6 *Early redemption of Zero Coupon ACS Instruments:* Unless otherwise specified in the relevant Final Terms, the Redemption Amount payable on redemption of a Zero Coupon ACS Instrument at any time before the Maturity Date shall be an amount equal to the sum of:
- (a) the Reference Price; and
  - (b) the product of the Accrual Yield (compounded annually) being applied to the Reference Price from (and including) the Issue Date to (but excluding) the date fixed for redemption or (as the case may be) the date upon which the ACS Instrument becomes due and payable.

Where such calculation is to be made for a period which is not a whole number of years, the calculation in respect of the period of less than a full year shall be made on the basis of such Day Count Fraction as may be specified in the relevant Final Terms for the purposes of this Condition 9.5 or, if none is so specified, a Day Count Fraction of 30E/360.

- 9.7 *Purchase:* The Issuer may at any time purchase ACS Instruments in the open market or otherwise and at any price. ACS Instruments so purchased may be held or resold or surrendered for cancellation.
- 9.8 *Cancellation:* All unmatured ACS Instruments so redeemed or purchased by the Issuer which are to be surrendered for cancellation shall be cancelled forthwith and may not be reissued or resold.

## **10. Payments**

- 10.1 *Principal:* Payments of principal shall be made only against presentation and (save in the case of a partial redemption which includes, in the case of an Instalment ACS Instrument, payment of any installment other than the final installment) surrender of ACS Instruments at the head office of the Issuer in the case of ACS Instruments held by CBF or, in the case of other ACS Instruments, at the Specified Office of any Paying Agent outside the United States by cheque (in the case of payment in Japanese Yen to a non-resident of Japan, drawn on an authorised foreign exchange bank) drawn in the currency in which the payment is due on, or by transfer to an account (in the case of payment in Japanese Yen to a non-resident of Japan, a non-resident account with an authorised foreign exchange bank specified by the payee) denominated in that currency (or, if that currency is Euro, any other account to which Euro may be credited or transferred) and maintained by the payee with a bank in the Principal Financial Centre of that currency (in the case of a sterling cheque, a town clearing branch of a bank in the City of London).

- 10.2 *Interest:* Payment of amounts in respect of interest on the ACS Instruments will be made where the relevant Final Terms specifies that the TEFRA D Rules apply against presentation of the Temporary Global ACS Instrument (upon due certification as required herein) or the Permanent Global ACS Instrument or, where the relevant Final Terms specifies that the TEFRA C Rules apply, against presentation of the Permanent Global ACS Instrument at the head office of the Issuer in the case of ACS Instruments held by CBF or, in the case of ACS Instruments not to be listed or quoted on any listing authority, stock exchange and/or quotation system in Germany, at the specified office of any of the Paying Agents outside the United States in the manner described in paragraph 10.1 above.
- 10.3 *Payments in New York City:* Payments of principal or interest may be made at the Specified Office of a Paying Agent in New York City if (i) the relevant ACS Instruments are denominated or payable in U.S. dollars (except for ACS Instruments held by CBF and listed or quoted on a listing authority stock exchange and/or quotation system in Germany) (ii) the Issuer has appointed Paying Agents outside the United States with the reasonable expectation that such Paying Agents will be able to make payment of the full amount of the interest on the ACS Instruments in the currency in which the payment is due when due, (iii) payment of the full amount of such interest at the specified offices of all such Paying Agents is illegal or effectively precluded by exchange controls or other similar restrictions and (iv) payment is permitted by applicable United States law. If (ii), (iii) and (iv) of the previous sentence apply, the Issuer shall forthwith appoint a Paying Agent with a Specified Office in New York City.
- 10.4 *Payments subject to fiscal laws:* All payments in respect of the ACS Instruments are subject in all cases to any applicable fiscal or other laws and regulations in the place of payment, but without prejudice to the provisions of Condition 12 (*Taxation*). No commissions or expenses shall be charged to the Instrument Holders in respect of such payments.
- 10.5 *Payments on business days:* If the due date for payment of any amount in respect of any ACS Instrument is not a Payment Business Day in the place of presentation, the Instrument Holder shall not be entitled to payment in such place of the amount due until the next succeeding Payment Business Day in such place and shall not be entitled to any further interest or other payment in respect of any such delay.
- 10.6 *Partial payments:* If a Paying Agent makes a partial payment in respect of any ACS Instrument presented to it for payment, such Paying Agent will endorse thereon a statement indicating the amount and date of such payment.

## **11. Prescription**

To the extent permitted by applicable law, the ACS Instruments shall become void unless presented for payment within a period of 12 years from the relevant date in respect thereof. After the date on which an ACS Instrument becomes void in its entirety, no claim may be made in respect thereof. Any monies paid by the Issuer to a Paying Agent for the payment of principal or interest with respect to the ACS Instruments and remaining unclaimed when the ACS Instruments become void shall be paid to the Issuer and all liability of the Issuer with respect

thereto shall thereupon cease. In this Condition, the "relevant date" in respect of an ACS Instrument is the date on which a payment in respect thereof first becomes due or (if the full amount of the moneys payable in respect of the ACS Instruments due on or before that date has not been duly received by the Paying Agents on or prior to such due date) the date on which notice that the full amount of such moneys has been received is duly given to the Instrument Holders in accordance with Condition 15.

## **12. Taxation**

All payments of principal and interest in respect of the ACS Instruments by or on behalf of the Issuer shall be made free and clear of, and without withholding or deduction for, any present or future taxes, duties, assessments or governmental charges of whatsoever nature imposed, levied, collected, withheld or assessed by the jurisdiction of incorporation of the Issuer or any political subdivision or any authority or agency thereof or therein having power to tax, unless such withholding or deduction is required by law.

## **13. Agents**

- 13.1 In acting under the Agency Agreement and in connection with the ACS Instruments, the Paying Agents act solely as agents of the Issuer and do not assume any obligations towards or relationship of agency or trust for or with any of the Instrument Holders.
- 13.2 The initial Paying Agents and their initial Specified Offices are listed in the Agency Agreement. The initial Calculation Agent (if any) is specified in the relevant Final Terms. The Issuer reserves the right at any time to vary or terminate the appointment of any Paying Agent and to appoint a successor Fiscal Agent or successor German Fiscal Agent or Calculation Agent and additional or successor Paying Agents; *provided, however, that:*
- (a) the Issuer shall at all times maintain a Fiscal Agent and a German Fiscal Agent; and
  - (b) the Issuer shall at all times maintain a Paying Agent (which may be the Fiscal Agent or, as the case may be, the German Fiscal Agent) with a Specified Office in continental Europe; and
  - (c) the Issuer will ensure that it maintains a Paying Agent in an EU member state that will not be obliged to withhold or deduct tax pursuant to European Council Directive 2003/48/EC or any other Directive implementing the conclusions of the ECOFIN Council meeting of 26-27 November 2000 or any law implementing or complying with, or introduced to conform to, such Directive; and
  - (d) if a Calculation Agent is specified in the relevant Final Terms, the Issuer shall at all times maintain a Calculation Agent; and
  - (e) if and for so long as the ACS Instruments are admitted to listing, trading and/or quotation by any listing authority, stock exchange and/or quotation system which requires the appointment of a Paying Agent in any particular place, the Issuer shall maintain a Paying Agent having its Specified Office in the place required by such listing authority, stock exchange and/or quotation system and, for the avoidance of doubt, if and for so long as the ACS Instruments are admitted to listing on the Official List of the Irish Stock Exchange Limited and the rules of



- the Irish Stock Exchange so require, the Issuer shall maintain a Paying Agent having its Specified Office in Ireland; and
- (f) in the circumstances described in Condition 10.3 (*Payments in New York City*), the Issuer shall maintain a Paying Agent with a Specified Office in New York City.

Notice of any change in any of the Paying Agents or in their Specified Offices shall promptly be given to the Instrument Holders.

#### **14. Further Issues**

The Issuer may from time to time, without the consent of the Instrument Holders, create and issue further ACS Instruments having the same terms and conditions as the ACS Instruments in all respects (or in all respects except for the first payment of interest) so as to form a single series with the ACS Instruments.

#### **15. Notices**

Notices to the Instrument Holders shall be delivered to CBF, Euroclear and CBL or any other relevant clearing system for communication to the persons shown in their records as having interests therein provided that, if the ACS Instruments are admitted to listing on the Official List of the Irish Stock Exchange Limited, notices to Instrument Holders shall be valid if published in a leading English language daily newspaper having general circulation in Ireland and approved by the Irish Stock Exchange Limited (which is expected to be *The Irish Times*) or, if such publication is not practicable, in a leading English language daily newspaper having general circulation in Europe. If the ACS Instruments are admitted to listing, trading and/or quotation by any other listing authority, stock exchange and/or quotation system, notices to Instrument Holders shall also be valid if published in compliance with the requirements of such listing authority, stock exchange and/or quotation system. All notices issued to Instrument Holders of ACS Instruments which are admitted to the Official List of the Irish Stock Exchange shall be copied to the Companies Announcement Office of the Irish Stock Exchange. Any such notice shall be deemed to have been given on the date of first publication (or if required to be published in more than one newspaper, on the first date on which publication shall have been made in all the required newspapers). Couponholders shall be deemed for all purposes to have notice of the contents of any notice given to the Instrument Holders.

#### **16. Overcollateralisation**

- 16.1 For so long as any ACS Instruments are outstanding, the prudent market value (determined in accordance with the ACS Act) of the cover assets pool maintained by the Issuer in accordance with the terms of the ACS Act will not at any time be less than the then applicable Minimum Overcollateralisation Level.
- 16.2 For the purposes of this Condition 16, the applicable "Minimum Overcollateralisation Level" at any time shall be an amount equal to 105 per cent. of the total outstanding principal amount of public credit covered securities of the Issuer (including ACS Instruments) in issue at such time.

#### **17. Governing Law and Jurisdiction**

- 17.1 *Governing law:* The ACS Instruments are governed by, and shall be construed in accordance with, Irish law.
- 17.2 *Jurisdiction:* The Issuer and each Instrument Holder irrevocably agrees that the High Court of Ireland shall have exclusive jurisdiction to hear and determine any suit, action or proceedings, and to settle any disputes, which may arise out of or in connection with the ACS Instruments (respectively, "Proceedings" and "Disputes") and, for such purposes, irrevocably submits to the jurisdiction of such court. The Issuer irrevocably waives any objection which it might now or hereafter have to the High Court of Ireland 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.
- 17.3 *Non-exclusivity:* The submission to the jurisdiction of the High Court of Ireland shall not (and shall not be construed so as to) limit the right of the Instrument Holders or any of them to take Proceedings in any 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 applicable law.

## **18. Enforcement**

Any Instrument Holder may in any Proceedings against the Issuer or to which the Instrument Holder and the Issuer are parties protect and enforce in its own name its rights arising under its ACS Instruments provided that it has obtained: (a) a certificate issued by its Custodian (i) stating the full name and address of the Instrument Holder, (ii) specifying an aggregate principal amount of ACS Instruments credited on the date of such statement to such Instrument Holder's securities account maintained with such Custodian and (iii) confirming that the Custodian has given a written notice to CBF, Euroclear, CBL or any other relevant clearing system containing the information pursuant to (i) and (ii) and bearing acknowledgements of CBF, Euroclear, CBL or any other relevant clearing system and any accountholder of CBF, Euroclear, CBL or any other relevant clearing system whom CBF, Euroclear, CBL or any other relevant clearing system records as having an interest in the relevant ACS Instruments and (b) a copy of the relevant Global ACS Certificate certified as being a true copy by a duly authorised officer of CBF, Euroclear, CBL or any other relevant clearing system. For the purposes of the foregoing, "Custodian" means any bank or other financial institution of recognised standing authorised to engage in securities custody business with which the Instrument Holder maintains a securities account in respect of any ACS Instrument and includes CBF, Euroclear and CBL.

## PRO FORMA FINAL TERMS FOR INSTRUMENTS

**Final Terms dated •**

**DEPFA BANK plc  
DEPFA Deutsche Pfandbriefbank AG  
DEPFA ACS BANK**

Issue of [*Aggregate Nominal Amount of Tranche*] [*Title of Instruments*]  
under the EUR **45,000,000,000 Programme for the Issuance of Debt Instruments**

[The Prospectus (as completed by these Final Terms) has been prepared on the basis that, except as provided in sub-paragraph (ii) below, any offer of Instruments in any Member State of the European Economic Area which has implemented the Prospectus Directive (Directive 2003/71/EC) (the "Prospectus Directive") (each, a "Relevant Member State") will be made pursuant to an exemption under the Prospectus Directive, as implemented in that Relevant Member State, from the requirement to publish a prospectus for offers of the Instruments. Accordingly any person making or intending to make an offer of the Instruments may only do so in:

- (i) circumstances in which no obligation arises for the Issuer or any Dealer to publish a prospectus pursuant to Article 3 of the Prospectus Directive or supplement a prospectus pursuant to Article 16 of the Prospectus Directive, in each case, in relation to such offer; or
- (ii) those Public Offer Jurisdictions mentioned in Paragraph 37 of Part A below, provided such person is one of the persons mentioned in Paragraph 37 of Part A below and that such offer is made during the Offer Period specified for such purpose therein.

Neither the Issuer nor any Dealer has authorised, nor do they authorise, the making of any offer of Instruments in any other circumstances] [*include this legend where a non-exempt offer of Instruments is anticipated*].

[The Prospectus (as completed by these Final Terms) has been prepared on the basis that any offer of Instruments in any Member State of the European Economic Area which has implemented the Prospectus Directive (Directive 2003/71/EC) (the "Prospectus Directive") (each, a "Relevant Member State") will be made pursuant to an exemption under the Prospectus Directive, as implemented in that Relevant Member State, from the requirement to publish a prospectus for offers of the Instruments. Accordingly any person making or intending to make an offer in that Relevant Member State of the Instruments may only do so in circumstances in which no obligation arises for the Issuer or any Dealer to publish a prospectus pursuant to Article 3 of the Prospectus Directive or supplement a prospectus pursuant to Article 16 of the Prospectus Directive, in each case, in relation to such offer. Neither the Issuer nor any Dealer has authorised, nor do they authorise, the making of any offer of Instruments in any other circumstances] [*include this legend where an exempt offer of Instruments is anticipated*].

## PART A – CONTRACTUAL TERMS

Terms used herein shall be deemed to be defined as such for the purposes of the Conditions set forth in the Prospectus dated [•] [and the supplement to the Prospectus dated [•] (which [together] constitute [s] a base prospectus for the purposes of the Prospectus Directive. This document constitutes the Final Terms of the Instruments described herein for the purposes of Article 5.4 of the Prospectus Directive and must be read in conjunction with such Prospectus [as so supplemented]. Full information on the Issuer and the offer of the Instruments is only available on the basis of the combination of these Final Terms and the Prospectus. [The Prospectus [and the supplement[s] to the Prospectus] [is] [are] available for viewing at [address] [and] [website] and copies may be obtained from [address].] [No website referred to in these Final Terms and the Prospectus forms part of these Final Terms and the Prospectus.]

*The following alternative language applies if the first tranche of an issue which is being increased was issued under a Prospectus with an earlier date.*

Terms used herein shall be deemed to be defined as such for the purposes of the Conditions (the "Conditions") set forth [in the [Information Memorandum/Prospectus] dated [•] [and the supplement to the Prospectus dated [•] which have been incorporated by reference in, and form part of the Prospectus dated 9 May 2008]. This document constitutes the Final Terms of the Instruments described herein for the purposes of Article 5.4 of the Prospectus Directive (Directive 2003/71/EC) (the "Prospectus Directive") and must be read in conjunction with the Prospectus dated [current date] [and the supplement to the Prospectus dated [•], which [together] constitute[s] a base prospectus for the purposes of the Prospectus Directive, save in respect of the [Conditions which are extracted from the [Information Memorandum/Prospectus] dated [original date] [and the supplement to the Prospectus dated [•] which are attached hereto. Full information on the Issuer and the offer of the Instruments is only available on the basis of the combination of these Final Terms and the Prospectus dated [original date] and [current date] [and the supplement to the Prospectuses dated [•] and [•]. [The Prospectuses [and the supplement to the Prospectuses] are available for viewing at [address] [and] [website] and copies may be obtained from [address].]

*[Include whichever of the following apply or specify as "Not Applicable" (N/A). Note that the numbering should remain as set out below, even if "Not Applicable" is indicated for individual paragraphs or sub-paragraphs. Italics denote guidance for completing the Final Terms.]*

*[When completing any final terms, or adding any other final terms or information, consideration should be given as to whether such terms or information constitute "significant new factors" and consequently trigger the need for a supplement to the Prospectus under Article 16 of the Prospectus Directive.]*

- |    |                        |   |
|----|------------------------|---|
| 1. | Issuer:                | [DEPFA BANK plc/DEPFA Deutsche Pfandbriefbank AG/ DEPFA ACS BANK] |
| 2. | [(i)] Series Number:   | [•]   |
|    | [(ii)] Tranche Number: | [•]   |

*(If fungible with an existing Tranche, details of that Tranche, including the date on which the Instruments become fungible).]*

3. Specified Currency or Currencies: [•]
4. Aggregate Nominal Amount: [•]
  - [(i)] Series: [•]
  - [(ii)] Tranche: [•]
5. Issue Price: [•] per cent. of the Aggregate Nominal Amount [plus accrued interest from *[insert date]* (if applicable)]
6.
  - (i) Specified Denominations: [•]
  - (ii) Calculation Amount: [•]
7.
  - [(i)] Issue Date: [•]
  - [(ii)] Interest Commencement Date [*Specify/Issue Date/Not Applicable*]
8. Maturity Date: [*specify date or (for Floating Rate Instruments) Interest Payment Date falling in or nearest to the relevant month and year*]
9. Interest Basis: [• per cent. Fixed Rate]  
[[*specify reference rate*] +/- • per cent. Floating Rate]  
[Zero Coupon]  
[Index-Linked Interest]  
[Other (*specify*)]  
(further particulars specified below)

10. Redemption/Payment Basis: [Redemption at par]  
[Index-Linked Redemption]  
[Dual Currency]  
[Partly Paid]  
[Instalment]  
[Other (*specify*)]
11. Change of Interest or Redemption/  
Payment Basis: [*Specify details of any provision for  
convertibility of Instruments into another  
interest or redemption/payment basis*]
12. Put/Call Options: [Investor Put]  
[Issuer Call]  
[(further particulars specified below)]
13. [(i)] Status of the Instruments: [Senior/[Dated/Perpetual]/ Subordinated]  
[(ii)] [Date [Board] approval for [•]  
issuance of Instruments  
obtained: (*N.B Only relevant where Board (or similar)  
authorisation is required for the particular  
tranche of Instruments*)
14. Method of distribution: [Syndicated/Non-syndicated]

**PROVISIONS RELATING TO INTEREST (IF ANY) PAYABLE**

15. **Fixed Rate Instrument Provisions** [Applicable/Not Applicable]  
(*If not applicable, delete the remaining sub-  
paragraphs of this paragraph*)
- (i) Rate[(s)] of Interest: [•] per cent. per annum [payable  
[annually/semi-annually/ quarterly/monthly] in  
arrear]
- (ii) Interest Payment Date(s): [•] in each year [adjusted in accordance with  
[*specify Business Day Convention and any  
applicable Business Centre(s) for the definition  
of "Business Day"*]/not adjusted]

- (iii) Fixed Coupon Amount[(s)]: [•] per Calculation Amount
  - (iv) Broken Amount(s): [•] per Calculation Amount, payable on the Interest Payment Date falling [in/on] [•]
  - (v) Day Count Fraction: [30/360 / Actual/Actual ([ICMA]/ISDA) / other]
  - (vi) Determination Dates: [•] in each year (*insert regular interest payment dates, ignoring issue date or maturity date in the case of a long or short first or last coupon. N.B. only relevant where Day Count Fraction is Actual/Actual ([ICMA])*)
  - (vii) Other terms relating to the method of calculating interest for Fixed Rate Instruments: [Not Applicable/give details]
16. **Floating Rate Instrument Provisions** [Applicable/Not Applicable]
- (If not applicable, delete the remaining subparagraphs of this paragraph)*
- (i) Interest Period(s) [•]
  - (ii) Specified Interest Payment Dates: [•]
  - (iii) Business Day Convention: [Floating Rate Convention/ Following Business Day Convention/ Modified Following Business Day Convention/ Preceding Business Day Convention/ other (*give details*)]
  - (iv) Business Centre(s): [•]
  - (v) Manner in which the Rate(s) of Interest is/are to be determined: [Screen Rate Determination/ISDA Determination/other (*give details*)]
  - (vi) Party responsible for calculating the Rate(s) of Interest and Interest Amount(s) (if not the [Agent]): [*include name and address*]
  - (vii) Screen Rate Determination:
    - Reference Rate: [•]

- Interest Determination Date(s): [•]
  - Relevant Screen Page: [•]
- (viii) ISDA Determination:
- Floating Rate Option: [•]
  - Designated Maturity: [•]
  - Reset Date: [•]
- (ix) Margin(s): [ +/- ][•] per cent. per annum
- (x) Minimum Rate of Interest: [•] per cent. per annum
- (xi) Maximum Rate of Interest: [•] per cent. per annum
- (xii) Day Count Fraction: [•]
- (xiii) Fall back provisions, rounding provisions, denominator and any other terms relating to the method of calculating interest on Floating Rate Instruments, if different from those set out in the Conditions: [•]
17. **Zero Coupon Instrument Provisions** [Applicable/Not Applicable]
- (If not applicable, delete the remaining subparagraphs of this paragraph)*
- (i) [Amortisation/Accrual] Yield: [•] per cent. per annum
  - (ii) Reference Price: [•]
  - (iii) Any other formula/basis of determining amount payable: [•]
18. **Index-Linked Interest Instrument/ other variable-linked interest Instrument Provisions** [Applicable/Not Applicable]
- (If not applicable, delete the remaining subparagraphs of this paragraph)*
- (i) Index/Formula/Other variable: [give or annex details]



- (ii) Party responsible for calculating the Rate(s) of Interest and/or Interest Amount(s) (if not the [Agent]): *[include name and address]*
  - (iii) Provisions for determining Coupon where calculated by reference to Index and/or Formula and/or other variable:
  - (iv) Determination Date(s): [•]
  - (v) Provisions for determining Coupon where calculation by reference to Index and/or Formula and/or other variable is impossible or impracticable or otherwise disrupted: [•]
  - (vi) Interest or calculation period(s): [•]
  - (vii) Specified Interest Payment Dates: [•]
  - (viii) Business Day Convention: [Floating Rate Convention/ Following Business Day Convention/ Modified Following Business Day Convention/Preceding Business Day Convention/other (*give details*)]
  - (ix) Business Centre(s): [•]
  - (x) Minimum Rate/Amount of Interest: [•] per cent. per annum
  - (xi) Maximum Rate/Amount of Interest: [•] per cent. per annum
  - (xii) Day Count Fraction: [•]
19. **Dual Currency Instrument Provisions** *[Applicable/Not Applicable]*
- (If not applicable, delete the remaining subparagraphs of this paragraph)*
- (i) Rate of Exchange/method of calculating Rate of Exchange: *[give details]*

- (ii) Party, if any, responsible for calculating the principal and/or interest due (if not the [Agent]): [•]
- (iii) Provisions applicable where calculation by reference to Rate of Exchange impossible or impracticable: [•]
- (iv) Person at whose option Specified Currency(ies) is/are payable: [•]

**PROVISIONS RELATING TO REDEMPTION**

20. **Call Option** [Applicable/Not Applicable]

*(If not applicable, delete the remaining subparagraphs of this paragraph)*

- (i) Optional Redemption Date(s): [•]
- (ii) Optional Redemption Amount (s) of each Instrument and method, if any, of calculation of such amount(s): [•] per Calculation Amount
- (iii) If redeemable in part:
  - (a) Minimum Redemption Amount: [•] per Calculation Amount
  - (b) Maximum Redemption Amount: [•] per Calculation Amount
- (iv) Notice period [•]

21. **Put Option** [Applicable/Not Applicable]

*(If not applicable, delete the remaining subparagraphs of this paragraph)*

- (i) Optional Redemption Date(s): [•]

(ii) Optional Redemption Amount [•] per Calculation Amount (s) of each Instrument and method, if any, of calculation of such amount(s):

(iii) Notice period [•]

22. **Final Redemption Amount of each Instrument** [•] per Calculation Amount

In cases where the Final Redemption Amount is Index-Linked or other variable-linked:

(i) Index/Formula/variable: [*give or annex details*]

(ii) Party responsible for calculating the Final Redemption Amount: (if not the Agent) [•]

(iii) Provisions for determining Final Redemption Amount where calculated by reference to Index and/or Formula and/or other variable: [•]

(iv) Determination Date(s): [•]

(v) Provisions for determining Final Redemption Amount where calculation by reference to Index and/or Formula and/or other variable is impossible or impracticable or otherwise disrupted: [•]

(vi) Payment Date: [•]

(vii) Minimum Final Redemption Amount: [•] per Calculation Amount

(viii) Maximum Final Redemption Amount: [•] per Calculation Amount

23. **Early Redemption Amount**

Early Redemption Amount(s) per Calculation Amount payable on redemption for taxation reasons or on event of default or other early redemption and/ or the method of calculating the same (if required or if different from that set out in the Conditions): [•]

**GENERAL PROVISIONS APPLICABLE TO THE INSTRUMENTS**

24. **Form of Instruments:**

**Bearer Instruments:**

[Temporary Global Instrument exchangeable for a Permanent Global Instrument which is exchangeable for a Definitive Instrument on [•] days' notice/at any time/in the limited circumstances specified in the Permanent Global Instrument]

[Temporary Global Instrument exchangeable for Definitive Instruments on [•] days' notice]

[Permanent Global Instrument exchangeable for Definitive Instruments on [•] days' notice/at any time/in the limited circumstances specified in the Permanent Global Instrument]

*(N.B. If a Global Instrument is exchangeable for Definitive Instruments at any time, the Instruments shall be tradeable only in principal amounts or at least the Specified Denomination or if more than one Specified Denomination, the lowest Specified Denomination.)*

25. New Global Instrument: [Yes/No]<sup>1</sup>

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<sup>1</sup> Instrument issued in CGI form may be eligible collateral for ECB operations where the CGI is delivered directly to CBF.

26. Additional Financial Centre(s) or other special provisions relating to Payment Dates: [Not Applicable/give details. Note that this item relates to the date and place of payment, and not interest period end dates, to which items 15(ii), 16(iv) and 18(ix) relates]
27. Talons for future Coupons or Receipts to be attached to Definitive Instruments (and dates on which such Talons mature): [Yes/No. If yes, give details]
28. Details relating to Partly Paid Instruments: amount of each payment comprising the Issue Price and date on which each payment is to be made [and consequences (if any) of failure to pay, including any right of the Issuer to forfeit the Instruments and interest due on late payment]: [Not Applicable/give details]
29. Details relating to Instalment Instruments: amount of each instalment, date on which each payment is to be made: [Not Applicable/give details]
30. Redenomination, renominatisation and reconventioning provisions: [Not Applicable/The provisions [in Condition 23] apply]
31. Consolidation provisions: [Not Applicable/The provisions [in Condition 19] apply]
32. Other final terms: [Not Applicable/give details]
- (When adding any other final terms consideration should be given as to whether such terms constitute "significant new factors" and consequently trigger the need for a supplement to the Prospectus under Article 16 of the Prospectus Directive.)*

## DISTRIBUTION

33. (i) If syndicated, names [and addresses]<sup>2</sup> of Managers [and underwriting commitments]<sup>2</sup> [Not Applicable/give names[, addresses and underwriting commitments]<sup>2</sup>]  
*[(Include names and addresses of entities agreeing to underwrite the issue on a firm commitment basis and names and addresses of the entities agreeing to place the issue without a firm commitment or on a "best efforts" basis if such entities are not the same as the Managers.)]<sup>2</sup>*
- (ii) Date of [Subscription] Agreement: [•]<sup>2</sup>
- (iii) Stabilising Manager(s) (if any): [Not Applicable/give name]
34. If non-syndicated, name [and address]<sup>1</sup> of Dealer: [Not Applicable/give name [and address]<sup>2</sup>]
- [35. Total commission and concession: [•] per cent. of the Aggregate Nominal Amount]<sup>2</sup>
36. U.S. selling restrictions: [Not Applicable/give details]
37. Non-exempt Offer: [Not Applicable][An offer of the Instruments may be made by the Managers [and [specify, if applicable]] other than pursuant to Article 3(2) of the Prospectus Directive in [specify relevant Member State(s) - which must be jurisdictions where the Prospectus and any supplements have been passported] (Public Offer Jurisdictions) during the period from [specify date] until [specify date] (Offer Period). See further paragraph 10 of Part B below<sup>3</sup>.

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<sup>2</sup> Only applicable to Tranches of Instruments with a denomination of less than EUR 50,000 or equivalent in other currencies.

<sup>3</sup> Consider any local regulatory requirements necessary to be fulfilled so as to be able to make a non-exempt offer in relevant jurisdictions. No such offer should be made in any relevant jurisdiction until those requirements have been met. Non-exempt offers may only be made into jurisdictions in which the Prospectus (and any supplement) has been notified/passported. Consider including details of parties (if any) other than the Managers making non-exempt offers in relevant jurisdictions, to the extent known to the Issuer (see Paragraph 5.4.1 of Annex V of the PD Regulation). Alternatively, consider a generic description of other parties involved in non-exempt offers (e.g. other parties authorized by the Managers) or (if relevant) note that other parties may make non-exempt offers in the specified jurisdictions during the offer period, in each case if not known to the Issuer.

38. Additional selling restrictions: [Not Applicable/give details]

#### **[LISTING AND ADMISSION TO TRADING APPLICATION**

These Final Terms comprise the final terms required to list and have admitted to trading the issue of Instruments described herein pursuant to the EUR 45,000,000,000 Programme for the Issuance of Debt Instruments of DEPFA BANK plc, DEPFA DEUTSCHE PFANDBRIEFBANK AG and DEPFA ACS BANK.]

#### **RESPONSIBILITY**

The Issuer accepts responsibility for the information contained in these Final Terms. [• has been extracted from •. The Issuer confirms that such information has been accurately reproduced and that, so far as it is aware, and is able to ascertain from information published by •, no facts have been omitted which would render the reproduced inaccurate or misleading.]

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*The start date for non-exempt offers will typically be no earlier than the publication date of the Final Terms. The start date in certain jurisdictions may need to be delayed until after compliance with any local requirements (e.g. publication of newspaper notices and accordingly may not necessarily be an actual date. For example, it could instead of a specific date be expressed as "the business day following publication of the [relevant notice]" or similar. The end date will be as agreed between the Issuer and the Managers.*

## PART B – OTHER INFORMATION

### 1. LISTING

- (i) Listing: [Irish Stock Exchange/other (*specify*)/None]
- (ii) Admission to trading [Application has been made for the Instruments to be admitted to trading on [•] with effect from [•].] [Not Applicable.]

*(Where documenting a fungible issue need to indicate that original securities are already admitted to trading.)*

### 2. RATINGS

**Ratings:** The Instruments to be issued have been rated:

[S & P: [•]]

[Moody's: [•]]

[Fitch: [•]]

[[Other]: [•]]

*[Need to include a brief explanation of the meaning of the ratings if this has previously been published by the rating provider.]*

*(The above disclosure should reflect the rating allocated to Instruments of the type being issued under the Programme generally or, where the issue has been specifically rated, that rating.)*

### 3. [NOTIFICATION]

The Irish Stock Exchange Limited [has been requested to provide/has provided – include first alternative for an issue which is contemporaneous with the establishment or update of the Programme and the second alternative for subsequent issues] the [include names of competent authorities of host Member States] with a certificate of approval attesting that the Prospectus has been drawn up in accordance with the Prospectus Directive.]



**4. [INTERESTS OF NATURAL AND LEGAL PERSONS INVOLVED IN THE [ISSUE/OFFER]**

*Need to include a description of any interest, including conflicting ones, that is material to the issue/offer, detailing the persons involved and the nature of the interest. May be satisfied by the inclusion of the following statement:*

"Save as discussed in ["Subscription and Sale"], so far as the Issuer is aware, no person involved in the offer of the Notes has an interest material to the offer."

**5. REASONS FOR THE OFFER, ESTIMATED NET PROCEEDS AND TOTAL EXPENSES<sup>4</sup>**

[(i) Reasons for the offer [ ]

*(See ["Use of Proceeds"] wording in Prospectus – if reasons for offer different from making profit and/or hedging certain risks will need to include those reasons here.)*

(ii) Estimated net proceeds: [•]

*(If proceeds are intended for more than one use will need to split out and present in order of priority. If proceeds insufficient to fund all proposed uses state amount and sources of other funding.)*

[(iii)] Estimate of total expenses: *[If the Instruments are derivative securities to which Annex XII of the Prospectus Directive Regulation (Commission Regulation 809/2004) (the "Prospectus Directive Regulation") applies it is only necessary to include disclosure of net proceeds and total expenses at (ii) and (iii) above where disclosure is included at (i) above.]*

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<sup>4</sup> Only applicable to Tranches of Instruments with a denomination of at least EUR 50,000 or equivalent in other currencies.

6. **[FIXED RATE INSTRUMENTS ONLY – YIELD**

**Indication of yield:**

[•]

[Calculated as [*include details of method of calculation in summary form*] on the Issue Date.]<sup>5</sup>

[As set out above, the]<sup>5</sup> [The] yield is calculated at the Issue Date on the basis of the Issue Price. It is not an indication of future yield.]

7. **[FLOATING RATE INSTRUMENTS ONLY – HISTORIC INTEREST RATES**

Details of historic [LIBOR/EURIBOR/other] rates can be obtained from [Reuters].]<sup>5</sup>

8. **[*Index-Linked or other variable-linked Instruments only* – PERFORMANCE OF INDEX/FORMULA/ other Variable, [EXPLANATION OF EFFECT ON VALUE OF INVESTMENT AND ASSOCIATED RISKS] and other information concerning the underlying**

*Need to include details of where past and future performance and volatility of the index/formula/other variable can be obtained [and a clear and comprehensive explanation of how the value of the investment is affected by the underlying and the circumstances when the risks are most evident.] [Where the underlying is an index need to include the name of the index and a description if composed by the Issuer and if the index is not composed by the Issuer need to include details of where the information about the index can be obtained. Where the underlying is not an index need to include equivalent information. Include other information concerning the underlying required by Paragraph 4.2 of Annex XII of the Prospectus Directive Regulation.]*

*[(When completing this paragraph, consideration should be given as to whether such matters described constitute "significant new factors" and consequently trigger the need for a supplement to the Prospectus under Article 16 of the Prospectus Directive.)]*

The Issuer [intends to provide post-issuance information in relation to the [Instruments/Underlying] [*specify what information will be reported and where it can be obtained*]] [does not intend to provide post-issuance information].

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<sup>5</sup> Only applicable to Tranches of Instruments with a denomination of at least EUR 50,000 or equivalent in other currencies.

**9. [Dual Currency Instruments only – PERFORMANCE OF RATE[S] OF EXCHANGE AND EXPLANATION OF EFFECT ON VALUE OF INVESTMENT**

*Need to include details of where past and future performance and volatility of the relevant rate[s] can be obtained [and a clear and comprehensive explanation of how the value of the investment is affected by the underlying and the circumstances when the risks are most evident.]<sup>6</sup>*

*[(When completing this paragraph, consideration should be given as to whether such matters described constitute "significant new factors" and consequently trigger the need for a supplement to the Prospectus under Article 16 of the Prospectus Directive.)]*

**10. OPERATIONAL INFORMATION**

ISIN Code: [ ]

Common Code: [ ]

German Securities Code (WKN): [ ]

New Global Instrument intended to be held in a manner which would allow Eurosystem eligibility: [Not Applicable/Yes/No] Note that the designation "Yes" simply means that the Instruments are intended upon issue to be deposited with Euroclear or Clearstream, Luxembourg as common safe-keeper and does not necessarily mean that the Instruments will be recognised as eligible collateral for Eurosystem monetary policy and intra-day credit operations by the Eurosystem either upon issue or at any or all times during their life. Such recognition will depend upon satisfaction of the Eurosystem eligibility criteria.] [Include this text if "Yes" selected in which case the Instruments must be issued in NGI form]

Any clearing system(s) other than Euroclear Bank SA/NV and Clearstream Banking, société anonyme and the relevant identification number(s): [Clearstream Banking AG, Frankfurt am Main/Not Applicable/ give name(s) and number(s)]

Delivery: Delivery [against/free of] payment

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<sup>6</sup> Required for derivative securities to which Annex XII to the Prospectus Directive Regulation applies.

[Fiscal Agent/German Fiscal Agent]: [Deutsche Bank AG, London Branch/Deutsche Bank Aktiengesellschaft]<sup>7</sup>

Names and addresses of additional Paying Agent(s) (if any): [ ]

[11. **TERMS AND CONDITIONS OF THE OFFER**]<sup>8</sup>

Offer Price: [Issue Price][*specify*]

Conditions to which the offer is subject: [Not Applicable/*give details*]

Description of the application process: [Not Applicable/*give details*]

Description of possibility to reduce subscriptions and manner for refunding excess amount paid by applicants: [Not Applicable/*give details*]

Details of the minimum and/or maximum amount of application: [Not Applicable/*give details*]

Details of the method and time limits for paying up and delivering the Instruments: [Not Applicable/*give details*]

Manner in and date on which results of the offer are to be made public: [Not Applicable/*give details*]

Procedure for exercise of any right of pre-emption, negotiability of subscription rights and treatment of subscription rights not exercised: [Not Applicable/*give details*]

Categories of potential investors to which the Instruments are offered and whether tranche(s) have been reserved for certain countries: [Not Applicable/*give details*]

Process for notification to applicants of the amount allotted and the indication whether dealing may begin [Not Applicable/*give details*]

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<sup>7</sup> Choose "German Fiscal Agent" and "Deutsche Bank Aktiengesellschaft" where the selected Issuer is the Pfandbriefbank.

<sup>8</sup> Only applicable to Tranches of Instruments with a denomination of less than EUR 50,000 or equivalent in other currencies.

before notification is made:

Amount of any expenses and taxes specifically charged to the subscriber or purchaser: [Not Applicable/*give details*]

Name(s) and address(es), to the extent known to the Issuer, of the placers in the various countries where the offer takes place. [None/*give details*]

Signed on behalf of the Issuer:

By:

Duly authorised]

## PRO FORMA FINAL TERMS FOR PFANDBRIEF INSTRUMENTS

*The Final Terms in respect of each Tranche of Pfandbrief Instruments will be substantially in the following form, duly supplemented (if necessary), amended (if necessary) and completed to reflect the particular terms of the relevant Pfandbrief Instruments and their issue. Text in this section appearing in italics does not form part of the form of the Final Terms but denotes directions for completing the Final Terms.*

**Final Terms dated •**

**DEPFA BANK PLC  
DEPFA DEUTSCHE PFANDBRIEFBANK AG  
DEPFA ACS BANK**

**Issue of [Aggregate Nominal Amount of Tranche] [Title of Pfandbrief Instruments] under  
the EUR 45,000,000,000 Debt Issuance Programme**

*Include this legend where a non-exempt offer of Pfandbrief Instruments is anticipated:*

[The Prospectus (as completed by these Final Terms) has been prepared on the basis that, except as provided in sub-paragraph (ii) below, any offer of Pfandbrief Instruments in any Member State of the European Economic Area which has implemented the Prospectus Directive (2003/71/EC) (the "Prospectus Directive") (each, a "Relevant Member State") will be made pursuant to an exemption under the Prospectus Directive, as implemented in that Relevant Member State, from the requirement to publish a prospectus for offers of the Pfandbrief Instruments. Accordingly any person making or intending to make an offer of the Notes may only do so:

- (i) in circumstances in which no obligation arises for the Issuer or any Dealer to publish a prospectus pursuant to Article 3 of the Prospectus Directive or supplement a prospectus pursuant to Article 16 of the Prospectus Directive, in each case, in relation to such offer; or
- (ii) in those Public Offer Jurisdictions mentioned in Paragraph 37 of Part A below, provided such person is one of the persons mentioned in Paragraph 37 of Part A below and that such offer is made during the Offer Period specified for such purpose therein.

Neither the Issuer nor any Dealer has authorised, nor do they authorise, the making of any offer of Notes in any other circumstances].

*Include this legend where only an exempt offer of Pfandbrief Instruments is anticipated:*

[The Prospectus (as completed by these Final Terms) has been prepared on the basis that any offer of Pfandbrief Instruments in any Member State of the European Economic Area which has implemented the Prospectus Directive (2003/71/EC) (the "Prospectus Directive") (each, a "Relevant Member State") will be made pursuant to an exemption under the Prospectus

Directive, as implemented in that Relevant Member State, from the requirement to publish a prospectus for offers of the Pfandbrief Instruments. Accordingly any person making or intending to make an offer in that Relevant Member State of the Pfandbrief Instruments may only do so in circumstances in which no obligation arises for the Issuer or any Dealer to publish a prospectus pursuant to Article 3 of the Prospectus Directive or supplement a prospectus pursuant to Article 16 of the Prospectus Directive, in each case, in relation to such offer. Neither the Issuer nor any Dealer has authorised, nor do they authorise, the making of any offer of Pfandbrief Instruments in any other circumstances].

## PART A - CONTRACTUAL TERMS

Terms used herein shall be deemed to be defined as such for the purposes of the Pfandbrief Conditions (the "Pfandbrief Conditions") set forth in the Prospectus dated [•] [and the supplement to the Prospectus dated [•] [*only include details of a supplement to the Prospectus in which the Conditions have been amended or information added for the purposes of all future issues under the Programme*] which [together] constitute[s] a base prospectus (the "Prospectus") for the purposes of the Prospectus Directive (Directive 2003/71/EC) (the "Prospectus Directive"). This document constitutes the Final Terms of the Pfandbrief Instruments described herein for the purposes of Article 5.4 of the Prospectus Directive. These Final Terms contain the final terms of the Pfandbrief Instruments and must be read in conjunction with such Prospectus [as so supplemented].

Full information on the Issuer and the offer of the Pfandbrief Instruments is only available on the basis of the combination of these Final Terms and the Prospectus dated [*current date*] [as so supplemented] [The Prospectus [and the supplement to the Prospectus[es]] are available for viewing at [address] [and] [ website] and copies may be obtained from [address].]

*The following alternative language applies if the first tranche of an issue which is being increased was issued under a prospectus with an earlier date and the relevant terms and conditions from that prospectus with an earlier date were incorporated by reference in this Prospectus (see "Information Incorporated by Reference" at pages 7 to 9 of the Prospectus).*

[Terms used herein shall be deemed to be defined as such for the purposes of the Pfandbrief Conditions (the "Pfandbrief Conditions") set forth in the [Information Memorandum/Prospectus] dated [•] [and the supplement to the Information Memorandum/Prospectus dated [•]] which have been incorporated by reference in, and form part of, the Prospectus dated 9 May 2008. These Final Terms contain the final terms of the Pfandbrief Instruments and must be read in conjunction with the Prospectus dated [*current date*] [and the supplement to the Prospectus dated [*date*]] which [together] constitute[s] a base prospectus (the "Prospectus") for the purposes of the Prospectus Directive (Directive 2003/71/EC) (the "Prospectus Directive"), save in respect of the [Pfandbrief Conditions] which are extracted from the [Information Memorandum] [Prospectus] dated [*original date*] and are attached hereto. This document constitutes the Final Terms relating to the issue of Pfandbriefe described herein for the purposes of Article 5.4 of the Prospectus Directive .

Full information on the Issuer and the offer of the Pfandbrief Instruments described herein is only available on the basis of the combination of these Final Terms [the information memorandum] [the prospectus] dated [*original date*] and the [Prospectus] dated [*current date*] [as so supplemented]. [The Prospectus [and the supplement to the Prospectus(es)] [is] [are] available for viewing at [*address*] [and] [*website*] and copies may be obtained from [*address*].] [No website referred to in these Final Terms and the Prospectus forms part of these Final Terms and the Prospectus.] ]

*[Include whichever of the following apply or specify as "Not Applicable" (N/A). Note that the numbering should remain as set out below, even if "Not Applicable" is indicated for individual paragraphs or sub-paragraphs. Italics denote guidance for completing the Final Terms.]*

*[When completing any final terms, or adding any other final terms or information, consideration should be given as to whether such terms or information constitute "significant new factors" and consequently trigger the need for a supplement to the Prospectus under Article 16 of the Prospectus Directive.]*

- |    |  |  |
|----|--|--|
| 1. | Issuer:  | DEPFA Deutsche Pfandbriefbank AG   |
| 2. | [(i) Series Number:  | [•]]   |
|    | [(ii) Tranche Number:  | [•]  |
|    | <i>(If fungible with an existing Tranche, details of that Tranche, including the date on which the Pfandbrief Instruments become fungible).]</i> |  |
| 3. | Specified currency or Currencies:  | [•]  |
| 4. | Aggregate Nominal Amount:  | [•]  |
|    | [(i) Series:   | [•]]   |
|    | [(ii) Tranche:   | [•]]   |
| 5. | Issue price:   | [•] per cent. of the Aggregate Nominal Amount [plus accrued interest from [ <i>insert date</i> ] ( <i>if applicable</i> )]                     |
| 6. | Specified Denomination(s):   | [•]  |
| 7. | [(i) Issue Date:   | [•]  |
|    | [(ii) Interest Commencement Date:  | [•]]   |
| 8. | Maturity Date:   | <i>[specify date or (for Floating Rate Pfandbrief Instruments) Interest Payment Date falling in or nearest to the relevant month and year]</i> |
| 9. | Interest Basis:  | [• per cent. Fixed Rate]   |



- [[*specify reference rate*] +/- • per cent.  
Floating Rate]  
[Zero Coupon]  
[Index-Linked Interest]  
[Other (*specify*)]  
(further particulars specified below)
10. Redemption/Payment Basis: [Redemption at par]  
[Other (*specify*)]<sup>1</sup>
11. Change of Interest or Redemption/  
Payment Basis: [*specify details of any provision for  
convertibility of Pfandbrief Instruments  
into another interest or redemption/  
payment basis*]
12. Call Options: [Issuer Call]  
[(further particulars specified below)]
13. (i) Status of the Pfandbrief  
Instruments: Unsubordinated
- [[*(ii)*] Date [Board] approval for  
issuance of Pfandbriefe obtained: [*•*]  
*Only relevant where Board (or similar)  
authorisation is required for the  
particular tranche of Notes or related  
Guarantee*]
14. Method of distribution: [Syndicated/Non-syndicated]

#### **PROVISIONS RELATING TO INTEREST (IF ANY) PAYABLE**

15. **Fixed Rate Pfandbrief Instrument  
Provisions** [Applicable/Not Applicable]  
  
*(If not applicable, delete the remaining  
sub-paragraphs of this paragraph)*
- (i) Rate[(s)] of Interest: [*•*] per cent. per annum [payable  
[annually/semi-annually/  
quarterly/monthly] in arrear]
- (ii) Interest Payment Date(s): [*•*] in each year [adjusted in accordance  
with [*specify Business Day Convention  
and any applicable Business Centre(s)  
for the definition of "Business Day"*] [not  
adjusted]

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<sup>1</sup> To the extent permitted by the German Pfandbrief Act.

- (iii) Fixed Coupon Amount[(s)]: [•] per [•] in Nominal Amount
- (iv) Broken Amount(s): *[Insert particulars of any initial or final broken interest amounts which do not correspond with the Fixed Coupon Amount [(s)]]*
- (v) Day Count Fraction: [30/360 / Actual/Actual ([ICMA]/ISDA) / other]
- (vi) Determination Dates: [•] in each year *(insert regular interest payment dates, ignoring issue date or maturity date in the case of a long or short first or last coupon. N.B. only relevant where Day Count Fraction is Actual/Actual ([ICMA]))*
- (vii) Other terms relating to the method of calculating interest for Fixed Rate Pfandbrief Instruments: [Not Applicable/give details]
16. Floating Rate Instrument Provisions [Applicable/Not Applicable]
- (If not applicable, delete the remaining sub-paragraphs of this paragraph)*
- (i) Interest/Period(s): [•]
- (ii) Specified Interest Payment Dates: [•]
- (iii) Business Day Convention: [Floating Rate Convention/Following Business Day Convention/ Modified Following Business Day Convention/ Preceding Business Day Convention/ other *(give details)*]
- (iv) Business Centre(s): [•]
- (v) Manner in which the Rate(s) of Interest is/are to be determined: [Screen Rate Determination/ISDA Determination/other *(give details)*]
- (vi) Party responsible for calculating the Rate(s) of Interest and Interest Amount(s): [Agent/Issuer/other *( include name and address)*]
- (vii) Screen Rate Determination:
- Reference Rate: [•]
  - Interest Determination Date(s): [•]
  - Relevant Screen Page: [•]

- (viii) ISDA Determination:
- Floating Rate Option: [•]
  - Designated Maturity: [•]
  - Reset Date: [•]
- (ix) Margin(s): [ +/- ][•] per cent. per annum
- (x) Minimum Rate of Interest: [•] per cent. per annum
- (xi) Maximum Rate of Interest: [•] per cent. per annum
- (xii) Day Count Fraction: [•]
- (xiii) Fall back provisions, rounding provisions, denominator and any other terms relating to the method of calculating interest on Floating Rate Pfandbrief Instruments, if different from those set out in the Conditions: [•]
17. **Zero Coupon Pfandbrief Instrument Provisions** [Applicable/Not Applicable]
- (If not applicable, delete the remaining sub-paragraphs of this paragraph)*
- (i) [Amortisation/Accrual] Yield: [•] per cent. per annum
  - (ii) Reference Price: [•]
  - (iii) Any other formula/basis of determining amount payable: [•]
18. **Index-Linked Interest Pfandbrief Instrument/other variable-linked interest Pfandbrief Instrument Provisions<sup>2</sup>** [Applicable/Not Applicable]
- (If not applicable, delete the remaining sub-paragraphs of this paragraph)*
- (i) Index/Formula/Other variable: [give or annex details]
  - (ii) Calculation Agent responsible for calculating the interest due: [include name and address]
  - (iii) Provisions for determining Coupon where calculated by reference to Index and/or Formula and/or other variable: [•]
  - (iv) Determination Date(s): [•]
  - (v) Provisions for determining [•]

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<sup>2</sup> To the extent permitted by the German Pfandbrief Act

Coupon where calculation by reference to Index and/or Formula and/or other variable is impossible or impracticable or otherwise disrupted:

- (vi) Interest or calculation period(s): [•]
- (vii) Specified Interest Payment Dates: [•]
- (viii) Business Day Convention: [Floating Rate Convention/ Following Business Day Convention/ Modified Following Business Day Convention/ Preceding Business Day Convention/other (*give details*)]
- (ix) Business Centre(s): [•]
- (x) Minimum Rate/Amount of Interest: [•] per cent. per annum
- (xi) Maximum Rate/Amount of Interest: [•] per cent. per annum
- (xii) Day Count Fraction: [•]

**19. Dual Currency Pfandbrief Instrument Provisions**

[Applicable/Not Applicable]  
*(If not applicable, delete the remaining sub-paragraphs of this paragraph.)*  
*[give details]*

- (i) Rate of Exchange/method of calculating Rate of Exchange: [ ]
- (ii) Calculation Agent, if any, responsible for calculating the principal and/or interest due: [ ]
- (iii) Provisions applicable where calculation by reference to Rate of Exchange impossible or impracticable: [ ]
- (iv) Person at whose option Specified Currency(ies) is/are payable: [ ]

**PROVISIONS RELATING TO REDEMPTION**

**20. Call Option**

[Applicable/Not Applicable]  
*(If not applicable, delete the remaining sub-paragraphs of this paragraph.)*

- (i) Optional Redemption Date(s): [•]
- (ii) Optional Redemption Amount(s) of each Pfandbrief Instrument and method, if any, of calculation of such amount(s): [•] per Pfandbrief Instrument of [•] specified denomination
- (iii) If redeemable in part:
- (a) Minimum Redemption Amount: [•]
- (b) Maximum Redemption Amount: [•]
- (iv) Notice period [•]
21. **Final Redemption Amount of each Pfandbrief Instrument** [Redemption at par]
- [Other (*specify*)]<sup>3</sup>

#### GENERAL PROVISIONS APPLICABLE TO THE PFANDBRIEF INSTRUMENTS

22. **Form of Pfandbrief Instruments:** [•]
- [Temporary Global Pfandbrief Instrument exchangeable for a Permanent Global Pfandbrief Instrument]
- [Permanent Global Pfandbrief Instrument]
23. New Global Pfandbrief Instrument [Yes/No]<sup>4</sup>
24. Additional Financial Centre(s) or other special provisions relating to Payment Dates: [Not Applicable/*give details. Note that this item relates to the date and place of payment, and not interest period end dates, to which items 15 (ii), 16(iv) and 18 (ix) relates*]
25. Details relating to Partly Paid Pfandbrief Instruments: amount of each payment comprising the Issue price and date on which each payment is to be made [and consequences (if any) of failure to pay, including any right of the Issuer to forfeit the

<sup>3</sup> To the extent permitted by the German Pfandbrief Act.

<sup>4</sup> N.B. Pfandbrief Instruments issued in CGI form may be eligible collateral for ECB operations where the CGI is delivered directly to CBF.

Pfandbrief Instruments and interest due on late payment]:

26. Details relating to Instalment Pfandbrief Instruments: amount of each instalment, date on which each payment is to be made: [Not applicable/*give details*]
28. Other final terms: [Not Applicable/*give details*]  
*(When adding any other final terms consideration should be given as to whether such terms constitute "significant new factors" and consequently trigger the need for a supplement to the Prospectus under Article 16 of the Prospectus Directive.)*

## DISTRIBUTION

29. (i) If syndicated, names [and addresses]<sup>5</sup> of Managers [and underwriting commitments]<sup>5</sup>: [Not applicable/*give names, [addresses and underwriting commitments]*]  
*(Include names and addresses of entities agreeing to underwrite the issue on a firm commitment basis and names and addresses of the entities agreeing to place the issue without a firm commitment or on a "best efforts" basis if such entities are not the same as the Managers.)<sup>5</sup>*
- (ii) Date of [Subscription] Agreement: [•]
- (iii) Stabilising Manager(s) (if any): [Not Applicable/*give name*]
30. If non-syndicated, name [*and address*] of Dealer<sup>5</sup>: [Not Applicable/*give name and address*]
31. [Total commission and concession: [•] per cent. Of the Aggregate Nominal Amount]<sup>5</sup>

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<sup>5</sup> Only applicable to Tranches of Pfandbrief Instruments with denomination of less than EUR 50,000 or equivalent in other currencies.

32. Non-exempt Offer:<sup>6</sup> [Not Applicable] [An offer of the Pfandbrief Instruments may be made by the Managers [and [*specify, if applicable*]] other than pursuant to Article 3(2) of the Prospectus directive in [*specify relevant Member State(s) - which must be jurisdictions where the Prospectus and any supplements have been passported*] (Public Offer Jurisdictions) during the period from [*specify date*] until [*specify date*] (Offer Period).
33. Additional selling restrictions: [Not Applicable/*give details*]

## **[LISTING AND ADMISSION TO TRADING APPLICATION**

These Final Terms comprise the final terms required to list and have admitted to trading the issue of Pfandbrief Instruments described herein pursuant to the EUR 45,000,000,000 Programme for the Issuance of Debt Instruments of DEPFA BANK plc and DEPFA Deutsche Pfandbriefbank AG.]

## **RESPONSIBILITY**

The Issuer accepts responsibility for the information contained in these Final Terms. [• has been extracted from •. The Issuer confirms that such information has been accurately reproduced and that, so far as it is aware, and is able to ascertain from information published by •, no facts have been omitted which would render the reproduced inaccurate or misleading.]

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<sup>6</sup> Consider any local regulatory requirements necessary to be fulfilled so as to be able to make a non-exempt offer in relevant jurisdictions. No such offer should be made in any relevant jurisdiction until those requirements have been met. Non-exempt offers may only be made into jurisdictions in which the Base Prospectus (and any supplement) has been notified/passported. Consider including details of parties (if any) other than the Managers making non-exempt offers in relevant jurisdictions, to the extent known to the Issuer (see Paragraph 5.4.1 of Annex V of the PD Regulation). Alternatively, consider a generic description of other parties involved in non-exempt offers (e.g. other parties authorized by the Managers) or (if relevant) note that other parties may make non-exempt offers in the specified jurisdictions during the offer period, in each case if not known to the Issuer.

The start date for non-exempt offers will typically be no earlier than the publication date of the Final Terms. The start date in certain jurisdictions may need to be delayed until after compliance with any local requirements (e.g. publication of newspaper notices and accordingly may not necessarily be an actual date. For example, it could instead of a specific date be expressed as "the business day following publication of the [*relevant notice*]" or similar. The end date will be as agreed between the Issuer and the Managers.

## PART B - OTHER INFORMATION

### 1. LISTING

- (i) Listing: [Irish Stock Exchange/other  
(specify)/None]
- (ii) Admission to trading: [Application has been made for the  
Pfandbrief Instruments to be admitted to  
trading on [] with effect from [].] [Not  
Applicable.]  
*(Where documenting a fungible issue  
need to indicate that original securities  
are already admitted to trading.)*
- [(iii) Estimate of total expenses  
related to admission to trading] [•]<sup>7</sup>

### 2. RATINGS

- Ratings:** The Pfandbrief Instruments to be issued  
have been rated:  
[S & P: [•]]  
[Moody's: [•]]  
[[Other]: [•]]  
*[Need to include a brief explanation of  
the meaning of the ratings if this has  
previously been published by the rating  
provider.]<sup>7</sup>*  
*(The above disclosure should reflect the  
rating allocated to Pfandbrief  
Instruments of the type being issued  
under the Programme generally or,  
where the issue has been specifically  
rated, that rating.)*

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<sup>7</sup> Only applicable to Tranches of Pfandbrief Instruments with a denomination of less than EUR 50,000 or equivalent in other currencies.



3. **[NOTIFICATION]**

The Irish Stock Exchange Limited [has been requested to provide] [has provided]<sup>8</sup> the [include names of competent authorities of host Member States] with a certificate of approval attesting that the Prospectus has been drawn up in accordance with the Prospectus Directive.]

4. **[INTERESTS OF NATURAL AND LEGAL PERSONS INVOLVED IN THE [ISSUE/OFFER]**

*Need to include a description of any interest, including conflicting ones, that is material to the issue/offer, detailing the persons involved and the nature of the interest. May be satisfied by the inclusion of the following statement:*

*"Save as discussed in ["Subscription and Sale "], so far as the Issuer is aware, no person involved in the offer of the Notes has an interest material to the offer."*

5. **REASONS FOR THE OFFER, ESTIMATED NET PROCEEDS AND TOTAL EXPENSES<sup>9</sup>**

[(i) Reasons for the offer [•]  
*(See ["Use of Proceeds"] wording in Prospectus - if reasons for offer different from making profit and/or hedging certain risks will need to include those reasons here.)]*

[(ii) ] Estimated net proceeds: [•]  
*(If proceeds are intended for more than one use will need to split out and present in order of priority. If proceeds insufficient to fund all proposed uses state amount and sources of other funding.)*

[(iii) ] Estimate of total expenses: [If the Pfandbrief Instruments are derivative securities to which Annex XII of the Prospectus Directive Regulation (Regulation 809/2004) (the "Prospectus Directive Regulation") applies it is only necessary to include disclosure of net proceeds and total expenses at (ii) and (iii) above where disclosure is included

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<sup>8</sup> Include first alternative for an issue which is contemporaneous with the establishment or update of the Programme and the second alternative for subsequent issues

<sup>9</sup> Only applicable to Tranches of Pfandbrief Instruments with a denomination of less than EUR 50,000 or equivalent in other currencies.

at (i) above.]

6. **[FIXED RATE PFANDBRIEF INSTRUMENTS ONLY - YIELD**

Indication of yield:

[•]

[Calculated as *[include details of method of calculation in summary form]* on the Issue Date.]<sup>10</sup>

[As set out above, the [The] yield is calculated at the Issue Date on the basis of the Issue Price. It is not an indication of future yield.]

7. **[FLOATING RATE PFANDBRIEF INSTRUMENTS ONLY - HISTORIC INTEREST RATES**

Details of historic [LIBOR/EURIBOR/other] rates can be obtained from [Reuters].]

8. ***[Index-Linked or other variable-linked Pfandbrief Instruments only - PERFORMANCE OF INDEX/ FORMULA/other Variable***<sup>11</sup>, **[EXPLANATION OF EFFECT ON VALUE OF INVESTMENT AND ASSOCIATED RISKS] AND OTHER INFORMATION CONCERNING THE UNDERLYING**

*Need to include details of where past and future performance and volatility of the index/formula/other variable can be obtained [and a clear and comprehensive explanation of how the value of the investment is affected by the underlying and the circumstances when the risks are most evident]. [Where the underlying is an index need to include the name of the index and a description if composed by the Issuer and if the index is not composed by the Issuer need to include details of where the information about the index can be obtained. Where the underlying is not an index need to include equivalent information.]<sup>12</sup>*

*[(When completing this paragraph, consideration should be given as to whether such matters described constitute "significant new factors" and consequently trigger the need for a supplement to the Prospectus under Article 16 of the Prospectus Directive.)]*

The Issuer [intends to provide post-issuance information in relation to the [Pfandbrief Instruments/Underlying] *[specify what information will be reported and where it can be obtained]*] [does not intend to provide post-issuance information].

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<sup>10</sup> Only applicable to Tranches of Pfandbrief Instruments with a denomination of less than EUR 50,000 or equivalent in other currencies.

<sup>11</sup> To the extent permitted by the German Pfandbrief Act.

<sup>12</sup> Required for derivative securities to which Annex XII to the Prospectus Directive Regulation applies.

9. **[Dual Currency Pfandbrief Instruments only - PERFORMANCE OF RATE[S] OF EXCHANGE AND EXPLANATION OF EFFECT ON VALUE OF INVESTMENT**

*Need to include details of where past and future performance and volatility of the relevant rate[s] can be obtained [and a clear and comprehensive explanation of how the value of the investment is affected by the underlying and the circumstances when the risks are most evident.]<sup>12</sup> ]*

**10. OPERATIONAL INFORMATION**

ISIN Code:	[•]
Common Code:	[•]
New Global Pfandbrief Instrument intended to be held in a manner which would allow Eurosystem eligibility:	[Not Applicable/Yes/No] Note that the designation "Yes" simply means that the Instruments are intended upon issue to be deposited with Euroclear or Clearstream, Luxembourg as common safe-keeper and does not necessarily mean that the Instruments will be recognised as eligible collateral for Eurosystem monetary policy and intra-day credit operations by the Eurosystem either upon issue or at any or all times during their life. Such recognition will depend upon satisfaction of the Eurosystem eligibility criteria. <i>[Include this text if "Yes" selected in which case the Instruments must be issued in NGI form]</i>
German Securities Code (WKN):	[•]
Any clearing system(s) other than Euroclear Bank SA/NV and Clearstream Banking Societe Anonyme and the relevant identification number(s):	[Clearstream Banking AG, Frankfurt am Main/Not Applicable/ give name(s) and number(s)]
Delivery:	Delivery [against/free of] payment
German Fiscal Agent:	Deutsche Bank Aktiengesellschaft <sup>13</sup>
Names and addresses of additional Paying Agent(s) (if any):	[•]

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<sup>13</sup>The Issuer is the Pfandbriefbank so "German Fiscal Agent" and "Deutsche Bank Aktiengesellschaft" must be selected as a Fiscal Agent based in Germany is required.

[11. **TERMS AND CONDITIONS OF THE OFFER**]<sup>14</sup>

Offer Price:	[Issue Price][ <i>specify</i> ]
Conditions to which the offer is subject:	[Not Applicable/ <i>give details</i> ]
Description of the application process:	[Not Applicable/ <i>give details</i> ]
Description of possibility to reduce subscriptions and manner for refunding excess amount paid by applicants:	[Not Applicable/ <i>give details</i> ]
Details of the minimum and/or maximum amount of application:	[Not Applicable/ <i>give details</i> ]
Details of the method and time limits for paying up and delivering the Pfandbrief Instruments:	[Not Applicable/ <i>give details</i> ]
Manner in and date on which results of the offer are to be made public:	[Not Applicable/ <i>give details</i> ]
Procedure for exercise of any right of pre-emption, negotiability of subscription rights and treatment of subscription rights not exercised:	[Not Applicable/ <i>give details</i> ]
Categories of potential investors to which the Pfandbrief Instruments are offered and whether tranche(s) have been reserved for certain countries:	[Not Applicable/ <i>give details</i> ]
Process for notification to applicants of the amount allotted and the indication whether dealing may begin before notification is made:	[Not Applicable/ <i>give details</i> ]
Amount of any expenses and taxes specifically charged to the subscriber or purchaser:	[Not Applicable/ <i>give details</i> ]

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<sup>14</sup> NB only to be included for Tranches of Pfandbrief Instruments with a denomination of less than EUR50,000 or equivalent in other currencies.

Name(s) and address(es), to the extent [None/*give details*]  
known to the Issuer, of the placers in  
the various countries where the offer  
takes place.

Signed on behalf of the Issuer:

By:

Duly authorised]

## PRO FORMA FINAL TERMS FOR ACS INSTRUMENTS

Final Terms dated [•]

DEPFA ACS BANK

### Issue of [Aggregate Nominal Amount of Tranche] [Title of ACS Instruments] under the EUR 45,000,000,000 Programme for the Issuance of Debt Instruments

[The Prospectus (as completed by these Final Terms) has been prepared on the basis that, except as provided in sub-paragraph (ii) below, any offer of ACS Instruments in any Member State of the European Economic Area which has implemented the Prospectus Directive (Directive 2003/71/EC) (the "Prospectus Directive") (each, a "Relevant Member State") will be made pursuant to an exemption under the Prospectus Directive, as implemented in that Relevant Member State, from the requirement to publish a prospectus for offers of the ACS Instruments. Accordingly any person making or intending to make an offer of the ACS Instruments may only do so in:

- (i) circumstances in which no obligation arises for the Issuer or any Dealer to publish a prospectus pursuant to Article 3 of the Prospectus Directive or supplement a prospectus pursuant to Article 16 of the Prospectus Directive, in each case, in relation to such offer; or
- (ii) those Public Offer Jurisdictions mentioned in Paragraph 37 of Part A below, provided such person is one of the persons mentioned in Paragraph 37 of part A below and that such offer is made during the Offer Period specified for such purpose therein.

Neither the Issuer nor any Dealer has authorised, nor do they authorise, the making of any offer of ACS Instruments in any other circumstances]. *[Include this legend where a non-exempt offer of ACS Instruments is anticipated].*

[The Prospectus (as completed by these Final Terms) has been prepared on the basis that any offer of ACS Instruments in any Member State of the European Economic Area which has implemented the Prospectus Directive (Directive 2003/71/EC) (the "Prospectus Directive") (each, a "Relevant Member State") will be made pursuant to an exemption under the Prospectus Directive, as implemented in that Relevant Member State, from the requirement to publish a prospectus for offers of the ACS Instruments. Accordingly any person making or intending to make an offer in that relevant Member State of the ACS Instruments may only do so in circumstances in which no obligation arises for the Issuer or any Dealer to publish a prospectus pursuant to Article 3 of the Prospectus Directive or supplement or prospectus pursuant to Article 16 of the Prospectus Directive, in each case, in relation to such offer. Neither the Issuer nor any Dealer has authorised, nor do they authorise, the making of any offer of ACS Instruments in any other circumstances] or supplement or prospectus pursuant to Article 16 of the Prospectus Directive.] *[Include this legend where an exempt offer of ACS Instruments is anticipated].*

## PART A – CONTRACTUAL TERMS

Terms used herein shall be deemed to be defined as such for the purposes of the Conditions set forth in the Prospectus dated [•] [and the supplement to the Prospectus dated [•] which [together] constitute[s] a base prospectus for the purposes of the Prospectus Directive (Directive

2003/71/EC) (the "Prospectus Directive"). This document constitutes the Final Terms of the ACS Instruments described herein for the purposes of Article 5.4 of the Prospectus Directive and must be read in conjunction with such Prospectus [as so supplemented]. Full information on the Issuer and the offer of the ACS Instruments is only available on the basis of the combination of these Final Terms and the Prospectus. [The Prospectus [and the supplement to the Prospectus] [is] [are] available for viewing at [address] [and] [website] and copies may be obtained from [address].] [No website referred to in these Final Terms and the Prospectus forms part of these Final Terms and the Prospectus.]

*The following alternative language applies if the first tranche of an issue which is being increased was issued under a Prospectus with an earlier date.*

Terms used herein shall be deemed to be defined as such for the purposes of the Conditions (the "Conditions") set forth [in the [Information Memorandum/Prospectus] dated [•] [and the supplement to the Prospectus dated [•] which have been incorporated by reference in, and form part of the Prospectus dated 9 May 2008]. This document constitutes the Final Terms of the ACS Instruments described herein for the purposes of Article 5.4 of the Prospectus Directive (Directive 2003/71/EC) (the "Prospectus Directive") and must be read in conjunction with the Prospectus dated [current date] [and the supplement to the Prospectus dated [•], which [together] constitute[s] a base prospectus for the purposes of the Prospectus Directive, save in respect of the [Conditions which are extracted from the [Information Memorandum/Prospectus] dated [Original Date] and are attached hereto. Full information on the Issuer and the offer of the ACS Instruments is only available on the basis of the combination of these Final Terms and the Prospectuses dated [original date] and [current date] [and the supplement[s] to the Prospectuses dated [•] and [•].] [The Prospectuses [and the supplement to the Prospectuses] are available for viewing at [address] [and] [website] and copies may be obtained from [address].]

*[Include whichever of the following apply or specify as "Not Applicable" (N/A). Note that the numbering should remain as set out below, even if "Not Applicable" is indicated for individual paragraphs or sub-paragraphs. Italics denote guidance for completing the Final Terms.]*

[When completing any final terms, or adding any other final terms or information, consideration should be given as to whether such terms or information constitute "significant new factors" and consequently trigger the need for a supplement to the Prospectus under Article 16 of the Prospectus Directive.]

- |    |                      |                |
|----|----------------------|----------------|
| 1. | Issuer:              | DEPFA ACS BANK |
| 2. | [i] Series Number:   | [•]            |
|    | [ii] Tranche Number: | [•]            |

*(If fungible with an existing Tranche, details of that Tranche, including the date on which the ACS Instruments become fungible).]*

3. Specified Currency or Currencies: [•]
4. Aggregate Nominal Amount: [•]
- [(i)] Series: [•]
- [(ii)] Tranche: [•]
5. Issue Price: [•] per cent. of the Aggregate Nominal Amount  
[plus accrued interest from *[insert date]* (if applicable)]
6. (i) Specified Denominations: [•]
- [(ii)] Calculation Amount: [•]
7. [(i)] Issue Date: [•]
- [(ii)] Interest Commencement Date [*specify*/Issue Date/Not Applicable]
8. Maturity Date: [*specify date or (for Floating Rate ACS Instruments) Interest Payment Date falling in or nearest to the relevant month and year*]
9. Interest Basis: [• per cent. Fixed Rate]
- [[*specify reference rate*] +/- • per cent. Floating Rate]
- [Zero Coupon]
- [Index-Linked Interest]
- [Other (*specify*)]
- (further particulars specified below)
10. Redemption/Payment Basis: [Redemption at par]
- [Index-Linked Redemption]
- [Dual Currency]
- [Partly Paid]
- [Instalment]
- [Other (*specify*)]



11. Change of Interest or Redemption/  
Payment Basis: *[Specify details of any provision for  
convertibility of ACS Instruments into another  
interest or redemption/ payment basis]*
12. Call Options: [Issuer Call]  
  
[(further particulars specified below)]
13. [(i)] Status of the ACS Instruments: Unsubordinated
- [(ii)] [Date [Board] approval for  
issuance of ACS Instruments  
obtained: [•]  
*(N.B Only relevant where Board (or similar)  
authorisation is required for the particular  
tranche of ACS Instruments)*
14. Method of distribution: [Syndicated/Non-syndicated]

#### **PROVISIONS RELATING TO INTEREST (IF ANY) PAYABLE**

15. **Fixed Rate ACS Instrument  
Provisions** [Applicable/Not Applicable]  
*(If not applicable, delete the remaining sub-  
paragraphs of this paragraph)*
- (i) Rate[(s)] of Interest: [•] per cent. per annum [payable  
[annually/semi-annually/ quarterly/monthly] in  
arrear]
- (ii) Interest Payment Date(s): [•] in each year [adjusted in accordance with  
*[specify Business Day Convention and any  
applicable Business Centre(s) for the definition  
of "Business Day"]*]/not adjusted]
- (iii) Fixed Coupon Amount[(s)]: [•] per Calculation Amount
- (iv) Broken Amount(s): [•] per Calculation Amount, payable on the  
Interest Payment Date falling [in/on] [•]
- (v) Day Count Fraction: [30/360 / Actual/Actual ([ICMA]/ISDA) /  
other]
- (vi) Determination Dates: [•] in each year *(insert regular interest  
payment dates, ignoring issue date or maturity  
date in the case of a long or short first or last  
coupon. N.B. only relevant where Day Count  
Fraction is Actual/Actual ([ICMA]))*

- (vii) Other terms relating to the method of calculating interest for Fixed Rate ACS Instruments: [Not Applicable/*give details*]
16. **Floating Rate Instrument Provisions** [Applicable/Not Applicable]
- (If not applicable, delete the remaining subparagraphs of this paragraph)*
- (i) Interest Period(s) [•]
- (ii) Specified Interest Payment Dates: [•]
- (iii) Business Day Convention: [Floating Rate Convention/ Following Business Day Convention/ Modified Following Business Day Convention/ Preceding Business Day Convention/ other (*give details*)]
- (iv) Business Centre(s): [•]
- (v) Manner in which the Rate(s) of Interest is/are to be determined: [Screen Rate Determination/ISDA Determination/other (*give details*)]
- (vi) Party responsible for calculating the Rate(s) of Interest and Interest Amount(s) (if not the [Agent]): [*include name and address*]
- (vii) Screen Rate Determination:
- Reference Rate: [•].
  - Interest Determination Date(s): [•]
  - Relevant Screen Page: [•]
- (viii) ISDA Determination:
- Floating Rate Option: [•]
  - Designated Maturity: [•]
  - Reset Date: [•]
- (ix) Margin(s): [+/-][•] per cent. per annum

- (x) Minimum Rate of Interest: [•] per cent. per annum
  - (xi) Maximum Rate of Interest: [•] per cent. per annum
  - (xii) Day Count Fraction: [•]
  - (xiii) Fall back provisions, rounding provisions, denominator and any other terms relating to the method of calculating interest on Floating Rate ACS Instruments, if different from those set out in the Conditions: [•]
17. **Zero Coupon ACS Instrument Provisions** [Applicable/Not Applicable]
- (If not applicable, delete the remaining subparagraphs of this paragraph)*
- (i) [Amortisation/Accrual] Yield: [•] per cent. per annum
  - (ii) Reference Price: [•]
  - (iii) Any other formula/basis of determining amount payable: [•]
18. **Index-Linked Interest ACS Instrument/other variable-linked interest ACS Instrument Provisions** [Applicable/Not Applicable]
- (If not applicable, delete the remaining subparagraphs of this paragraph)*
- (i) Index/Formula/Other variable: [give or annex details]
  - (ii) Party responsible for calculating the Rate(s) of Interest and/or Interest Amount(s) (if not the Agent): [include name and address]
  - (iii) Provisions for determining Coupon where calculated by reference to Index and/or Formula and/or other variable: [•]
  - (iv) Determination Date(s): [•]
- [•]

- (v) Provisions for determining Coupon where calculation by reference to Index and/or Formula and/or other variable is impossible or impracticable or otherwise disrupted: [•]
- (vi) Interest or calculation period(s): [•]
- (vii) Specified Interest Payment Dates: [•]
- (viii) Business Day Convention: [Floating Rate Convention/ Following Business Day Convention/ Modified Following Business Day Convention/Preceding Business Day Convention/other (*give details*)]
- (ix) Business Centre(s): [•]
- (x) Minimum Rate/Amount of Interest: [•] per cent. per annum
- (xi) Maximum Rate/Amount of Interest: [•] per cent. per annum
- (xii) Day Count Fraction: [•]
19. **Dual Currency ACS Instrument Provisions** [Applicable/Not Applicable]  
*(If not applicable, delete the remaining subparagraphs of this paragraph)*
- (i) Rate of Exchange/method of calculating Rate of Exchange: [*give details*]
- (ii) Party, if any, responsible for calculating the principal and/or interest due (if not the [Agent]): [•]
- (iii) Provisions applicable where calculation by reference to Rate of Exchange impossible or impracticable:
- (iv) Person at whose option Specified Currency(ies) is/are payable: [•]

## PROVISIONS RELATING TO REDEMPTION

- 20. Call Option** [Applicable/Not Applicable]
- (If not applicable, delete the remaining subparagraphs of this paragraph)*
- (i) Optional Redemption Date(s): [•]
  - (ii) Optional Redemption Amount (s) of each ACS Instrument and method, if any, of calculation of such amount(s): [•] per Calculation Amount
  - (iii) If redeemable in part:
    - (a) Minimum Redemption Amount: [•] per Calculation Amount
    - (b) Maximum Redemption Amount: [•] per Calculation Amount
  - (iv) Notice period [•]
- 21. Put Option** [Applicable/Not Applicable]
- (If not applicable, delete the remaining subparagraphs of this paragraph)*
- (i) Optional Redemption Date(s) (Put): [•]
  - (ii) Optional Redemption Amount(s) of each ACS Instrument and method, if any, of calculation of such amount(s): [•] per Calculation Amount
  - (iii) Notice Period [•]
- 22. Final Redemption Amount of each ACS Instrument** [•] per Calculation Amount
- In cases where the Final Redemption Amount is Index-Linked or other variable-linked:
- (i) Index/Formula/variable: [give or annex details]

- (ii) Party responsible for calculating the Final Redemption Amount (if not the Agent): [•]
- (iii) Provisions for determining Final Redemption Amount where calculated by reference to Index and/or Formula and/or other variable: [•]
- (iv) Determination Date(s): [•]
- (v) Provisions for determining Final Redemption Amount where calculation by reference to Index and/or Formula and/or other variable is impossible or impracticable or otherwise disrupted: [•]
- (vi) Payment Date: [•]
- (vii) Minimum Final Redemption Amount: [•] per Calculation Amount
- (viii) Maximum Final Redemption Amount: [•] per Calculation Amount

## GENERAL PROVISIONS APPLICABLE TO THE ACS INSTRUMENTS

- 23. **Form of ACS Instruments:** [•]  
  - [Temporary Global ACS Instrument exchangeable for a Permanent Global ACS Instrument]
  - [Permanent Global Instrument]
- 24. New Global ACS Instrument: [Yes/No]<sup>1</sup>
- 25. Additional Financial Centre(s) or other special provisions relating to Payment Dates: [Not Applicable/give details. Note that this item relates to the date and place of payment, and not interest period end dates, to which items 15(ii), 16(iv) and 18(ix) relates]

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<sup>1</sup> N.B. ACS Instruments issued in CGI form may be eligible collateral for ECB operations where the CGI is delivered directly to CBF.

26. Details relating to Partly Paid ACS Instruments: amount of each payment comprising the Issue Price and date on which each payment is to be made [and consequences (if any) of failure to pay, including any right of the Issuer to forfeit the ACS Instruments and interest due on late payment]: [Not Applicable/give details]
27. Details relating to Instalment ACS Instruments: amount of each instalment, date on which each payment is to be made: [Not Applicable/give details]
28. Other final terms: [Not Applicable/give details]
- (When adding any other final terms consideration should be given as to whether such terms constitute "significant new factors" and consequently trigger the need for a supplement to the Prospectus under Article 16 of the Prospectus Directive.)*

## DISTRIBUTION

29. (i) If syndicated, names [and addresses] of Managers [and underwriting commitments]: [Not Applicable/give names[, addresses and underwriting commitments]]<sup>2</sup>
- [(Include names and addresses of entities agreeing to underwrite the issue on a firm commitment basis and names and addresses of the entities agreeing to place the issue without a firm commitment or on a "best efforts" basis if such entities are not the same as the Managers.)]<sup>2</sup>*
- [(ii) Date of [Subscription] Agreement: [•]]<sup>2</sup>
- (iii) Stabilising Manager(s) (if any): [Not Applicable/give name]
30. If non-syndicated, name [and address]<sup>2</sup> of Dealer: [Not Applicable/give name and address]

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<sup>2</sup> Only applicable to Tranches of ACS Instruments with a denomination of less than EUR 50,000 or equivalent in other currencies.

31. [Total commission and concession: [•] per cent. of the Aggregate Nominal Amount]<sup>2</sup>
32. U.S. selling restrictions: [Not Applicable/give details]
33. Non-exempt Offer: [Not Applicable][An offer of the ACS Instruments may be made by the Managers [and *[specify, if applicable]*] other than pursuant to Article 3(2) of the Prospectus Directive in *[specify relevant Members State(s) - which must be jurisdictions where the Prospectus and any supplements have been passported]* ("Public Offer Jurisdictions") during the period from *[specify date]* until *[specify date]* ("Offer Period"). See further paragraph 10 of Part B below.<sup>3</sup>
34. Additional Selling Restrictions: [Not applicable/give details]

## **[LISTING AND ADMISSION TO TRADING APPLICATION**

These Final Terms comprise the final terms required to list and have admitted to trading the issue of ACS Instruments described herein pursuant to the EUR 45,000,000,000 Programme for the Issuance of Debt Instruments of DEPFA BANK plc DEPFA Deutsche Pfandbriefbank AG and DEPFA ACS BANK.]

## **RESPONSIBILITY**

The Issuer accepts responsibility for the information contained in these Final Terms. [• has been extracted from •. The Issuer confirms that such information has been accurately reproduced and that, so far as it is aware, and is able to ascertain from information published by •, no facts have been omitted which would render the reproduced inaccurate or misleading.]

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<sup>3</sup> Consider any local regulatory requirements necessary to be fulfilled so as to be able to make a non-exempt offer in relevant jurisdictions. No such offer should be made in any relevant jurisdiction until those requirements have been met. Non-exempt offers may only be made into jurisdictions in which the Prospectus (and any supplement) has been notified/passported. Consider including details of parties (if any) other than the Managers making non-exempt offers in relevant jurisdictions, to the extent known to the Issuer (see Paragraph 5.4.1 of Annex V of the PD Regulation). Alternatively, consider a generic description of other parties involved in non-exempt offers (e.g. other parties authorized by the Managers) or (if relevant) note that other parties may make non-exempt offers in the specified jurisdictions during the offer period, in each case if not known to the Issuer. The start date for non-exempt offers will typically be no earlier than the publication date of the Final Terms. The start date in certain jurisdictions may need to be delayed until after compliance with any local requirements (e.g. publication of newspaper notices and accordingly may not necessarily be an actual date. For example, it could instead of a specific date be expressed as "the business day following publication of the [relevant notice]" or similar. The end date will be as agreed between the Issuer and the Managers.



## Part B - Other Information

### 1. LISTING

- (i) Listing: [Irish Stock Exchange/other (*specify*)/None]
- (ii) Admission to trading: [Application has been made for the ACS Instruments to be admitted to trading on [•] with effect from [•].] [Not Applicable.]

*(Where documenting a fungible issue need to indicate that original securities are already admitted to trading.)*

### 2. RATINGS

#### **Ratings:**

The ACS Instruments to be issued have been rated:

[S & P: [•]]

[Moody's: [•]]

[Fitch: [•]]

[[Other]: [•]]

*[Need to include a brief explanation of the meaning of the ratings if this has previously been published by the rating provider.]<sup>4</sup>*

*(The above disclosure should reflect the rating allocated to ACS Instruments of the type being issued under the Programme generally or, where the issue has been specifically rated, that rating.)*

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<sup>4</sup> Only applicable to Tranches of ACS Instruments with a denomination of less than EUR 50,000 or equivalent in other currencies.

### 3. [NOTIFICATION]

The Irish Stock Exchange Limited [has been requested to provide/has provided – include first alternative for an issue which is contemporaneous with the establishment or update of the Programme and the second alternative for subsequent issues] the [include names of competent authorities of host Member States] with a certificate of approval attesting that the Prospectus has been drawn up in accordance with the Prospectus Directive.]

### 4. [INTERESTS OF NATURAL AND LEGAL PERSONS INVOLVED IN THE [ISSUE/OFFER]

Need to include a description of any interest, including conflicting ones, that is material to the issue/offer, detailing the persons involved and the nature of the interest. May be satisfied by the inclusion of the following statement:

"Save as discussed in ["Subscription and Sale"], so far as the Issuer is aware, no person involved in the offer of the Notes has an interest material to the offer."

### 5. REASONS FOR THE OFFER, ESTIMATED NET PROCEEDS AND TOTAL EXPENSES<sup>4</sup>

[(i) Reasons for the offer [•]

*(See ["Use of Proceeds"] wording in Prospectus – if reasons for offer different from making profit and/or hedging certain risks will need to include those reasons here.)]*

[(ii) Estimated net proceeds: [•]

*(If proceeds are intended for more than one use will need to split out and present in order of priority. If proceeds insufficient to fund all proposed uses state amount and sources of other funding.)*

[(iii) Estimate of total expenses: *[If the ACS Instruments are derivative securities to which Annex XII of the Prospectus Directive Regulation (Regulation 809/2004) (the "Prospectus Directive Regulation") applies it is only necessary to include disclosure of net proceeds and total expenses at t (ii) and (iii) above where disclosure is included at (i) above.]*

## 6. [FIXED RATE ACS INSTRUMENTS ONLY – YIELD

Indication of yield:

[•]

[Calculated as [*include details of method of calculation in summary form*] on the Issue Date.]<sup>5</sup>

[As set out above, the]<sup>5</sup> [The] yield is calculated at the Issue Date on the basis of the Issue Price. It is not an indication of future yield.]

## 7. [FLOATING RATE ACS INSTRUMENTS ONLY – HISTORIC INTEREST RATES

Details of historic [LIBOR/EURIBOR/other] rates can be obtained from [Reuters].]<sup>5</sup>

## 8. [*Index-Linked or other variable-linked ACS Instruments only* – PERFORMANCE OF INDEX/ FORMULA/other Variable], EXPLANATION OF EFFECT ON VALUE OF INVESTMENT AND ASSOCIATED RISKS] AND OTHER INFORMATION CONCERNING THE UNDERLYING

*Need to include details of where past and future performance and volatility of the index/formula/other variable can be obtained [and a clear and comprehensive explanation of how the value of the investment is affected by the underlying and the circumstances when the risks are most evident. [Where the underlying is an index need to include the name of the index and a description if composed by the Issuer and if the index is not composed by the Issuer need to include details of where the information about the index can be obtained. Where the underlying is not an index need to include equivalent information. Include other information concerning the underlying required by Paragraph 4.2 of Annex XII of the Prospectus Directive Regulation.]<sup>6</sup>*

*[(When completing this paragraph, consideration should be given as to whether such matters described constitute "significant new factors" and consequently trigger the need for a supplement to the Prospectus under Article 16 of the Prospectus Directive.)]*

The Issuer [intends to provide post-issuance information in relation to the [ACS Instruments/Underlying] [*specify what information will be reported and where it can be obtained*]][does not intend to provide post-issuance information].

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<sup>5</sup> Only applicable to Tranches of ACS Instruments with a denomination of less than EUR50,000 or equivalent in other currencies.

<sup>6</sup> Required for derivative securities to which Annex XII to the Prospectus Directive Regulation applies.

**9. [Dual Currency ACS Instruments only – PERFORMANCE OF RATE[S] OF EXCHANGE AND EXPLANATION OF EFFECT ON VALUE OF INVESTMENT**

*Need to include details of where past and future performance and volatility of the relevant rate[s] can be obtained [and a clear and comprehensive explanation of how the value of the investment is affected by the underlying and the circumstances when the risks are most evident.]<sup>7</sup>*

*[(When completing this paragraph, consideration should be given as to whether such matters described constitute "significant new factors" and consequently trigger the need for a supplement to the Prospectus under Article 16 of the Prospectus Directive.)]*

**10. OPERATIONAL INFORMATION**

ISIN Code: [•]

Common Code: [•]

New Global ACS Instrument intended to be held in a manner which would allow Eurosystem eligibility: [Not Applicable/Yes/No]

Note that the designation "Yes" simply means that the ACS Instruments are intended upon issue to be deposited with Euroclear or Clearstream, Luxembourg as common safe-keeper and does not necessarily mean that the Instruments will be recognised as eligible collateral for Eurosystem monetary policy and intra-day credit operations by the Eurosystem either upon issue or at any or all times during their life. Such recognition will depend upon satisfaction of the Eurosystem eligibility criteria. [Include this text if "Yes" selected in which case the Instruments must be issued in NGL form]

German Securities Code (WKN): [•]

Any clearing system(s) other than Euroclear Bank SA/NV and Clearstream Banking Societe Anonyme and the relevant identification numbers): [Clearstream Banking AG, Frankfurt am Main/Not Applicable/ give name(s) and number(s)]

Delivery: Delivery [against/free of] payment

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<sup>7</sup> Required for derivative securities to which Annex XII to the Prospectus Directive Regulation applies.

[Fiscal Agent/German Fiscal Agent] [Deutsche Bank AG, London Branch/Deutsche Bank Aktiengesellschaft]

Names and addresses of additional Paying Agent(s) (if any): [•]

[11. **TERMS AND CONDITIONS OF THE OFFER**]<sup>8</sup>

Offer Price: [Issue Price][*specify*]

Conditions to which the offer is subject: [Not Applicable/*give details*]

Description of the application process: [Not Applicable/*give details*]

Description of possibility to reduce subscriptions and manner for refunding excess amount paid by applicants: [Not Applicable/*give details*]

Details of the minimum and/or maximum amount of application: [Not Applicable/*give details*]

Details of the method and time limits for paying up and delivering the ACS Instruments: [Not Applicable/*give details*]

Manner in and date on which results of the offer are to be made public: [Not Applicable/*give details*]

Procedure for exercise of any right of pre-emption, negotiability of subscription rights and treatment of subscription rights not exercised: [Not Applicable/*give details*]

Categories of potential investors to which the ACS Instruments are offered and whether tranche(s) have been reserved for certain countries: [Not Applicable/*give details*]

Process for notification to applicants of the amount allotted and the indication whether dealing may begin before notification is made: [Not Applicable/*give details*]

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<sup>8</sup> NB only to be included for Tranches of ACS Instruments with a denomination of less than EUR50,000 or equivalent in other currencies.

Amount of any expenses and taxes specifically charged to the subscriber or purchaser:

[Not Applicable/*give details*]

Name(s) and address(es), to the extent known to the Issuer, of the placers in the various countries where the offer takes place.

[None/*give details*]

Signed on behalf of the Issuer:

By:

Duly authorised]

## **USE OF PROCEEDS**

The net proceeds from the issuance of each Tranche of Instruments issued on an unsubordinated basis and each Tranche of Pfandbrief Instruments and each Tranche of ACS Instruments (subject in the case of ACS Instruments to the requirements of the ACS Act) will be applied by the relevant Issuer to meet part of its financing requirements. The net proceeds from the issuance of each Tranche of Instruments issued on a subordinated basis will be used to strengthen the capital base of the relevant Issuer to support the continuing growth of its business.

## TAXATION

*The following is a general discussion of certain German and Irish tax consequences of the acquisition and ownership of Instruments, Pfandbrief Instruments and ACS Instruments, and certain aspects of the EU Savings Directive. It does not purport to be a comprehensive description of all tax considerations that may be relevant to a decision to purchase Instruments, Pfandbrief Instruments and ACS Instruments and, in particular, does not consider any specific facts or circumstances that may apply to a particular purchaser (including the tax consequences of holding the Instruments, Pfandbrief Instruments and ACS Instruments for investment funds and other tax exempt entities). This summary is based on the tax laws currently in force and as applied on the date of this Base Prospectus, which are subject to change, possibly with retroactive or retrospective effect. Certain provisions in German tax law (in particular in relation to the final withholding tax regime (Abgeltungsteuer)) have only been enacted recently and no published statements of the tax authorities or court decisions are available in this respect, so that there remain uncertainties as to interpretation of these provisions.*

***Prospective purchasers of Instruments, Pfandbrief Instruments and ACS Instruments are advised to consult their own tax advisers as to the tax consequences of the purchase, ownership and disposition of Instruments, Pfandbrief Instruments and ACS Instruments including the effect of any state or local taxes, under the tax laws of Germany, Ireland, and each country of which they are residents.***

### Germany

Any reference in the section on Taxation in Germany to Instruments includes Pfandbrief Instruments and ACS Instruments.

As under this Programme different types of Instruments may be issued, the tax treatment of such Instruments can be different due to their specific terms. Therefore, the following section only provides some very generic information on the possible tax treatment of the Instruments in Germany. As a consequence, with regard to specific types of Instruments issued under this Programme, the tax consequences of an acquisition, holding, sale and redemption might be more disadvantageous than described below. With regard to certain types of Instruments, neither official statements of the tax authorities nor court decisions exist, and it is not clear how these Instruments will be treated. Furthermore, there is often no consistent view in legal literature about the tax treatment of instruments like the Instruments, and it is neither intended nor possible to mention all different views in the following section. Where reference is made to statements of the tax authorities, it should be noted that the tax authorities may change their view even with retroactive effect and that the tax courts are not bound by circulars of the tax authorities and, therefore, may take a different view. Even if court decisions exist with regard to certain types of instruments, it is not certain that the same reasoning will apply to the Instruments due to certain peculiarities of such Instruments. Furthermore, the tax authorities may restrict the application of judgements of tax courts to the individual case with regard to which the judgement was rendered.



### *Taxation of German tax residents*

Persons (individuals and corporate entities) who are tax resident in Germany (in particular, persons having a residence, habitual abode, seat or place of management in Germany) are subject to income taxation (income tax or corporate income tax, as the case may be, plus solidarity surcharge thereon plus church tax, if applicable) on their worldwide income, regardless of its source, including interest from debt of any kind (such as the Instruments) and, in some cases, capital gains.

### *Private Instrument Holders (being individuals)*

The taxation of Instrument Holders (being individuals) holding the Instruments as private assets (the "Private Instrument Holders") will change as from the assessment period 2009.

### *Assessment period 2008*

With regard to the assessment period 2008, all interest paid under an Instrument is taxable. Accrued (unpaid) interest paid as a part of the sales price of the Instruments (the "Accrued Interest") is deemed to be interest and taxed accordingly. Furthermore, if an Instrument qualifies as a financial innovation (*Finanzinnovation*) and accordingly falls within the scope of section 20 para 2 no 4 of the German Income Tax Act ("ITA" – *Einkommensteuergesetz*) in the form applicable up to 31 December 2008, income received upon sale, transfer or redemption of such Instrument by a Private Instrument Holder is regarded as taxable interest income (the "Deemed Interest"). Deemed Interest will be calculated as part of sale proceeds or redemption amount which corresponds with the yield attributable to the holding period of the respective Private Instrument Holder reduced by the interest and Accrued Interest which has already been subject to income tax (*Besteuerung nach der Emissionsrendite*). If there is no yield under the Instrument or if the Private Instrument Holder is not able to bring evidence concerning such yield, Deemed Interest will be calculated as the difference between the proceeds from sale, assignment or redemption and the issue or purchase price (*Besteuerung nach der Marktrendite*). If such difference is negative, this may result in negative income from capital investments (*Einkünfte aus Kapitalvermögen*), which may be used to be set off against other income. Where the Instrument is issued in a currency other than euro, the difference will be computed in the foreign currency and will then be converted into euro.

Capital gains from the sale, transfer or redemption of an Instrument (which do not qualify as Deemed Interest or Accrued Interest) will only be taxable if the sale, transfer or redemption of such Instrument by the Private Instrument Holder occurs within one year after the acquisition of the Instrument (so-called private disposals within the meaning of section 23 ITA).

Capital losses from the sale or redemption of Instruments suffered within the one-year-holding-period are ring-fenced and, thus, can only be set off against capital gains from other private disposals. Capital losses suffered after the one-year-holding-period cannot be used at all to set them off against taxable capital gains from other assets or other taxable income.

The taxable income from the Instruments will be taxed at the Private Instrument Holder's individual income tax rate plus solidarity surcharge (*Solidaritätszuschlag*) thereon plus church tax, if applicable.

### *As from the assessment period 2009*

As from the assessment period 2009, all capital gains from the sale, transfer or redemption of an Instrument will be taxable, irrespective of whether or not the Instrument qualifies as a financial innovation or carries Accrued Interest and irrespective of the holding period (i.e. also if the Instrument has been held by the Private Instrument Holder for more than one year). Interest received under an Instrument will also be taxable.

With regard to income from capital investments (*Einkünfte aus Kapitalvermögen*), only a lump-sum of EUR 801 will be deductible as income-related expenses (*Werbungskosten*); the actual income-related expenses will not be deductible.

The taxable income from the Instruments will be taxed, in principle, at a flat income tax rate of 25% plus solidarity surcharge (*Solidaritätszuschlag*) thereon plus church tax, if applicable. Certain exemptions apply.

With regard to Instruments acquired before 1 January 2009, certain grandfathering rules apply, depending on the specific terms of such Instrument and certain other criteria.

### *Non-Private Instrument Holders*

Where the Instruments are held as business assets by individuals, corporations or other entities, interest income, Accrued and Deemed Interest, and capital gains will be subject to income tax or corporate income tax, as the case may be, plus solidarity surcharge thereon plus church tax (if applicable) and trade tax (if applicable).

Depending on the specific terms of the respective Instrument, the annual increase in value of the Instrument, as calculated at the time of acquisition, must be taken into account *pro rata temporis* as interest income.

If at maturity of an Instrument a physical delivery takes place instead of a cash-settlement, such delivery will be regarded as a taxable sale of the Instrument and the according capital gain will be subject to income tax or corporate income tax, as the case may be, plus solidarity surcharge thereon plus church tax (if applicable) and trade tax (if applicable).

### *Taxation of persons who are not tax resident in Germany*

Persons (individuals and corporate entities) who are not tax resident in Germany are subject to income tax or corporate income tax (plus solidarity surcharge thereon plus church tax, if applicable) and, if applicable, trade tax in Germany with interest, Deemed Interest and Accrued Interest and capital gains if (i) the Instruments are held as business assets of a German permanent establishment or a German permanent representative, (ii) proceeds received from the Instruments falls otherwise into a category of income from German sources under section 49 ITA or (iii) interest, Accrued Interest and Deemed Interest is paid upon physical presentation of the Instruments at the counter of a German credit institution or financial services institution, which term includes a German branch of a foreign credit institution or financial services institution but excludes a foreign branch of a German credit institution or financial services institution, or a German Issuer ("German Disbursing Agent").

As from 2009 onwards, with regard to income from capital investments (*Einkünfte aus Kapitalvermögen*), only a lump-sum of EUR 801 will be deductible as income-related expenses (*Werbungskosten*); the actual income-related expenses will not be deductible.

#### *German withholding tax*

A withholding tax on proceeds from capital investments (Kapitalertragsteuer) is imposed in Germany. The withholding tax provisions have been changed effective, in principle, for all proceeds received by an Instrument Holder after 31 December 2008.

Withholding tax will be levied if an Instrument is kept or administered by a German debtor or in a domestic securities deposit account by a German Disbursing Agent. As from 1 January 2009, the term German Disbursing Agent will also comprise securities trading businesses (*Wertpapierhandelsunternehmen*) and securities trading banks (*Wertpapierhandelsbanken*).

#### *Proceeds received before 1 January 2009*

With regard to proceeds received before 1 January 2009, only interest payments (including Accrued Interest and Deemed Interest) will be subject to withholding tax. Withholding tax will be levied, in principle, at a rate of 30 per cent. plus solidarity surcharge thereon at a rate of 5.5 per cent. If the proceeds are paid over the counter upon presentation of Instruments, withholding tax will be levied at a rate of 35 per cent. plus solidarity surcharge thereon at a rate of 5.5 per cent. The withholding tax (including solidarity surcharge) is an advance payment on the income tax liability if the recipient of the interest payment is subject to German income taxation by assessment.

#### *Proceeds received after 31 December 2008*

With regard to proceeds received after 31 December 2008, also proceeds from the sale, transfer or redemption of Instruments will be subject to withholding tax (unless the Instrument Holder is a German resident corporate entity and certain other prerequisites are met). Withholding tax will be levied at a flat withholding tax rate of 25 per cent. plus solidarity surcharge at a rate of 5.5 per cent. thereon plus church tax, if applicable. With regard to Private Instrument Holders, the withholding tax (including solidarity surcharge and church tax) is, in principle, a final tax and shall replace the Private Instrument Holder's income taxation by assessment. If no tax is withheld, the Private Instrument Holder is still obliged to file a tax return. With regard to Non-Private Instrument Holders, the withholding tax (including solidarity surcharge) is still an advance payment on the income tax liability if the recipient of the interest payment is subject to German income taxation by assessment. With regard to Instruments acquired before 1 January 2009, certain grandfathering rules apply, depending on the specific terms of such Instrument and certain other criteria.

#### *Tax base*

In the case of interest and Accrued Interest, withholding tax will be levied on the interest / Accrued Interest amount. As regards Deemed Interest (in 2008) and capital gains from the sale, transfer or redemption of Instruments (as from 2009 onwards), withholding tax will be levied on

an amount equal to the difference between the issue or purchase price of the Instrument and the redemption amount or sales proceeds if the Instrument Holder has kept the Instrument in a custodial account since the time of issuance or acquisition respectively. Otherwise, withholding tax is applied to 30 per cent. of the amounts paid in partial or final redemption of the Instrument or the proceeds from the sale of the Instrument. In computing the tax to be withheld, the German Disbursing Agent may deduct from the basis of the withholding tax any Accrued Interest previously paid by the Instrument Holder to the German Disbursing Agent during the same calendar year.

#### *Withholding exemption certificate and certificate of non-assessment*

In general, no withholding tax will be levied if the Instrument Holder is a Private Instrument Holder who filed a withholding exemption certificate (*Freistellungsauftrag*) with the German Disbursing Agent, but only to the extent the interest income and other taxable income from capital investments does not exceed the maximum exemption amount shown on the withholding exemption certificate. Similarly, no withholding tax will be deducted if the Instrument Holder has submitted to the German Disbursing Agent a certificate of non-assessment (*Nichtveranlagungsbescheinigung*) issued by the relevant local tax office.

#### *Non-German residents*

Persons who are not resident in Germany are, in principle, only subject to German withholding tax if, according to German income tax law, the proceeds received from the Instruments fall into a category of income from German sources under section 49 ITA (e.g. income effectively connected with a German trade or business or proceeds paid over the counter upon presentation of Instruments).

#### *Taxation if Instruments qualify as equity instruments*

If an Instrument qualifies as equity instrument from a German tax perspective, in addition to the rules set out above, income and deemed income may be subject to income taxation, trade tax and, even if interest on the Instrument is not paid out by a German Disbursing Agent, to withholding tax.

Further, capital gains achieved by a Private Instrument Holder might be re-qualified as business income and, thus, taxable at the Private Instrument Holder's individual income tax rate. Capital gains and dividend income might also be partly tax-exempt according to section 8b German Corporate Income Tax Act and section 3 no 40 German Income Tax Act respectively.

#### *Application of the tax provisions of the German Investment Tax Act*

The application of the German Investment Tax Act (*Investmentsteuergesetz*) requires the holding of an interest in an investment fund (*Investmentanteile*).

According to a tax decree issued by the Federal Ministry of Finance dated 2 June 2005 (BMF, IV C 1 – S 1980 – 1 – 87/05) concerning the application the German Investment Tax Act in the case of foreign investment funds, an interest requires that between the holder and the legal

entity owning the foreign fund assets exists a direct legal relationship which, however, has not to be membership-like relationship.

According to this tax decree, a security being issued by a third party and only reflecting the economic results of a foreign investment fund or several foreign investment funds will not be regarded as a unit in a foreign investment fund.

In certain cases, e.g. if the Instruments provide for a physical delivery of interests in funds or ETF-shares, the Investment Tax Act may apply to the Instruments in which case Instrument Holders may be subject to tax with fictitious profits. Furthermore, following the physical delivery of interests in entities which qualify as foreign investment funds, the holder of such instruments will be subject to the provisions of the Investment Tax Act and may be subject to tax with fictitious profits.

#### *Inheritance and Gift Tax*

Inheritance or gift taxes with respect to any Instrument will, in principle, arise under German law if, in the case of inheritance tax, either the decedent or the beneficiary or, in the case of gift tax, either the donor or the donee is a resident of a Germany or if such Instrument is attributable to a German trade or business for which a permanent establishment is maintained or a permanent representative has been appointed. In addition, certain German expatriates will be subject to inheritance and gift tax. The current law on Inheritance and Gift Tax has been found to be unconstitutional by the German Federal Constitutional Court (*Bundesverfassungsgericht*). However, it remains in effect for the present and is likely to be replaced by a new tax act, the effective date of which remains uncertain. At present, only a draft of a new law by the Federal Cabinet (*Bundeskabinett*) is available. The Issuer is, therefore, not able to make any statements on the future legislation on inheritance and gift tax.

#### *Other Taxes*

No stamp, issue, registration or similar taxes or duties will be payable in Germany in connection with the issuance, delivery or execution of the Instruments. Currently, net assets tax is not levied in Germany.

### **Ireland**

#### *Liability of Holders of Instruments or ACS Instruments to Income Tax*

Persons resident in Ireland are subject to Irish corporation tax or income tax on their worldwide income, which would include interest paid and discounts realised on the Instruments or, as the case may be, Pfandbrief Instruments, or, as the case may be, ACS Instruments.

Persons not resident in Ireland are subject to Irish tax on interest payable and discounts realised on Instruments or ACS Instruments, unless one of the following exemptions is available:

- (a) A company which is not resident in Ireland will not be chargeable to income tax in respect of interest paid (in the ordinary course of business of DEPFA plc or, as the case may be, DEPFA ACS) on Instruments or ACS Instruments, as the case may be, if the company is resident in a Member State of the European Union or in

a jurisdiction with which the Republic of Ireland has a valid double taxation treaty.

- (b) A person (whether or not a company) who is not resident in Ireland will not be chargeable to income tax in respect of interest paid on Instruments if:
- (i) the person is resident in a Member State of the European Union or in a jurisdiction with which Ireland has a valid double taxation treaty; and
  - (ii) the Instrument qualifies for exemption from withholding tax on interest as a "Quoted Eurobond".

An Instrument will qualify for exemption from withholding tax on interest as a "Quoted Eurobond" if:

- (i) it is quoted on a recognised stock exchange;
  - (ii) it carries a right to interest; and
  - (iii) one of the following conditions is satisfied:
    - (a) the person by or through whom the payment is made is not in Ireland; or
    - (b) the payment is made by or through a person in Ireland, and either:
      - (1) the Instrument is held in a recognised clearing system (Euroclear, CBL and CBF are recognised for this purpose); or
      - (2) the person who is the beneficial owner of the Instrument and who is beneficially entitled to the interest is non-Irish resident and has made a declaration of non-Irish residence in the form required by the Irish Revenue Commissioners.
- (c) A person (whether or not a company) who is not resident in Ireland will not be chargeable to income tax in respect of interest paid on ACS Instruments if the person is resident in a Member State of the European Union or in a jurisdiction with which Ireland has a double taxation treaty.

#### *Withholding Tax*

Irish tax legislation requires licensed banks such as DEPFA plc and DEPFA ACS to withhold tax on the payment of interest or discounts on certain "deposits". The term "deposit" is widely defined and would include an Instrument issued by DEPFA plc or DEPFA ACS or an ACS Instrument. There are a number of exceptions to the requirement to withhold tax, of which the most relevant are as follows:

- (a) The interest or discount is paid on a "deposit" which is a debt on a security and is listed on a stock exchange.
- (b) Although the Instrument or ACS Instrument is not listed on a stock exchange, the Instrument or ACS Instrument is held in Euroclear, CBL or CBF or any other clearing system recognised from time to time by the Irish Revenue

Commissioners, and certain other conditions are met. The Programme complies with those other conditions.

Irish tax legislation contains, in addition to withholding tax on deposit interest, a general withholding tax which may apply if the withholding tax on deposit interest does not apply. No withholding tax applies where the Instrument or ACS Instrument qualifies for exemption as a Quoted Eurobond (see above). In the case of Instruments or ACS Instruments that do not qualify for exemption as a Quoted Eurobond (for instance, unquoted Instruments or unquoted ACS Instruments) the general withholding tax is in any event avoided by virtue of an exemption in relation to interest paid by banks in the ordinary course of their business.

#### *Encashment Tax*

Interest on any Instrument or ACS Instrument which qualifies for exemption from withholding tax on interest as a Quoted Eurobond (see above) paid to or realised by an agent in Ireland on behalf of a holder of the relevant Instrument or ACS Instrument will be subject to a withholding in respect of Irish income tax at the standard rate of Irish income tax (at the date of this Prospectus being 20 per cent.) unless the beneficial owner of the relevant Instrument or ACS Instrument that is entitled to the interest is not resident for tax purposes in Ireland and makes a declaration in the required form.

#### *Capital Gains Tax*

Where an Instrument or ACS Instrument is listed on a stock exchange, a holder will not be subject to Irish tax on capital gains in respect of that Instrument or ACS Instrument unless that holder is either resident or ordinarily resident for tax purposes in Ireland or that holder has an enterprise or an interest in an enterprise, which carries on business in Ireland through a branch or agency, or a permanent establishment, to which or to whom the Instrument or ACS Instrument is attributable.

Where an Instrument or ACS Instrument is not listed on a stock exchange, then an exemption from Irish capital gains tax in respect of the Instrument or ACS Instrument, as the case may be, will continue to apply to the holders who are exempted in the circumstances referred to in the paragraph immediately above provided that the Instrument or ACS Instrument, as the case may be, does not derive its value, or the greater part of its value, from Irish land or certain Irish mineral rights.

#### *Capital Acquisitions Tax*

If the Instruments or ACS Instruments, as the case may be, are comprised in a gift or inheritance taken from an Irish resident or ordinarily resident disponer or if the disponer's successor is resident or ordinarily resident in Ireland, or if any of the Instruments or ACS Instruments are regarded as property situated in Ireland, the disponer's successor may be liable to capital acquisitions tax. Instruments or ACS Instruments would be regarded as property situate in Ireland if they were ever to be physically kept or located in Ireland with a depositary or otherwise.

For the purposes of capital acquisitions tax, a non-Irish domiciled person will not be treated as resident or ordinarily resident in Ireland except where that person has been resident in

Ireland for the purposes of Irish tax for the five consecutive years of assessment immediately preceding the year of assessment in which the date of the gift or inheritance falls.

At the date of this Prospectus the standard rate of capital acquisitions tax is 20 per cent. No tax applies on a gift or inheritance from a spouse.

#### *Stamp Duty*

No stamp duty is payable on the transfer of ACS Instruments issued by DEPFA ACS.

No stamp duty is payable on the transfer by delivery of Instruments issued by DEPFA plc or DEPFA ACS, as the case may be.

#### **European Union Savings Tax Directive**

Under the European Union Savings Tax Directive (the "Directive") each Member State is required to provide to the tax authorities of another Member State details of payments of interest or other similar income paid by a person within its jurisdiction to, or collected by such person for, an individual resident in that other Member State; however, Austria, Belgium and Luxembourg may instead apply a withholding system for a transitional period in relation to such payments, deducting tax at rates rising over time to 35 per cent. The transitional period commenced is to terminate at the end of the first fiscal year following agreement by certain non-EU countries to the exchange of information relating to such payments.

A number of non-EU countries, and certain dependent or associated territories of certain Member States have agreed to adopt similar measures (either provision of information or transitional withholding) in relation to payments made by a person within its jurisdiction to, or collected by such a person for, an individual resident in a Member State. In addition, the Member States have entered into provision of information or transitional withholding arrangements with certain of those dependent or associated territories in relation to payments made by a person in a Member State to, or collected by such a person for, an individual resident in one of those territories.



## DESCRIPTION OF DEPFA BANK PLC

### Introduction

DEPFA BANK public limited company ("DEPFA plc") was incorporated in the Republic of Ireland on 9 October 2001 under the Irish Companies Act, 1963 (as amended). DEPFA plc is a public limited company based in Dublin and holds a universal banking licence from the Irish Financial Regulator as part of the Central Bank and Financial Services Authority of Ireland (the "Authority") under the Irish Central Bank Act 1971 (as amended). DEPFA plc is registered in the Irish Companies Registration Office under company number 348819. It is the parent company of the DEPFA BANK plc group of companies, comprising DEPFA plc and its consolidated subsidiaries (the "Group"). The Group and DEPFA Deutsche Pfandbriefbank AG are specialist providers of financial products and services to the public sector.

DEPFA plc became a wholly-owned subsidiary of Hypo Real Estate Holding AG ("HRE") on 2 October 2007. The HRE shares are listed and traded on the Frankfurt Stock Exchange. HRE is the parent company of the HRE group which includes Hypo Real Estate Bank International Aktiengesellschaft, Hypo Real Estate Bank Aktiengesellschaft, DEPFA Deutsche Pfandbriefbank AG as well as the Group (together, the "HRE Group"). Following its acquisition of the Group, the HRE Group reports its business operations in three segments: commercial real estate financing, budget and infrastructure financing, and capital markets and asset management. The Group operates within the 'budget and infrastructure financing' and the 'capital markets and asset management' segments.

As used in this Prospectus, references to "the Group" in the context of periods prior to December 31, 2007 mean DEPFA plc and its consolidated subsidiaries which include: DEPFA ACS BANK, DEPFA Deutsche Pfandbriefbank AG and DEPFA First Albany Securities LLC (from September 14, 2007), while references to "the Group" in the context of periods subsequent to December 31, 2007 mean DEPFA plc and its consolidated subsidiaries which include: DEPFA ACS BANK, Hypo Public Finance Bank, Hypo Pfandbriefbank International S.A. (a direct subsidiary from March 31 2008) and DEPFA First Albany Securities LLC.

### Certain Business Developments

DEPFA plc is a specialist provider of financial products and services to the public sector. Its clients are governments, central banks, regional governments, municipalities and other such entities within and related to the public sector. Its products and services range from government budget financing and financing of infrastructure projects to placing of public sector assets and investment banking and other advisory services. It operates through a network of subsidiaries, branches and offices across many European countries, as well as in the Americas and Asia.

For 2008 DEPFA plc will report its business under the two segmental lines of Budget and Infrastructure Financing and Capital Markets and Asset Management. The segmental reporting described below shows the operations of the Group's business as categorised within the five segments of Budget Finance, Infrastructure Finance, Client Product Services, Global Markets and Corporate Centre as reported for 2007.

The Budget Finance segment principally comprises the financing of public sector entities via loans or bonds either directly through a specialist team of public sector originators or through the market via a balance sheet management team. The provision of liquidity facilities and the

active management of the asset portfolio also contribute to this segment. The Group's overall funding activities managed through the money market and capital market teams also contribute to this segment as do the activities of the global sales and syndication teams.

The Infrastructure Finance segment primarily deals with the provision of funding for essential public sector infrastructure projects (e.g. schools, prisons, hospital, roads) carried out by privately owned companies under concessions or agreements awarded by public sector entities.

Client Product Services comprise on and off balance sheet products that provide an added value for public sector clients, including derivatives, structured transactions, securitisation, pension finance, guaranteed investment contracts as well as advisory services. The DEPFA First Albany Securities LLC business falls under this segment.

The Global Markets Segment incorporates all trading activities and key long-term proprietary positions of DEPFA plc. Going forward this business section, together with the Client Product Services section, will be reported under the Capital Markets and Asset Management segment.

The Corporate Centre contains overhead costs, project costs as well as the residual property portfolio of DEPFA Deutsche Pfandbriefbank AG and surplus capital.

According to the results published in the annual report of 2007, the DEPFA Group achieved net profits of EUR 309 million in fiscal year 2007. Total assets amounted to approximately EUR 218 billion at 31 December 2007 of which more than EUR 158 billion were public sector credit risk.

At 31 December 2007, EUR 57 billion of the Group's public sector assets (in principal amount) was included in the cover asset pools forming the collateral for the asset covered securities and lettres de gage issued by DEPFA ACS BANK and Hypo Pfandbrief Bank International S.A., respectively.

### **Business Performance and Outlook**

In 2007 net income fell by 41 per cent. to EUR 309 million, which corresponds to a Return on Equity of 10.8 per cent. after tax. The costs associated with the merger with the HRE Group amounting to € 88 million were recognised in the 2007 accounts and this is reflected in the result. Furthermore, a deterioration in the trading performance, caused in large part by the negative impact of widening credit spreads on valuations of public sector instruments held in the trading book, weighed on the overall result.

A review of the results by business segments shows that the client facing segments, consisting of Budget Finance, Infrastructure Finance and Client Product Services, performed strongly with a combined pre-tax result of EUR 712 million, an increase of 13 per cent.

Net interest income was down 8 per cent. at EUR 392 million. The interest income contribution generated by the public finance portfolio was virtually flat in 2007, which was to be expected in a cycle of narrowing spread levels still prevailing for a good part of the year. In such an environment it was considered more appropriate to take advantage of gains in the valuation of assets in the portfolio, which is reflected in the strong sale of assets contribution. Net fee and commission income rose by 28 per cent. to EUR 41 million. Net trading income showed a loss of

EUR 52 million. Gains from sale of assets increased by 26 per cent. to EUR 348 million, which reflects a continuation of the favourable conditions in the spread environment that continued well into the year. Operating expenses rose by 55 per cent. to EUR 417 million. This increase was exaggerated by exceptional expenses of EUR 88 million arising from the change of control that took place in 2007 and the first-time consolidation of the Municipal Capital Markets unit of First Albany that became effective in September 2007. Profit before taxation amounted to EUR 332 million, down 48 per cent. on the previous year.

In **Budget Finance** Europe remains DEPFA plc's principal geographic market, however commitments are increasingly distributed more evenly across the complete European debt markets. Outside Europe the fastest growing market continues to be the United States. Net interest income, generated through DEPFA plc's stable, long-term asset and liability base, amounted to EUR 348 million, a 2 per cent. decrease year-on-year. Non-interest revenues, generated through fees from US Liquidity Facilities, other activities and the management of the Budget Finance asset portfolio, increased by 30 per cent. to EUR 368 million. New business in the USA was particularly strong. The U.S. now contributes 25 per cent. of the overall budget financing volume which also enhances the credit quality of the Budget Finance portfolio. DEPFA plc's funding activities remained strong, meeting and exceeding the Bank's targets for its long-term/ short-term funding mix and enhancing/ reducing the overall cost of funding in 2007. Profit before taxes in this segment totalled EUR 613 million in 2007.

**Infrastructure Finance 2007** was characterised by rapid growth in DEPFA plc's infrastructure finance business. This growth however took place in the first three quarters of the year. In the final quarter, in part responding to the deterioration in credit markets, and in part in fulfilment of its securitisation, sales and syndication plans, DEPFA plc concentrated on managing down its risk-weighted assets. Revenues and financing commitments doubled, reflecting both successful closing of a number of significant PPP and PFI loan transactions and the continuation of the initiative begun in 2006 to offer long-term funding to UK utility companies providing essential services to the public such as water, electricity and gas. In addition to the growth in loan margin and commitment fee income from the arranging and provision of direct funding, 2007 also saw significant advisory fee and derivatives income (booked in the Client Product Services segment).

The Infrastructure Finance segment shows a substantial increase in revenues to EUR 121 million (2006: EUR 55 million) and financing commitments to EUR 18 billion at the year-end (2006: EUR 8.2 billion). 72 infrastructure and PPP transactions were closed during the year (2006: 63) across a wide range of sectors and countries. Despite the substantial growth in funding commitments during the year, the quality of the portfolio remains good with no impairment provisions in 2007. Profit before taxes in this segment totalled EUR 90 million in 2007, up 150 per cent. on 2006.

The **Client Product Services** segment continued to grow in its second full year of operation. The principal driver of growth is the client derivatives business with the main pipeline of opportunities coming from the internal relationships between the derivatives team and the public sector and infrastructure finance origination teams. The Derivatives team concluded transactions with 125 clients with notional volumes of over EUR 6 billion. Other product groups in this segment placed increased focus on originating new business and contributing regular revenue streams to the overall performance. The Guaranteed Investment Contract (GIC) product

is unique to the US market and allows municipal issuers a flexible way to invest proceeds raised from bond issues. In 2007 the GIC team won over EUR 8 billion in new funds from over 120 municipal clients. Profit before taxes in this segment totaled EUR 9 million in 2007.

The **Global Markets** segment encompasses DEPFA plc's proprietary trading activities and its legacy interest rate carry book. DEPFA plc's decision to de-risk the books in Global Markets was reaffirmed after its acquisition by HRE Group. Following the change of ownership trading activities are being reduced or run off in these areas and results from the "legacy positions" will be reported in the Corporate Centre from 1 January 2008. These legacy positions are expected to continue to have a negative impact on the net interest income result in the corporate centre segment. Trading income was also negative. The weak trading performance is mainly the result of the US sub-prime mortgage crisis spilling over to other markets in which DEPFA plc operates. This segment showed a loss of EUR 147 million in 2007.

In **Corporate Centre** The negative net interest income results from interest expenditure relating to subordinated debt (lower Tier II and profit participation certificates) which is charged in its entirety to the Corporate Centre. Non-interest revenues showed a positive result, mainly due to interest on tax refunds.

The significant increase in operating expenses was due to exceptional merger related costs of EUR 88 million and EUR 23 million of a loss on disposal of DEPFA Deutsche Pfandbriefbank AG as part of an internal Group transfer of ownership and also, to a lesser extent, higher direct costs. The loss before taxes in this segment totalled EUR 233 million in 2007.

## **Recent Developments**

HRE completed its acquisition of DEPFA plc on October 2, 2007. HRE is headquartered in Munich, Germany and until the DEPFA acquisition its primary focus had been on commercial real estate financing. Following the acquisition of DEPFA plc, HRE indicated that the strategic structure of the HRE Group would be divided into three segments: commercial real estate financing, budget and infrastructure financing, and capital markets and asset management, to a large extent independent of the legal distinction in subsidiaries. HRE further indicated that Hypo Real Estate Bank International Aktiengesellschaft and Hypo Real Estate Bank Aktiengesellschaft will continue to be responsible for the operation of the commercial real estate financing segment whilst the budget and infrastructure financing and the capital markets and asset management segments will be operated by the Group.

Further internal reorganisation of the HRE Group took place on 31 December 2007 when HRE acquired DEPFA Deutsche Pfandbriefbank AG taking it outside of the Group and making it a direct subsidiary of HRE. At the same time DEPFA BANK acquired Hypo Public Finance Bank (HRE's specialist public sector bank headquartered in Dublin) and its consolidated subsidiaries taking it within the DEPFA Group. With effect from 31 March 2008 substantially all the assets and liabilities of Hypo Public Finance Bank were transferred to DEPFA plc pursuant to Section 33 of the Irish Central Bank Act 1977 (as amended). Effective the same date Hypo Pfandbrief Bank International S.A., a AAA rated Luxembourg public sector covered bond issuer, became a direct subsidiary of DEPFA plc.

Prior to the internal reorganisation referred to above the Group's financing of its activities by means of European covered bonds had been conducted by two subsidiaries: DEPFA Deutsche Pfandbriefbank AG which issues German Pfandbriefe in accordance with the German

Pfandbrief Act (Pfandbriefgesetz), and DEPFA ACS BANK which continues to issue Asset Covered Securities in accordance with the Asset Covered Securities Act, 2001 (as amended). Since the sale of DEPFA Deutsche Pfandbriefbank AG to HRE and the purchase of Hypo Pfandbrief Bank International S.A. the Group expects to issue covered bonds in the form of lettres de gage governed by Luxembourg law from its newly acquired direct subsidiary, Hypo Pfandbrief Bank International S.A.

On April 16, 2008, HRE announced that a group of investors coordinated by J.C. Flowers & Co., LLC, and consisting of J.C. Flowers & Co., LLC, Shinsei Bank Limited and Grove International Partners LLP have decided to submit via an acquisition vehicle a voluntary public offer to the shareholders of HRE to purchase 50,076,000 shares of HRE, equivalent to approximately 24.9 percent of all outstanding shares of HRE, for an offer price of €22.50 per share.

### **Ratings**

Senior long-term debt of DEPFA plc is rated AA- by Fitch Ratings Ltd. (Fitch), A+ by Standard & Poor's Rating Services, a division of The McGraw-Hill Companies Inc. (Standard & Poor's) and Aa3 by Moody's Investors Service (Moody's). These ratings reflect DEPFA plc's strong credit profile.

The above-mentioned ratings may change.

The head office of Fitch is One State Street Plaza, New York, NY 10004, USA, the head office of Moody's is 99 Church Street, New York, NY 10007, USA and the head office of Standard & Poor's is 55 Water Street, New York, NY 10041, USA.

As far as DEPFA plc is aware and is able to ascertain from the ratings information published by each of Fitch, Moody's and Standard & Poor's, no facts have been omitted which would render the reproduced information inaccurate or misleading.

### **Taxation**

DEPFA plc is located in the International Financial Services Centre (the "IFSC") in Dublin, Ireland. It is subject to a rate of 12.5 per cent. Irish corporation tax on all trading income.

### **Registered Office**

The registered office of DEPFA plc is 1 Commons Street, Dublin 1, Ireland. The telephone number of the registered office is +353 1 792 2222. The registered number of DEPFA plc is 348819.

### **Branches, Representative Offices and Subsidiaries of DEPFA BANK PLC**

DEPFA plc currently has a presence in the following cities through its network of branches, representative offices and subsidiaries: Dublin, Amsterdam, Athens, Chicago, Copenhagen, Frankfurt am Main, Hong Kong, Istanbul, London, Madrid, Milan, Mumbai, New York, Nicosia, Paris, Rome, San Francisco, Sao Paulo, Tokyo and Warsaw.

## Objects and Share Capital

The primary object of DEPFA plc as set out in clause 3(1) of its Memorandum and Articles of Association is to carry on the business of banking in all its forms, including borrowing, raising or taking up money and employing and using the same.

As of 31 December 2006, DEPFA plc's authorised share capital was comprised of: (i) Euro 130,100,002 divided into 433,333,333 ordinary shares of Euro 0.30 each and (ii) of Euro 100,000 divided in 10,000,000 non-cumulative redeemable preference shares with non cumulative dividends of Euro 0.01 each. The issued share capital, Euro 105,905,916 comprised of 353,019,713 ordinary shares and 7 A ordinary shares, was fully paid up.

## Regulatory Capital

Under the capital regulations of the Authority, at 31 December 2007 DEPFA plc's tier 1 capital was risk-weighted at 8.7 per cent. and its total capital to risk-weighted assets ratio was 11.1 per cent. Also at that date, 52 per cent. of DEPFA plc's on balance sheet assets were 0 per cent. risk-weighted, 36 per cent. of such assets were 20 per cent. risk-weighted while 12 per cent. were 100 per cent. risk-weighted.

## Selected Financial Information

The following table presents selected consolidated financial information of DEPFA plc pursuant to IFRS (extracted without material adjustment from the audited consolidated financial statements of DEPFA plc) for the fiscal years ended 31 December 2007 and 2006, respectively:

	31 December 2007	31 December 2006*
	<i>Euro million</i>	<i>Euro million</i>
<b>Balance Sheet</b>		
Total Assets	217,900	222,945
Total Equity	2,951	2,777
<b>Income Statement</b>		
Net Interest Income	309	314
Net Fee and Commission Income	42	34
Net Trading Income	-50	141
Gains Less Losses from Financial Assets	218	159
Other Operating Income	10	2
<b>Total Operating Income</b>	<b>529</b>	<b>650</b>
Staff Costs	(223)	(127)
Administrative Expenses	(135)	(66)
Depreciation and Amortisation	(10)	(7)
Other Operating Expenditure	(4)	-
<b>Operating Expenses</b>	<b>(372)</b>	<b>(200)</b>
<b>Net Operating Profit before Impairment Losses</b>	<b>157</b>	<b>450</b>

\* The comparative figures for the 2006 income statement have been restated to reflect the classification of DEPFA Deutsche Pfandbriefbank AG as a discontinued operation.

	31 December 2007	31 December 2006*
	<i>Euro million</i>	<i>Euro million</i>
Impairment Losses on Loans and Advances	-	-
<b>Operating Profit / Profit before Taxation</b>	<b>157</b>	<b>450</b>
Taxation	(29)	(107)
<b>Profit for the Year – Continuing Operations</b>	<b>128</b>	<b>343</b>
Result from Discontinued Operations	181	183
<b>Group Net Income</b>	<b>309</b>	<b>526</b>

### Historical Financial Information

The audited consolidated financial statements of DEPFA plc in respect of the financial year ended 31 December 2006 (prepared in accordance with IFRS), together with the auditor's report thereon are incorporated by reference and the audited consolidated financial statements of DEPFA plc in respect of the financial year ended 31 December 2007 (prepared in accordance with IFRS), together with the auditor's report thereon are also incorporated by reference.

For further details in relation to the historical financial information of DEPFA plc please see the section entitled "*Documents Incorporated by Reference*".

### Financial Year

The financial year of the Group is the calendar year.

### Auditors

DEPFA BANK's auditors are PricewaterhouseCoopers, One Spencer Dock, North Wall Quay, Dublin 1, Ireland, who have audited the accounts of DEPFA BANK, without qualification, in accordance with International Standards on Auditing ("ISA") (UK and Ireland) for the financial years ended 31 December 2006 and 31 December 2007. PricewaterhouseCoopers has no material interest in DEPFA BANK.

PricewaterhouseCoopers is registered with the Institute of Chartered Accountants in Ireland.

### The Board of Directors of DEPFA plc

There are currently ten members of the Board of Directors of Depfa plc, four of whom are Executive Directors. Alternate Directors may also be appointed under the Memorandum and Articles of Association of Depfa plc.

Members	Principal Outside Activities
Georg Funke (Chairman)	Hypo Real Estate Holding AG Hypo Real Estate Bank International, Stuttgart
(Non-executive director)	Hypo Real Estate Bank AG, Munich Hypo Public Finance Bank

Dr. Markus Fell (Deputy Chairman)	Hypo Real Estate Capital Limited (London)
<i>(Non-executive director)</i>	Hypo Real Estate bank International AG
	Hypo Real Estate Holding AG
	Hypo Real Estate Bank AG
	Hypo Public Finance Bank
	Hypo Real Estate Systems GmbH.
Bettina von Oesterreich	Hypo Real Estate Bank International AG
<i>(Non-executive director)</i>	Hypo Public Finance Bank
	Hypo Real Estate Holding AG
	Quadra Realty Trust
	Hypo Real Estate Bank AG.
Dr. John Bourke	DEPFA ACS BANK
<i>(Non-executive director)</i>	Hypo Public Finance Bank
	HVB Credit Advisors Limited
	HVB Fund Services Limited
	Bray Offshore Wind Limited
	Cloughboola Windfarms Limited
	Cordal Windfarms Limited
	Glanaruddery Windfarms Limited
	Kish Offshore Wind Limited
	Minnehome Limited
	Muingnaminnane Windfarms Limited
	Saorgus Energy Limited
	Tursillagh Holdings Limited
	Tursillagh Wind Farms Limited
	Tursillagh 2 Limited



Patrick Ryan <i>(Non-executive director)</i>	DEPFA ACS BANK Hypo Public Finance Bank The Society of Actuaries in Ireland AIB Pensions (UK) Limited Axa Life Europe Limited Axa Life Europe Hedging Services Limited
Cyril Dunne <i>(Non-executive director)</i>	None.
Paul Leatherdale	None.
Bo Heide-Ottosen	DEPFA ACS Bank DEPFA Deutsche Pfandbriefbank AG - Chairman of the Supervisory Board Hypo Real Estate International S.A. (Luxembourg) - Chairman of the Supervisory Board DEPFA First Albany Securities LLC - Member of the Board of Managers
Tom Glynn	Hypo Public Finance USA, Inc Hypo Capital Markets, Inc Hypo Real Estate Holding AG Collineo Asset Management USA, Inc Collineo Asset Management GmbH
James Campbell	Hypo Public Finance Bank Hypo Pfandbrief Bank International S.A. Hypo Real Estate Systems GmbH DEPFA Ireland Holding Limited

DEPFA Hold One Limited  
DEPFA Hold Two Limited  
DEPFA Hold Three Limited  
DEPFA Hold Four Limited  
DePfa-Bank Europe plc  
DEPFA Hold Six

The business address of Paul Leatherdale, Bo Heide-Ottosen and James Campbell is 1 Commons Street, Dublin 1, Ireland. The business address of Georg Funke, Dr Markus Fell, Bettina von Oesterreich, Cyril Dunne and Tom Glynn is Unsöldstr. 2, 80538 Munich, Germany. The addresses of the other board members are as follows: Dr John Bourke, 7 The Woods, Ballinlea Road, Killiney, co. Dublin; Patrick Ryan, 5 Burleigh Mews, Burlington Road, Dublin.

As far as known to Depfa plc, other than as may arise from an individual director's principal outside activities as listed in each case above under the heading *The Board of Directors of DEPFA BANK plc – Principal Outside Activities*, no potential conflicts of interest exist between any duties to Depfa plc of the Board of Directors listed above and their private interests or other duties in respect of their management roles.

## **DESCRIPTION OF THE PRINCIPAL SUBSIDIARIES OF DEPFA BANK PLC**

The principal subsidiaries of DEPFA plc are as follows:

### **DEPFA ACS BANK, Dublin**

DEPFA ACS BANK is an unlimited company wholly owned by DEPFA plc, the primary purpose of which is to provide funding to the Group by issuing Asset Covered Securities under the ACS Act. DEPFA ACS BANK is wholly owned by DEPFA plc.

### **Hypo Public Finance Bank, Dublin**

Hypo Public Finance Bank is a subsidiary of DEPFA plc. Its core business lines are in public sector finance, infrastructure and asset based finance, capital markets and asset management. On March 31, 2008 Hypo Public Finance Bank transferred substantially all its assets and liabilities to DEPFA plc.

### **Hypo Pfandbrief Bank International S.A., Luxembourg**

Hypo Pfandbrief Bank International S.A. is a wholly-owned subsidiary of DEPFA plc and issues AAA rated covered bonds (lettres de gage) governed by Luxembourg law.

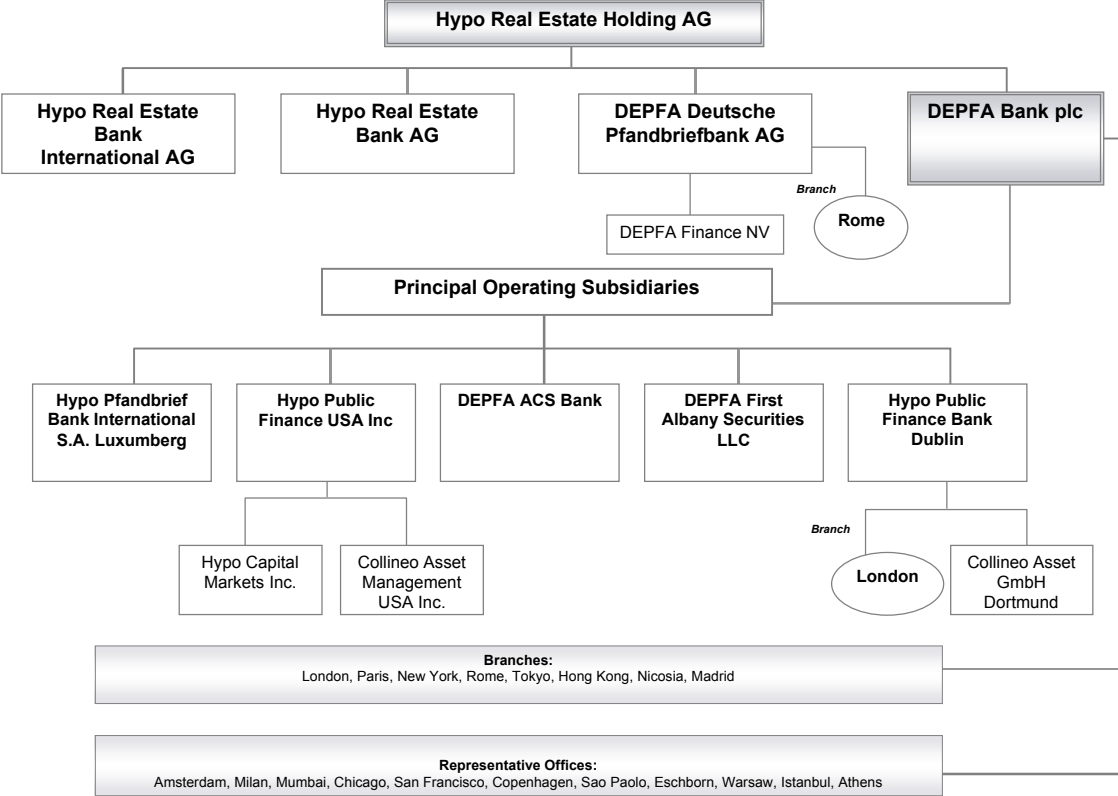
### **DEPFA First Albany Securities LLC, New York**

DEPFA plc established DEPFA First Albany Securities LLC as a wholly-owned U.S. broker-dealer subsidiary to acquire the U.S. Municipal Capital Markets Group of First Albany Capital, Inc. This acquisition became effective on September 14, 2007. DEPFA First Albany Securities LLC is headquartered in New York and through a total of eleven office locations in the United States provides underwriting, sales, trading and financial advisory services in the U.S. municipal capital markets.

### **Hypo Public Finance USA Inc**

Hypo Public Finance USA LLC, a direct subsidiary of DEPFA plc, is a Delaware incorporated limited liability company which holds a portfolio of Asset Finance Loans.

The following diagram illustrates the structure and essential shareholdings\* of the Group at the date of this Prospectus. Unless otherwise indicated, all subsidiaries of Depfa plc are wholly owned:



\*Essential shareholdings are those in excess of 50%

## DESCRIPTION OF DEPFA DEUTSCHE PFANDBRIEFBANK AG

DEPFA Deutsche Pfandbriefbank AG (the Pfandbriefbank) is incorporated in Germany as a joint stock company and operates under the German Banking Act (*Kreditwesengesetz*; the Banking Act) and the German Pfandbrief Act (*Pfandbriefgesetz*; the Pfandbrief Act). The object of the Company is the operation of a covered bond (*Pfandbrief*) issuer within the meaning of the Pfandbrief Act (*Pfandbriefgesetz*). The Company is authorised to conduct all types of banking business, except investment business and POS cash card services. The Pfandbrief business is limited to the issuance of Public Sector Pfandbriefe (*Öffentliche Pfandbriefe*).

The Pfandbriefbank is registered in the commercial register of Frankfurt am Main, Germany under No. HRB 55655. Its registered office is located in Eschborn, Germany (Ludwig-Erhard-Strasse 14, 65760 Eschborn, Germany; telephone: +49 6196 9990-0).

The Pfandbriefbank acts as a finance institution with a focus on the German public finance market. In addition, it represents a platform for short- and long-term funding in the money and capital markets. DEPFA plc transferred its shares in the Pfandbriefbank to Hypo Real Estate Holding AG on 31 December 2007 as of which date the Pfandbriefbank became a wholly (100 per cent.) owned unlisted subsidiary of Hypo Real Estate Holding AG..

The Pfandbriefbank has the benefit of the following keep well statement dated 13 December 2007 and issued by Hypo Real Estate Holding AG (the Keep Well Statement):

"For the following company Hypo Real Estate Holding AG ensures that it is able to meet its contractual obligations (with the exception of political risk): DEPFA Deutsche Pfandbriefbank AG."

The Keep Well Statement is not, and should not be, regarded as equivalent to a guarantee by Hypo Real Estate Holding AG of the payment of any indebtedness, liability or obligation of the Pfandbriefbank (including any Instruments to be issued by the Pfandbriefbank).

### History

The Pfandbriefbank, which traces its origins back to the Preussische Landespfandbriefanstalt, was established in Berlin, Germany on 22 July 1922. According to the Articles of Incorporation of the Preussische Landespfandbriefanstalt, its purpose was to grant loans, in particular for housing and urban development, on favourable terms on a non-profit making basis. It was forced to cease operating at the end of the Second World War. In autumn 1949, the Preussische Landespfandbriefanstalt was recognised as a "displaced bank" (i. e. one forced to transfer from East Germany to West Germany) and changed its name to Deutsche Pfandbriefanstalt in July 1951. The participation of the former state of Prussia in the share capital was transferred to the federal government of Germany on 16 December 1954.

Deutsche Pfandbriefanstalt was transformed – while retaining its original identity – into Deutsche Pfandbrief- und Hypothekenbank AG by a resolution of the general meeting dated 17 November 1989, as provided for under the German Law on the Conversion of Deutsche Pfandbriefanstalt into a joint stock corporation, on 31 December 1989.

In 1999, as a result of a group restructuring, Deutsche Pfandbrief- und Hypothekbank AG was renamed DEPFA Deutsche Pfandbriefbank AG. In 2002, the Pfandbriefbank became a 100 per cent subsidiary of the Irish-based parent company, DEPFA plc as part of the corporate restructuring and demerger process of the public finance and property finance businesses. In 2007, the DEPFA group of companies was taken over by the HRE Group. Since 31 December 2007, the Pfandbriefbank is a 100 per cent subsidiary of Hypo Real Estate Holding AG.

### **Business, Performance and Outlook**

The Pfandbriefbank has concentrated to date on the public finance market in German-speaking countries and on long-term refinancing through the issue of Public Sector Pfandbriefe. The total financing volume amounted to Euro 48.8 billion at the end of 2007. At the same time, total Public Sector Pfandbriefe outstanding amounted to Euro 43.3 billion. The Pfandbriefbank will continue to be a public finance house and a funding vehicle of its parent and affiliated companies.

The net interest income decreased in 2007 at an essentially unchanged margin of interest in unison with the declining business volume by 15.6% to €95.2 million. One-off effects related to premature repayments have not taken place. In the state financing business, notable commission expenses or earnings generally do not occur. Commission income improved on the previous year and now comprises €-0.5 million compared to -€1.6 million. The bank has been performing trading transactions since April 2007. The net expenditure reported from finance transactions mainly results from interest derivatives.

In total, management expenditure fell sharply by €18.2 million to €29.9 million. Even if the one-off costs in 2006 caused by the change in the valuation of company pension reserves (see last year's business report) are taken into consideration, a fall in management expenditure of € 2.1 m or 6.5% remains. A reduction in miscellaneous management expenses compared to the previous year by €0.7 million to €14.2 million can be reported. Amongst other things, this resulted from lower costs for the new business premises in Eschborn. Personnel costs showed a reduction of €2.2 million due to lower pension plan expenditure. Depreciation intangible assets increased from €0.7 million to €2.3 million. Special depreciation caused by the vacation of the business premises in Frankfurt have had an effect on this figure.

After including a €17.5 million positive balance from miscellaneous operating income/expenses, of which €15.1 million represents earned interest in accordance with Section 233a of the German Tax Code (AO), an operating income before risk provisioning of €79.9 million results, which is €24.9 million or 45.2% higher than in the previous year.

No evaluation result occurred in the credit business. Loan risks for real estate mortgage transactions are borne by Aareal Bank. The negative risk provisioning balance in 2007 is mainly due to depreciations according to the lowest value principle in the securities portfolio for public sector loans. By far the largest part is attributable to securities from issuers in the EU. The primary cause of the lowest of cost or market value depreciations was credit spreadwidening. This therefore relates to market price-induced valuation adjustments and not loans that have not been repaid.

As in previous years, the bank has not classified securities into capital assets. Income before tax of €25.8 million therefore results (previous year: €85.9 million). The positive tax on profits of €10.8 million (tax yield) is specifically due to tax reimbursements, which are essentially based on extensions to outstanding tax assessments to date and the conclusion of external tax auditing. The bank has refrained from forming active latent taxes in accordance with Section 274(2) of the German Commercial Code (HGB). This results in an annual net income for 2007 of €36.6 million. After reversing the surplus reserves of €84.0 million, distributable retained earnings of €120.6 million result.

## **Ratings**

Each of Fitch Ratings Ltd. (Fitch) and Standard & Poor's Rating Services, a division of The McGraw-Hill Companies Inc. (Standard & Poor's) has rated Public Sector Pfandbriefe to be issued by the Pfandbriefbank pursuant to the Programme AAA. Moody's has rated Public Sector Pfandbriefe to be issued by the Pfandbriefbank pursuant to the Programme Aaa.

Senior long-term debt of the Pfandbriefbank is rated A by Fitch, Aa3 by Moody's Investors Service (Moody's) and A by Standard & Poor's.

For the purpose of Fitch ratings, "AAA" means highest credit quality. "AAA" ratings denote the lowest expectation of credit risk. They are assigned only in case of exceptionally strong capacity for payment of financial commitments. This capacity is highly unlikely to be adversely affected by foreseeable events. "A" means high credit quality. "A" ratings denote expectations of low credit risk. The capacity for payment of financial commitments is considered strong. This capacity may, nevertheless, be more vulnerable to changes in circumstances or in economic conditions than is the case for higher ratings. The modifiers "+" or "-" may be appended to a rating to denote relative status within major rating categories. Such suffixes are not added to the "AAA" long-term rating category, to categories below "CCC", or to short-term ratings other than "F1".

For the purpose of Moody's ratings, "Aaa" means that banks rated "Aaa" for deposits offer exceptional credit quality and have the smallest degree of risk. While the credit quality of these banks may change, such changes as can be visualized are most unlikely to materially impair the bank's strong positions. Banks rated "Aa" for deposits offer excellent credit quality but are rated lower than "Aaa" banks because their susceptibility to long-term risks appears somewhat greater. The margins of protection may not be as great as with "Aaa"-rated banks, or fluctuations of protective elements may be of greater amplitude. Moody's appends the numerical modifiers 1, 2 and 3 to each generic rating category from Aa to Caa. The modifier 1 indicates that the bank is in the higher end of its letter-rating category; the modifier 2 indicates a mid-range ranking; and the modifier 3 indicates that the bank is in the lower end of its letter-rating category.

For the purposes of Standard & Poor's ratings, "AAA" means that an obligor rated "AAA" has extremely strong capacity to meet its financial commitments. "AAA" is the highest issuer credit rating assigned by Standard & Poor's. An obligor rated "A" has strong capacity to meet its financial commitments but is somewhat more susceptible to the adverse effects of changes in circumstances and economic conditions than obligors in higher-rated categories. The

ratings from “AA” to “CCC” may be modified by the addition of a plus (+) or minus (-) sign to show the relative standing within the major rating categories

The above-mentioned ratings may change. Upon the publication of revised ratings, a supplement to this Prospectus will be published providing information about the revised ratings.

The rating definitions set out above have been sourced from, in the case of Fitch, [www.fitchratings.com](http://www.fitchratings.com), in the case of Moody's, from [www.moody.com](http://www.moody.com), and, in the case of Standard & Poor's, from [www.standardandpoors.com](http://www.standardandpoors.com).

The head office of Fitch is One State Street Plaza, New York, NY 10004, USA, the head office of Moody's is 99 Church Street, New York, NY 10007, USA and the head office of Standard & Poor's is 55 Water Street, New York, NY 10041, USA.

As far as the Pfandbriefbank is aware and is able to ascertain from the ratings information published by each of Fitch, Moody's and Standard & Poor's, no facts have been omitted which would render the reproduced information inaccurate or misleading.

### **Managing Board**

The Managing Board of the Pfandbriefbank is comprised of two members. As at the date of this DIP Prospectus, the members of the Managing Board (each of whose business address is Ludwig-Erhard-Straße 14, 65760 Eschborn, Germany) are:

<u>Members</u>	<u>Principal Outside Activities</u>
Dr. Matthias Achilles	None.
Dr. Marcel Morschbach	None

No potential conflicts of interest exist between any duties to the Pfandbriefbank of the members of the Managing Board listed above and their private interests or other duties in respect of their management roles.

### **Supervisory Board**

The Supervisory Board elects and supervises the Managing Board. The Supervisory Board may form committees of members and transfer decision making powers of the Supervisory Board to these committees where permitted by law.

The members of the Supervisory Board are:

<u>Members</u>	<u>Principal Outside Activities</u>
<b><u>Bo Heide-Ottosen</u></b> <b>Chairman</b>	Member of the Management Board of Hypo Real Estate Holding AG  Member of the Board of Directors of DEPFA



	BANK plc
	Chairman and member of the Board of Directors of DEPFA ACS Bank
<b><u>Bettina von Oesterreich</u></b> <b>Deputy Chairman</b>	Member of the Management Board and CRO of Hypo Real Estate Holding AG
	Non-executive member of the Board of Directors of DEPFA plc
	Non-executive member of the Board of Directors of Hypo Public Finance Bank
	Member of the Supervisory Board of Hypo Real Estate Bank AG
	Member of the Management Board of Hypo Real Estate Bank International AG
	Member of the Board of Directors of Quadra Realty Trust Inc.
	Member of the advisory board of WH-Zweite Grundstücks Verwaltungs GmbH & Co. KG
<b><u>Dominik Ahlers</u></b>	Head of Finance of Hypo Real Estate Holding AG
<b><u>Dr. Heiner Bendfeld</u></b>	Head of Legal of Hypo Real Estate Holding AG
<b><u>René Moos</u></b>	None
<b><u>Christian Brankatsch</u></b>	None

The business address of Bo Heide-Ottosen, Dominik Ahlers, Dr. Heiner Bendfeld and Bettina von Oesterreich is Unsöldstraße 2, 80538 Munich, Germany. The business address of René Moos and Christian Brankatsch is Ludwig-Erhard-Straße 14, 65760 Eschborn, Germany.

No potential conflicts of interest exist between any duties to the Pfandbriefbank of the members of the Supervisory Board listed above and their private interests or other duties in respect of their supervisory roles.

### **Historical Financial Information**

The audited non-consolidated financial statements of the Pfandbriefbank in respect of the financial year ended 31 December 2006, together with the auditor's report thereon are incorporated herein by reference and the audited non-consolidated financial statements of the

Pfandbriefbank in respect of the financial year ended 31 December 2007, together with the auditor's report thereon are also incorporated herein by reference.

The audited non-consolidated cashflow statement of the Pfandbriefbank in respect of the financial year ended 31 December 2006, together with the auditor's report thereon are incorporated herein by reference and the audited non-consolidated cashflow statement of the Pfandbriefbank in respect of the financial year ended 31 December 2007, together with the auditor's report thereon are also incorporated herein by reference.

For further details in relation to the historical financial information of the Pfandbriefbank please see the section entitled "*Documents Incorporated by Reference*".

### **Selected Financial Information**

The following table presents selected non-consolidated financial information of the Pfandbriefbank (as derived from the audited non-consolidated financial statements for the fiscal years ending 31 December 2006 and 31 December 2007, in each case prepared pursuant to German GAAP) (in the case of information provided in relation to the balance sheet and in relation to employees) at the dates specified or (in the case of information provided in relation to the profit and loss account) for the fiscal years ended 31 December 2006 and 31 December 2007, respectively.

	31 December 2007	31 December 2006
	<i>Euro million</i>	<i>Euro million</i>
<b>Balance Sheet</b>		
Business Volume <sup>1</sup>	56,621.1	63,989.7
Total Assets	54,120.6	63,805.9
Total Receivables	29,465.3	36,384.3
Securities	24,178.6	26,848.8
Certificated Liabilities	37,418.1	44,441.1
Equity	872.0	944.4
<b>Profit and Loss Account</b>		
Net Interest Income <sup>2</sup>	95.2	112.8
Net Commission Income	(0.5)	(1.6)
General Administrative Expenses <sup>3</sup>	29.9	48.1
Operating Result (before risk provisions/remeasurement gains) <sup>4</sup>	79.9	55.0
Income Taxes	(10.8)	(23.1)
Net Income for the Year	36.6	109.0
Net Retained Profits	120.6	225.0

<sup>1</sup> Includes total assets, guarantee obligations and irrevocable loan commitments.

<sup>2</sup> Includes current income from equities and other non-fixed income securities and participations.

<sup>3</sup> Includes general administrative expenditures and depreciation, amortisation or write-offs of intangible and fixed assets.

<sup>4</sup> Consists of net interest income plus net commission income minus general administrative expenses plus other operating income minus other operating expenditure minus other taxes not reported under "other operating expenditure".

Employees including staff on parental leave (at year-end)	95	84
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### **Auditors**

The auditors of the Pfandbriefbank are PricewaterhouseCoopers Aktiengesellschaft, Wirtschaftsprüfungsgesellschaft ("PwC"), whose registered address is Olof-Palme-Straße 35, 60439 Frankfurt am Main, Germany and who have audited the accounts of the Pfandbriefbank, without qualification, in accordance with German generally accepted auditing standards for each of the financial years ended 31 December 2006 and 31 December 2007.

PwC is a member of the following professional body:

Wirtschaftsprüferkammer, Körperschaft des öffentlichen Rechts, Rauchstraße 26, 10787 Berlin, Germany.

### **Subsidiaries**

The principal subsidiaries of the Pfandbriefbank are as follows:

#### ***DePfa Finance N.V.***

DePfa Finance N.V. is incorporated in the Netherlands. As a finance company, its object is to borrow funds and to on lend the funds so received to other members of the HRE Group.

### **The Pfandbriefbank's Position within the HRE Group**

The diagram set out on page 188 of this Prospectus provides an overview of the Pfandbriefbank's position within HRE Group and illustrates the structure and the essential shareholdings of the DEPFA group of companies (essential shareholdings are those in excess of 50 per cent.) at the date of this Prospectus. Each of Hypo Real Estate International AG and Hypo Real Estate Bank AG has subsidiaries and/or branches which are not shown in that diagram.

## **DESCRIPTION OF PUBLIC SECTOR PFANDBRIEFE (*ÖFFENTLICHE PFANDBRIEFE*)**

The following is a description reduced to some of the more fundamental principles governing the laws regarding Pfandbriefe and Pfandbrief Banks in summary form and without addressing all the law's complexities and details. Accordingly, it is qualified in its entirety by reference to the applicable laws.

A German credit institution licensed under the Banking Act (*Kreditwesengesetz*) (the "Banking Act") to carry out Pfandbrief business must obtain special authorisation from the Federal Financial Services Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht — "BaFin"*) and, for that purpose, must meet the organisational requirements as specified in the Act on the Reorganisation of the Law on Pfandbriefe (*Gesetz zur Neuordnung des Pfandbriefrechts*), the "Pfandbrief Act".

### ***Rules applicable to all Types of Pfandbriefe***

Pfandbriefe are standardised debt instruments issued by a German credit institution authorised to issue Pfandbriefe in accordance with the Pfandbrief Act. In this summary, banks authorised to issue Pfandbriefe are generally referred to as "Pfandbrief Banks" which is the term applied by the Pfandbrief Act. The quality and standards of Pfandbriefe are strictly governed by provisions of the Pfandbrief Act and subject to supervision by the BaFin. Pfandbriefe generally are medium- to long-term bonds, typically with an original maturity of two to ten years, which are secured or "covered" at all times by a pool of specified qualifying assets (*Deckung*), as described below. Pfandbriefe are recourse obligations of the issuing bank, and no separate vehicle is created for their issuance in general or for the issuance of any specific series of Pfandbriefe. Prior to maturity, Pfandbriefe may not be redeemed at the option of the holders.

Pfandbriefe may either be Mortgage Pfandbriefe (*Hypothekenspfandbriefe*), Public Sector Pfandbriefe (*öffentliche Pfandbriefe*) or Ship Mortgage Pfandbriefe (*Schiffspfandbriefe*). The outstanding Pfandbriefe must be covered by a separate pool of specified qualifying assets: a pool for Mortgage Pfandbriefe, a pool for Public Sector Pfandbriefe, and a pool for Ship Mortgage Pfandbriefe (each a "Cover Pool"). An independent trustee appointed by the BaFin has wide responsibilities in monitoring the compliance of the Pfandbrief Bank with the provisions of the Pfandbrief Act. In particular, the trustee monitors the adequacy of the cover assets and maintains a register listing the assets provided as cover from time to time in respect of the Pfandbriefe.

The aggregate principal value of assets in the Cover Pool must at all times be at least equal to the aggregate principal amount of the outstanding Pfandbriefe issued against such Cover Pool. Moreover, the aggregate interest yield on any such Cover Pool must at all times be at least equal to the aggregate interest payable on all Pfandbriefe relating to the Cover Pool. In addition, the coverage of all outstanding Pfandbriefe with respect to principal and interest must also at all times be secured on the basis of the present value (*Barwert*). Finally, the present value of the

assets contained in the Cover Pool must exceed the total amount of liabilities from the corresponding Pfandbriefe and derivatives by at least 2 per cent (*sichernde Überdeckung*).

Such 2 per cent excess cover must consist of highly liquid assets. Qualifying assets for the excess cover are (i) debt securities, debt register claims, treasury bills and treasury bonds of the German government, a special fund of the German government, a German state, the European Communities, a member state of the European Union, the member states of the European Economic Area, Switzerland, the United States, Canada, Japan, any other European states with full OECD member status, the European Investment Bank, the International Bank of Reconstruction and Development, the Council of Europe Development Bank, or the European Bank for Reconstruction and Development; (ii) debt securities guaranteed by any of the foregoing entities; and (iii) credit balances maintained with the European Central Bank, the central banks of the member states of the European Union and appropriate suitable credit institutions provided that the amount of the claims of the Pfandbriefbank is known at the time of purchase.

The Pfandbriefbank must record in the register of cover assets for any Cover Pool each asset and the liabilities arising from derivatives. Derivatives may be entered in such register only with the consent of the trustee and the counterparty.

The Pfandbriefbank must have established an appropriate risk management system meeting the requirements specified in detail in the Pfandbrief Act and must comply with comprehensive disclosure requirements on a quarterly and annual basis, as set out in detail in the Pfandbrief Act.

The operations of all banks engaged in the issuance of Pfandbriefe have been regulated since 19 July 2005 by the Pfandbrief Act and the Banking Act, and will be subject to the prudential supervision of the BaFin. In particular, the BaFin will carry out audits of the assets forming part of any Cover Pool, regularly in bi-annual intervals.

### ***Cover Pool for Public Sector Pfandbriefe***

The Cover Pool for Public Sector Pfandbriefe may comprise payment claims from the granting of loans, bonds or similar transactions or other claims acknowledged in writing by the bodies of states and other public instrumentalities, including, but not limited to: (i) the German government as well as any German state, municipality or other qualifying public body in Germany; (ii) member states of the European Union, or member states of the European Economic Area, Switzerland, the United States, Canada or Japan; (iii) the states covered by (ii) if in accordance with Article 43 (1) of Directive 2000/12/EC of the European Parliament and the Council of 20 March 2000 a weighting of not more than 20 per cent. applies and no higher weighting has been set by the supervisory authority; (iv) another European state not covered by (ii) which is a Full Member of the Organization for Economic Cooperation and Development; (v) non-profit administrative authorities controlled by the central or regional governments or local territorial authorities of the states referred to in (ii) above, provided that the competent authorities in accordance with Article 43 (1)(b)(6) in conjunction with Article 46 of Directive 2000/12/EC have set a weighting for those loans of not more than 20 per cent.; (vi) the European Investment Bank, the International Bank of Reconstruction and Development, the Council of

Europe Development Bank, or the European Bank for Reconstruction and Development; and, finally, (vii) any entity the obligations of which are guaranteed by a public entity referred to or mentioned in (i) through (iv) and (vi) above.

The Cover Pool may furthermore include inter alia the following assets: (i) equalisation claims converted into bearer bonds; (ii) money claims against the European Central Bank, a central bank of any EU member state or a suitable credit institution, in as much as the amount of the claims of the Pfandbrief Bank is known at the time of purchase; and (iii) claims arising under certain derivatives contracted under standardised master agreements with certain qualifying counterparties, provided that it is assured that the claims arising under such derivatives will not be prejudiced in the event of the insolvency of the Pfandbrief Bank or any other Cover Pool maintained by it.

### ***Insolvency Proceedings***

In the event of the commencement of insolvency proceedings over the assets of the Pfandbrief Bank, none of the Cover Pools maintained by it would be included in the insolvency estate, and, therefore, such insolvency would not automatically result in an insolvency of any Cover Pool. Only if at the same time or thereafter the relevant Cover Pool were to become insolvent, separate insolvency proceedings would be initiated against such Cover Pool by the BaFin. In this case, holders of Pfandbriefe would have the first claim on the respective Cover Pool. Their preferential right would also extend to interest on the Pfandbriefe accrued after the commencement of insolvency proceedings. Furthermore, but only to the extent that holders of Pfandbriefe suffer a loss, holders would also have recourse to any assets of the Pfandbrief Bank not included in the Cover Pools. As regards those assets, holders of the Pfandbriefe would rank equal with other unsecured and unsubordinated creditors of the Pfandbrief Bank.

One or two administrators (Sachwalter — each, an "Administrator") will be appointed in the case of the insolvency of the Pfandbrief Bank to administer each Cover Pool for the sole benefit of the holders of Pfandbriefe. Upon request by the BaFin, the court having jurisdiction over the head office of the Pfandbrief Bank will appoint the Administrator before or after the institution of insolvency proceedings. The Administrator will be subject to the supervision by the court and also by the BaFin with respect to the duties of the Pfandbrief Bank arising in connection with the administration of the assets included in the relevant Cover Pool. The Administrator will be entitled to dispose of the Cover Pool's assets and receive all payments on the relevant assets to ensure full satisfaction of the claims of the holders of Pfandbriefe. To the extent, however, that those assets are obviously not necessary to satisfy such claims, the insolvency receiver of the Pfandbrief Bank is entitled to demand the transfer of such assets to the insolvency estate.

Subject to the consent of the BaFin, the Administrator may transfer all or part of the cover assets and the liabilities arising from the Pfandbriefe issued against such assets to another Pfandbrief Bank.

## DESCRIPTION OF DEPFA ACS BANK

DEPFA ACS BANK (“DEPFA ACS”) is a public unlimited company wholly owned by DEPFA BANK, the Primary purpose of which is to provide funding to the Group by issuing Asset Covered Securities in accordance with the ACS Act. DEPFA ACS was incorporated with registered number 354382 in Ireland on 13 March 2002 as a public limited company under the Irish Companies Act, 1963 as amended under the name of DePfa ACS plc. It was subsequently re-registered as a public unlimited company and changed its name to DEPFA ACS BANK.

DEPFA ACS has a banking licence issued under the Irish Central Bank Act, 1971 (as amended) and is supervised by the Financial Regulator. It also has the status of a designated public credit institution under the ACS Act which authorises it to issue Asset Covered Securities in accordance with the ACS Act.

The registered office of DEPFA ACS is at 1 Commons Street, Dublin 1, Ireland. The telephone number of the registered office is +353 1 792 2222.

The authorised share capital of DEPFA ACS at the date of this Prospectus is €1,000,000,000 divided into 1,000,000,000 ordinary shares of €1 each of which 510,000,000 shares are issued. DEPFA BANK plc is the beneficial owner of 100 per cent. of the issued share capital of DEPFA ACS. In addition, as of the date of this Prospectus DEPFA ACS has outstanding €190,000,000 of upper Tier 2 perpetual subordinated debt and €425,000,000 of lower Tier 2 subordinated term debt (€346,000,000 eligible Tier 2 own funds). DEPFA ACS is a directly held wholly-owned subsidiary of DEPFA plc and is under the control of HRE. However, DEPFA ACS and DEPFA plc are both regulated and supervised by the Financial Regulator under the Irish Banking Code (see Supervision and Regulation) and two of DEPFA ACS’s directors are not, at the date of this Prospectus, employees of any member of the HRE Group

The primary object of DEPFA ACS as set out in clause 3 of its Memorandum of Association is to carry on the permitted activities of a designated public credit institution or formerly designated public credit institution as provided for in the ACS Act.

DEPFA ACS has no subsidiaries or subsidiary undertakings.

### **The Business of DEPFA ACS**

DEPFA ACS was established with the purpose of issuing Asset Covered Securities under the ACS Act in order to finance public sector assets. Accordingly, the core activities of DEPFA ACS are the acquisition of public sector assets and the issuance and ongoing administration of public credit covered securities in accordance with the ACS Act. The issue of Asset Covered Securities provides the Group with a source of long term funding which assists the Group’s liquidity management and improves funding costs.

DEPFA ACS has acquired from members of the Group, or itself originated, a portfolio of assets with an aggregate outstanding principal amount of approximately € 67 billion as of 31 March 2008 in connection with the issuance of Asset Covered Securities. When DEPFA ACS first started to issue Asset Covered Securities, asset purchases were primarily made from other

members of the Group. However, direct asset origination by DEPFA ACS is becoming increasingly predominant over the refinancing of the existing assets on DEPFA plc's balance sheet.

DEPFA ACS's issuance of Asset Covered Securities is driven by capital market conditions and opportunities. Subject to market conditions, DEPFA ACS would normally expect to issue at least two benchmark issues annually with a maturity between three and ten years and intends to issue further Asset Covered Securities under the Programme on a private placement basis as well as issuing Asset Covered Securities on a stand-alone loan documentation basis from time to time. Asset Covered Securities are an extremely important part of the Group's funding strategy

The selection of assets for acquisition by DEPFA ACS and inclusion in the cover assets pool is largely determined by the requirements of the ACS Act and the specific characteristics of the Asset Covered Securities to be issued. Once the features of forthcoming issues have been determined according to market conditions, the composition of the pool is determined by the requirements of the ACS Act and influenced by rating quality standards, diversification objectives and asset liability management considerations.

DEPFA ACS is an unlimited company. There is no limit on the liability of the then-current members (the registered shareholders of record) of DEPFA ACS, as an unlimited company under Irish law, to contribute to DEPFA ACS in an insolvent liquidation of DEPFA ACS to the extent that DEPFA ACS's assets are insufficient to meet its liabilities. In that event, the liquidator of DEPFA ACS or the court has the right to seek contribution from each of the members. DEPFA ACS's unlimited status does not confer on the creditors of DEPFA ACS the right to seek payment of DEPFA ACS's liabilities from DEPFA ACS's members or to seek contribution for DEPFA ACS from the members in the event of DEPFA ACS becoming insolvent or otherwise. This right rests with the liquidator of DEPFA ACS or the court on an insolvent winding-up.

### **Board of Directors and management of DEPFA ACS**

Three of the directors of the Issuer are employees of DEPFA Group companies. Three directors of the Issuer are non-executive directors, one of whom is an employee of the Group. Both of the other two non-executive directors are on the board of directors of DEPFA plc. This close tie between DEPFA plc and the directors of the Issuer is aimed at maintaining the Group's expertise and business franchise at the Issuer. However, the Issuer is independent in its decision-making as far as it is appropriate for a wholly-owned subsidiary bank of a banking group. Generally, at least four full board meetings of the Issuer are held in Ireland each year while the executives meet on a more regular basis. The Issuer has an audit committee consisting of non-executive directors which meets on an annual basis to receive the report of the internal audit team of the Group on the Issuer. The Issuer considers itself to be adequately staffed but also relies on intra- group services, particularly from its parent, DEPFA plc.



## **The Board of Directors of DEPFA ACS BANK**

As of the date of this Information Memorandum, there are five members of the Board of Directors of DEPFA plc. Their business addresses and principal outside activities are listed below.

### **Members**

### **Principal Outside Activities**

#### **Bo Heide-Ottosen**

*(chairman and non-executive director)*

Business address:

1 Commons Street,  
Dublin 1, Ireland

Offices held within the HRE Group:

Hypo Real Estate Holding AG  
Member of the management board  
DEPFA plc

DEPFA Deutsche Pfandbriefbank AG  
Chairman of the Supervisory Board  
Hypo Pfandbrief Bank International S.A.  
(Luxembourg)  
Chairman of the Board  
Director Other Directorships/Activities:

None

#### **Dr. John Kevin Bourke**

*(non-executive director)*

Business address:

7 The Woods,  
Ballinlea Road,  
Killiney, Co. Dublin

Other Directorships/Activities:

DEPFA plc  
Hypo Public Finance Bank  
HVB Credit Advisors Limited  
HVB Fund Services Limited  
Bray Offshore Wind Limited  
Cloughboola Windfarms Limited  
Cordal Windfarms Limited  
Glanaruddery Windfarms Limited  
Kish Offshore Wind Limited  
Minnehome Limited

Muingnaminnane Windfarms Limited  
Saorgus Energy Limited  
Tursillagh Holdings Limited  
Tursillagh Wind Farms Limited  
Tursillagh 2 Limited

**Mr. Patrick Joseph Ryan**  
(*non-executive director*)

Business address:

5 Burleigh Mews,  
Burlington Road,  
Dublin 4

Other Directorships/Activities:

DEPFA plc  
Hypo Public Finance Bank  
The Society of Actuaries in Ireland  
AIB Pensions (UK) Limited  
Axa Life Europe Limited  
Axa Life Europe Hedging Services Limited

**Michael Deeny**  
(*Managing Director*)

Business address:

1 Commons Street  
Dublin 1, Ireland

Offices held within the HRE Group:

(Non-Executive Director)  
DEPFA Hold One Limited  
DEPFA Hold Two Limited  
DEPFA Hold Three Limited  
DEPFA Hold Four Limited  
DEPFA Hold Six unlimited  
DEPFA Ireland Holding Limited  
DEPFA Royalty Management Limited  
DBE Property Holdings Limited  
NEBRA Hold One Limited  
Other Directorships/Activities:  
German Irish Chamber of Industry and  
Commerce  
International School of Dublin Limited

**Julia Hoggett**  
(*Executive Director*)

Business address:

1 Commons Street  
Dublin 1, Ireland

Other Directorships/Activities:

British American Project Limited

As far as known to DEPFA ACS, other than as may arise from an individual director's principal outside activities as listed above, no potential conflicts of interest exist between any duties to DEPFA ACS of the Board of Directors listed above and their private interests or other duties in respect of their management roles.

### **Auditors**

DEPFA ACS's auditors are PricewaterhouseCoopers One Spencer Dock, North Wall Quay, Dublin 1, Ireland, who are registered with the Institute of Chartered Accountants in Ireland.

### **Financial Year**

The financial year of DEPFA ACS is the calendar year.

## IRISH ASSET COVERED SECURITIES

### 1. Overview of the Asset Covered Securities Acts 2001 and 2007

The Asset Covered Securities Act 2001 (the "2001 ACS Act") as amended and supplemented by the Asset Covered Securities (Amendment) Act 2007 (the "2007 ACS Act") (the 2001 ACS Act together with, and as amended by, the 2007 ACS Act, the "ACS Act") introduced into Irish law a framework for the issuance of asset covered securities.

Asset covered securities can only be issued by Irish credit institutions which are registered under the ACS Act and restrict their principal activities to public sector or property financing. Those credit institutions, such as DEPFSA ACS, which are registered under the ACS Act and restrict their principal activities to public sector financing are called designated public credit institutions ("Institutions"). The ACS Act provides, among other things, for the registration of eligible credit institutions as Institutions, the maintenance by Institutions of a defined pool of prescribed public credit assets and limited classes of other assets, known as a cover assets pool ("Pool") and the issuance by Institutions of certain asset covered securities secured by a statutory preference under the ACS Act on the assets ("Cover Assets") comprised in the Pool. Asset covered securities issued by Institutions in accordance with the ACS Act are called public credit covered securities ("Asset Covered Securities").

The ACS Act varies the general provisions of Irish insolvency law which would otherwise apply with respect to Cover Assets and Asset Covered Securities on the insolvency of an Institution. See "*Insolvency of Institutions*" below. The ACS Act further provides for the supervision and regulation of Institutions by the Irish Financial Services Regulatory Authority, as part of the Central Bank and Financial Services Authority of Ireland (the "Authority"), for the role of the cover-assets monitor (the "Monitor") in respect of each Institution, for asset/ liability management between the Pool and Asset Covered Securities and, in certain circumstances, for the role with respect to an Institution and its Pool and Asset Covered Securities of the National Treasury Management Agency or a manager appointed by the Authority.

A more detailed examination of the ACS Act and regulations made thereunder are set out below under the headings "*Cover Assets Pool*", "*Restrictions on the Activities of an Institution*", "*The Cover Assets Monitor*", "*Overcollateralisation*", "*Insolvency of Institutions*", "*Supervision and Regulation*" and "*Registration of Institutions/Revocation of Registration*".

### 2. Cover Assets Pool

#### *Institutions Required to Maintain Cover Assets Pool*

An Institution may only issue Asset Covered Securities if it maintains a Pool in compliance with the ACS Act.

A public credit asset or a substitution asset forms part of the Pool only if its inclusion has been approved by the Monitor.

In general, where an Institution becomes aware that it has contravened the requirements of the ACS Act relating to the Pool that it is required to maintain, the Institution in question must take all possible steps to prevent the contravention from continuing or being repeated. Until those steps have been taken, the Institution may not issue further Asset Covered Securities. As soon as practicable after the Monitor appointed in respect of an Institution has become aware, or

has formed a reasonable suspicion, that the Institution has contravened or failed to comply with a provision of the ACS Act that relates to the responsibilities of a Monitor, the Monitor is required to provide the Authority with a written report of the matter. See "*The Cover-Assets Monitor — Duties of the Monitor before an Institution issues Asset Covered Securities*" and "*The Cover-Assets Monitor — Duty of the Monitor to Inform the Authorities of Certain Matters*" below. Under the ACS Act, an Institution is required, as soon as practicable after becoming aware that certain Cover Assets comprised in its Pool would, if the Institution were to include such assets at that time in its Pool, contravene certain of the requirements of the ACS Act, remove such assets from its Pool and, where required, replace such assets. Until these steps have been taken, the Institution is prohibited from issuing any further Asset Covered Securities. See further below under "*Location Requirements*" and "*Restrictions on Inclusion of Substitution Assets in the Pool*".

The ACS Act empowers the Authority to apply to the Irish High Court for an order prohibiting a person (including an Institution) whom it finds to be contravening or to have repeatedly contravened a provision of the ACS Act or a regulatory notice or a regulation made under the ACS Act from continuing or repeating the contravention. The Irish High Court may also, on an application from the Authority, make an order requiring a person (including an Institution) to comply with a provision of the ACS Act or a regulatory notice or a regulation made under the ACS Act if it finds that such person has failed or is failing to comply with the provision after being requested by the Authority so to comply.

#### *Categories of Assets that may be Included in the Pool*

A Pool maintained by an Institution may include only certain public credit assets, substitution assets and cover assets hedge contracts as described below.

#### *Public Credit Assets*

A "public credit asset" is defined as an asset or property held by an Institution that comprises one or more public credits.

The ACS Act defines "public credit" as any kind of financial obligation in respect of money borrowed or raised (for this purpose a financial obligation includes one that is in the form of a security that represents other public credit that is securitised as well as one that is not, and an obligation given as a surety or guarantee), where the person who has the obligation is:

- (a) central governments, central banks, public sector entities, regional governments or local authorities in Ireland or in any other EEA country;
- (b) central governments and central banks in Australia, Canada, Japan, New Zealand, the Swiss Confederation, the United States of America or a country specified in an order made by the Minister for Finance of Ireland (a "section 5(1)(b) asset");
- (c) public sector entities (as defined below), regional governments and local authorities in Australia, Canada, Japan, New Zealand, the Swiss Confederation, the United States of America or a country specified in an order made by the Minister for Finance of Ireland (a "section 5(1)(c) asset");

- (d)
  - (i) multilateral development banks which qualify as such for the purposes of the Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast) (the "Recast Codified Banking Directive"); or
  - (ii) international organisations which qualify as such for the purposes of the Recast Codified Banking Directive,
    - (each a "section 5(1)(d) asset");
- (e) central governments, central banks, public sector entities, regional governments or local authorities in a category B country (as defined below); or
- (f) any other entity established in a country to which paragraph (a), (b) or (e) relates that is prescribed by order of the Minister for Finance of Ireland.

The ACS Act defines "public sector entities" as:

- (a) non-commercial administrative bodies (which is defined to include commercial undertakings, or undertakings with non-commercial and commercial activities, owned or controlled by central governments or regional governments or local authorities where the debt concerned of the undertaking is used directly or indirectly for the purpose of complying with public service obligations) responsible to –
  - (i) central governments, regional governments or local authorities, or
  - (ii) authorities that are regarded by the competent authority (within the meaning of Regulation 2 of the European Communities (Capital Adequacy of Credit Institutions) Regulations 2006 of Ireland), for the purposes of the Recast Codified Banking Directive, as exercising the same responsibilities as regional governments or local authorities,
- (b) non-commercial undertakings owned by central governments that have explicit guarantee arrangements, or
- (c) self-administered bodies governed by law that are under public supervision.

#### *Substitution Assets*

The ACS Act defines "substitution assets" as:

- (a) deposits with an eligible financial institution (see below); and
- (b) any specified kind of property (being an exposure to an institution within the meaning of Article 4(6) of the Recast Codified Banking Directive) designated a substitution asset in an order made by the Minister for Finance (as at the date of this Prospectus no assets have been so designated by Ministerial order).

For the purposes of (a) above, the Authority's regulations made before the date of this Prospectus provide that the following financial institutions are eligible financial institutions:

- (i) Any credit institution which is authorised in Ireland or any other EEA country; or
- (ii) A bank which is authorised to receive deposits or other repayable funds from the public and is located in Australia, Canada, Japan, New Zealand, the Swiss Confederation or the United States of America,

which has, from an eligible ECAI, a minimum credit quality assessment of Credit Quality Step 2 (as such terms are defined in the laws of Ireland which implement the Recast Codified Banking Directive).

#### *Location Requirements*

Under the ACS Act, a public credit asset or a substitution asset (other than a deposit) is located in the country in which the entity which qualifies the asset as a public credit asset or, as applicable, a substitution asset, is formed or established. A substitution asset which is a deposit is situated in the country in which the place of business of the financial institution that is holding the deposit is located.

Under the ACS Act, the public credit assets and substitution assets comprised in the Pool may be located within any EEA country or category A country (see below).

Under the ACS Act, a "category A country" is defined as Australia, Canada, Japan, New Zealand, the Swiss Confederation, the United States of America or any country specified in an order made by the Minister for Finance of Ireland.

An Institution is, subject to the provisions of the ACS Act outlined below, prohibited from including in its Pool any public credit asset or substitution asset located only within a category B country.

A "category B country" is defined as a country, other than a category A or EEA country, that is a full member of the Organisation for Economic Co-operation and Development, but only if it has not re-scheduled its external debt during the immediately preceding five years.

Under the ACS Act, subject as provided below:

- (a) an Institution is not permitted to include in its Pool a section 5(1)(b) asset (as defined above) or a section 5(1)(d) asset (as defined above) unless such asset complies with any creditworthiness standards or criteria which may be specified by the Authority in a regulatory notice (as at the date of this Prospectus, the creditworthiness standards and criteria which have been so specified by the Authority are those specified in paragraph 68(b) of Annex VI to the Recast Codified Banking Directive); and
- (b) an Institution is not permitted to include in its Pool a section 5(1)(c) asset (as defined above) unless such asset complies with (i) risk weighting standards or criteria for capital adequacy purposes which are specified by the Authority in a regulatory notice (as at the date of this Prospectus, the risk weighting standards and criteria which have been so specified by the Authority are those specified in

paragraphs 68(b) of Annex VI to the Recast Codified Banking Directive) and (ii) creditworthiness standards or criteria which may be specified by the Authority in a regulatory notice (as at the date of this Prospectus, the creditworthiness standards and criteria which have been so specified by the Authority are those specified in paragraph 68(b) of Annex VI to the Recast Codified Banking Directive),

provided, however, that a section 5(1)(b) asset, section 5(1)(c) asset or section 5(1)(d) asset may, notwithstanding the above restriction, be included by an Institution in its Pool if:

- (i) any such assets comply with credit-worthiness standards or criteria, or risk-weighting standards or criteria, so specified by the Authority in a regulatory notice; and
- (ii) the total aggregate nominal or principal amount of all such assets comprised in the Pool at any time does not exceed 20 per cent. of the aggregate nominal or principal amount of outstanding Asset Covered Securities issued by the Institution.

When making any regulatory notice for these purposes, the Authority is required to have regard to any relevant standards or criteria applicable under the Recast Codified Banking Directive which are relevant to article 22(4) securities that qualify as covered bonds for the purposes of that Directive.

"Article 22(4) securities" are defined in the ACS Act as bonds which come within the terms of the first sub-paragraph of Article 22(4) of Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (as inserted by Council Directive 88/220/EC of 22 March 1988 amending, as regards the investment policies of certain UCITS, Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investments in transferable securities (UCITS).

Under the ACS Act, an Institution is required, as soon as practicable after becoming aware that a section 5(1)(b) asset, a section 5(1)(c) asset or a section 5(1)(d) asset comprised in its Pool would, if the Institution were to include that asset at that time in its Pool, contravene the above requirements, remove that section 5(1)(b) asset, section 5(1)(c) asset or section 5(1)(d) asset, as applicable, from its Pool and, where required, replace it. Until these steps have been taken, the Institution is prohibited from issuing any further Asset Covered Securities.

#### *Non-Performing Assets*

Non-performing assets may not be included in the Pool. "Non-performing" is defined in the context of an Institution to mean that the relevant asset is in the course of being foreclosed or otherwise enforced or that one or more payments of principal or interest payable on the related credit are in arrears for ten days or more under the terms of the security documents that govern that credit.

#### *Financial Matching Criteria for the Pool and Asset Covered Securities*



The ACS Act sets out certain financial matching requirements which must be met by an Institution in respect of its Pool and Asset Covered Securities. These criteria are that:

- (a) the Pool maintained by an Institution has a duration (see below) of not less than the Asset Covered Securities;
- (b) the prudent market value of the Pool is greater than the total of the principal amount of those Asset Covered Securities;
- (c) the total amount of interest payable in a given period of 12 months in respect of the Pool is during that 12 month period not less than the total amount of interest payable in respect of that period on those Asset Covered Securities; and
- (d) the currency in which each public credit asset and each substitution asset included in the Pool is denominated is the same as the currency in which those Asset Covered Securities are denominated,

after taking into account, in the case of paragraphs (b), (c) and (d) above, the effect of any cover assets hedge contract (see "Cover Assets Hedge Contracts" below) that the Institution has entered into in relation to the Pool and those Asset Covered Securities. The effect of any pool hedge collateral is to be disregarded for the purpose of the above financial matching criteria.

#### *Meaning of Duration of the Pool and Asset Covered Securities*

"Duration" means, in relation to the Pool and Asset Covered Securities, a weighted average term to maturity of the relevant principal amount of public credit assets and substitution assets comprised in the Pool or those Asset Covered Securities, as the case may be, determined in accordance with a formula or criteria specified in a regulatory notice published by the Authority, after taking into account the effect of any relevant cover assets hedge contract entered into by the Institution in relation to the Pool or those Asset Covered Securities, or both, as the case may be.

For the purposes of the definition of "duration" contained within the ACS Act, the weighted average term to maturity of the relevant principal or nominal amount of public credit assets and substitution assets comprised in the Pool must not be more than 3 years greater than the weighted average term to maturity of the Asset Covered Securities secured on that Pool after taking into account the effect of any relevant cover assets hedge contract entered into by the Institution in relation to the Pool or those Asset Covered Securities, or both, as the case may be.

#### *Valuation of Assets Held by an Institution*

The prudent market value of a public credit asset comprised in the Pool maintained by an Institution is an amount denominated in the currency in which the related public credit is denominated, equal to 100 per cent. (or such other percentage as may be specified by regulations made by the Authority (although, as of the date of this Prospectus, no relevant regulations have been made)) of the principal or nominal amount of that public credit that is outstanding on the date concerned.

The Authority may specify, by regulatory notice, further requirements in relation to the valuation basis and methodology, time of valuation and any other matter that it considers relevant for determining the prudent market value of public credit assets for the purposes of the ACS Act. The ACS Act also empowers the Authority to specify, by regulatory notice,

requirements in relation to the valuation basis and methodology, time of valuation and any other matter that it considers relevant for determining the prudent market value of substitution assets, or the value of credit transaction assets, or the total assets held by an Institution for the purposes of the ACS Act.

The Authority published the Asset Covered Securities Act, 2001 Regulatory Notice (Section 56(3) and Section 56(5)) on 31st August, 2007. In that notice, the Authority specified requirements in relation to the valuation basis and methodology and time of valuation of substitution assets, credit transaction assets and total assets.

#### *Restrictions on Replacement of Underlying Assets Comprised in the Pool*

A public credit asset or substitution asset may replace an underlying asset (defined in relation to a Pool as a public credit asset or substitution asset that is then comprised in the Pool) only if the replacement has been approved by the Monitor.

An Institution is required to replace an underlying asset with a public credit asset or substitution asset if the underlying asset, when included in the Pool, contravenes or fails to comply with a provision of the ACS Act, the regulations made by the Authority under the ACS Act or a requirement of the Authority or the Monitor made under the ACS Act.

Subject to obtaining the consent of its Monitor, an Institution is permitted in any other case to replace an underlying asset with a public credit asset or substitution asset, provided that the replacement is not prohibited by a provision of the ACS Act, the regulations made by the Authority under the ACS Act or a requirement of the Authority.

An Institution may not replace an underlying asset with a public credit asset or a substitution asset if the public credit asset or substitution asset would not have been eligible for initial inclusion in the Pool.

#### *Restrictions on Inclusion of Substitution Assets in the Pool*

An Institution is prohibited from including a substitution asset in its Pool unless the substitution asset concerned meets the creditworthiness standards or criteria applicable to it specified by the Authority in a regulatory notice, or if, after including the substitution asset concerned in the Pool, the total prudent market value of all substitution assets then comprised in the Pool at the relevant time would exceed 15 per cent. of the aggregate nominal or principal amount of outstanding Asset Covered Securities secured on such Pool.

The Authority may, however, suspend the applicable ratio requirement if it is satisfied that to do so would facilitate the discharge of secured claims (that is, claims in respect of which the rights of a preferred creditor are secured under Part 7 of the ACS Act, see "Insolvency of Institutions" below) against the Institution.

The Authority has issued a regulatory notice prescribing the following creditworthiness standards and criteria which must be met by a substitution asset to be eligible to be included in the Pool maintained by an Institution:

- (a) a credit quality assessment of Credit Quality Step 1; or
- (b) for exposures within the EEA with maturity not exceeding 100 days, a minimum long term credit quality assessment of Credit Quality Step 2,

(as such terms are defined in the laws of Ireland which implement the Recast Codified Banking Directive).

An Institution is required, as soon as practicable after becoming aware that a substitution asset comprised in its Pool would, if the Institution were to include that substitution asset at that time in its Pool, contravene the creditworthiness standards or criteria applicable to it as specified by the Authority in a regulatory notice (as referred to above), remove that substitution asset from its Pool and, where required, replace it. Until these steps have been taken, the Institution is prohibited from issuing any further Asset Covered Securities.

#### *Use of Realised Proceeds of Cover Assets*

Money received by an Institution as the proceeds of realising a Cover Asset forms part of the Pool until (i) it is used to create or acquire permitted public credit assets or substitution assets for inclusion in the Pool, (ii) it is used to discharge secured claims under the ACS Act (see Insolvency of Institutions below), (iii) it is released from the Pool as an underlying asset and is replaced by other public credit assets or substitution assets, or (iv) it is released from the Pool in accordance with the ACS Act.

#### *Release of Underlying Assets from the Pool*

An Institution may, with the prior consent of the Monitor, release underlying assets from the Pool if the assets are not required to be comprised in the Pool to secure secured claims.

#### *Register of Public Credit Covered Securities Business*

An asset is, except as indicated under "Use of Realised Proceeds of Cover Assets" above, included in, or removed from, a Pool when the appropriate particulars are recorded in the register of public credit covered securities business maintained by the Institution (the "Business Register").

An Institution is required to establish and keep a Business Register in respect of:

- (a) the Asset Covered Securities it has issued;
- (b) the cover assets hedge contracts (see "Cover Asset Hedge Contracts" below) that it has entered into; and
- (c) the public credit assets and substitution assets that it holds as security for those Asset Covered Securities and contracts.

An Institution is required at all times to provide access to the Business Register to the Authority and the Monitor appointed in respect of such Institution, and to permit each such person to take copies of the Business Register or any entry in the Business Register at such Institution's expense.

#### *Cover Assets Hedge Contracts*

An Institution is permitted under the ACS Act to enter into certain hedging contracts related to its permitted activities including the maintenance of its Pool and the issuance of Asset Covered Securities. The definition of "cover assets hedge contracts" in the ACS Act encompasses certain hedging contracts that relate directly or indirectly only to (i) Asset Covered Securities, or (ii) certain Cover Assets, or (iii) both Asset Covered Securities and certain Cover

Assets, provided in all cases that the Institution and the counterparty have agreed that the contract is to be comprised in the Pool.

A cover assets hedge contract must state, among other things, that it is a cover assets hedge contract entered into in accordance with the ACS Act, and a cover assets hedge contract must comply with the requirements (if any) specified in any relevant regulatory notice published by the Authority. As of the date of this Prospectus, the Authority has not published a regulatory notice specifying any such requirements.

As soon as practicable after entering into a cover assets hedge contract, an Institution is required to ensure that particulars of the contract are entered into the Business Register. An Institution must remove from its Business Register a cover assets hedge contract if the contract has been discharged or the counterparty has so agreed.

An Institution is required to establish and keep a register in respect of any pool hedge collateral that it holds (the "Pool Hedge Collateral Register").

"Pool hedge collateral" in relation to a cover assets hedge contract means any asset or property provided to an Institution by or on behalf of any other contracting party to that contract where the terms of the contract provide for an absolute transfer of the asset or property to the Institution by way of collateral (but not by way of security), or both provide for the transfer of the asset or property to the Institution by way of security and give the Institution the right to deal with the asset or property as if the Institution were the absolute owner of that asset or property.

An Institution is required to include in its Pool Hedge Collateral Register, among other matters, the following particulars:

- (a) the pool hedge collateral it holds from each counterparty to a cover assets hedge contract;
- (b) particulars of the cover assets hedge contracts that relate to the pool hedge collateral;
- (c) such other particulars as are prescribed by regulatory notice issued by the Authority.

The consent of the Monitor is not required for an Institution to make, amend or delete an entry in its Pool Hedge Collateral Register unless either (i) the Authority so requires, or (ii) the Institution is insolvent or potentially insolvent.

In addition, the Authority may, by regulatory notice, specify requirements in relation to:

- (a) the type of assets or property that qualify as pool hedge collateral; and
- (b) the maintenance and operation of the Pool Hedge Collateral Register.

The Authority has issued a regulatory notice requiring Institutions to include in their Pool Hedge Collateral Registers details, in respect of any pool hedge collateral, of the cover assets hedge contract for which such pool hedge collateral has been provided. Institutions are required to maintain their Pool Hedge Collateral Registers at their registered or head offices, or at such other office in Ireland as has been notified to the Authority in writing.

The Authority has also made regulations requiring the Monitor appointed in respect of an Institution to monitor the Institution's compliance with the requirement to include certain particulars in its Pool Hedge Collateral Register.

The ACS Act provides that an asset or property that comprises all or any part of any pool hedge collateral is excluded from public credit assets and substitution assets for the purposes of the ACS Act.

#### *Financial Statements of an Institution*

Under the ACS Act an Institution must include in its annual financial statements the names of the countries in which the public credit assets comprised in its Pool are located and the number and percentage of those assets located in those countries as of the date to which the financial statements are made up. Under the ACS Act, an Institution is also required to include a reference to the number and percentage of any section 5(1)(d) assets comprised in its Pool. An Institution must also include such other information as may be prescribed by the regulations made by the Authority. As of the date of this Prospectus, no such regulations have been made by the Authority.

### **3. Restrictions on the Activities of an Institution**

An Institution may not carry on a business activity other than a permitted business activity (see below), although entities which hold more than one designation (relating to both public credit and mortgage credit activities) may carry out the permitted activities in respect of each designation.

#### *Permitted Business Activities in which an Institution may engage*

Under the ACS Act, the permitted business activities in which an Institution may engage (subject to the restrictions described below) are:

- (a) providing public credit and dealing in and holding public credit assets;
- (b) dealing in and holding substitution assets;
- (c) dealing in and holding assets that the Authority requires it to hold for regulatory purposes;
- (d) dealing in and holding credit transaction assets;
- (e) engaging in activities connected with financing or refinancing permitted business activities;
- (f) entering into certain hedging contracts for the purpose of hedging risks associated with the foregoing activities and dealing in and holding pool hedge collateral; and
- (g) engaging in activities that are incidental or ancillary to the foregoing activities.

Categories (a) and (b) are discussed above — see "*Cover Assets Pool*" above. An explanation of certain of the categories of permitted business activities is set out below.

#### *Permitted Business Activities — (d) Dealing in and Holding Credit Transaction Assets*

The ACS Act defines a "credit transaction asset" as an asset derived from having engaged in a credit transaction. A "credit transaction" is defined as:

- (a) placing a deposit with a financial institution which has been designated as eligible for such purposes by order made by the Authority (see below);
- (b) dealing with or holding a financial asset; or
- (c) any other kind of transaction designated as such by the Minister for Finance of Ireland by order. At the date of this Prospectus no such order has been made.

A "financial asset" is defined to include shares, gilts, bonds, derivatives and debt portfolios.

Regarding paragraph (a) above, the Authority has before the date of this Prospectus designated by order the following financial institutions as eligible financial institutions:

- (i) any credit institution which is authorised in Ireland or any other EEA country, or
- (ii) a bank which is authorised to receive deposits or other repayable funds from the public and is located in Australia, Canada, Japan, New Zealand, the Swiss Confederation or the United States of America,

which has a credit quality assessment of Credit Quality Step 3 (as defined in the laws of Ireland which implement the Recast Codified Banking Directive).

*Permitted Business Activities — (e) Engaging in Activities Connected with Financing or Refinancing Permitted Business Activities*

The activities referred to in relation to the financing or re-financing of an Institution's assets include (but are not limited to):

- (a) taking deposits or other repayable funds from the public; and
- (b) issuing Asset Covered Securities (see further below).

*Permitted Business Activities — (f) Entering into Certain Hedging Contracts for the Purpose of Hedging Risks Associated with the Foregoing Activities and Dealing in and Holding Pool Hedge Collateral*

An Institution may enter into one or more contracts ("Hedging Contracts") the purpose or effect of which is to reduce or minimise the risk of financial loss or exposure liable to arise from:

- (a) fluctuations in interest rates or currency exchange rates;
- (b) credit risks; or
- (c) other risk factors that may adversely affect its permitted business activities.

The Authority may, by regulatory notice, specify requirements as to:

- (a) the kind of Hedging Contracts; and
- (b) the terms and conditions under which Hedging Contracts, or any class of those contracts, may be entered into.

As at the date of this Prospectus, no such regulatory notice has been published by the Authority.

Special provision is made for Hedging Contracts which relate to certain Cover Assets held, and Asset Covered Securities issued, or to both Cover Assets held and Asset Covered Securities issued, by an Institution. Those Hedging Contracts when recorded in the Business Register are referred to in the ACS Act as cover assets hedge contracts. The provisions of the ACS Act relating to those contracts are described further under the headings "*Cover Assets Pool — Cover Assets Hedge Contracts*" and "*Insolvency of Institutions*".

#### *General Restrictions on Certain Types of Permitted Business Activities*

The ACS Act specifies limitations on the level of public credit assets or substitution assets held by an Institution in the course of its general business activities which may be located in category B countries. The total prudent market value of public credit assets or substitution assets located in category B countries held by the Institution, expressed as a percentage of the total prudent market value of all the public credit assets and substitution assets held by the Institution, may not exceed 10 per cent. (or such other percentage as may be specified by an order of the Minister for Finance) of the total prudent market value of all of the public credit assets and substitution assets held by the Institution.

An Institution is required to ensure that the total value of the credit transaction assets that it holds, expressed as a percentage of the total value of all of the Institution's assets, does not at any time exceed 10 per cent. (or such other percentage as may be specified by an order of the Minister for Finance (although, as at the date of this Prospectus, no relevant order has been made)) of the total value of all of the Institution's assets. In relation to valuations of assets of an Institution, see *Cover Assets Pool — Valuation of Assets Held by an Institution*.

The Authority, by giving notice in writing to an Institution, may impose on an Institution or on any class of Institutions requirements or restrictions as to the kinds of credit transaction assets that the Institution or class of Institutions may hold.

Any restriction on the proportion or percentage of the Pool which may be comprised of certain Cover Assets or criteria or standards applicable to Cover Assets will not apply to any further such Cover Assets comprised or to be comprised from time to time in that Pool, provided that and for so long as the Institution is in compliance with the financial matching requirements set out in the ACS Act in respect of its Pool and Asset Covered Securities (see "*Cover Assets Pool – Financial Matching Criteria for the Pool and Asset Covered Securities*" above) and the Pool meets the required level of regulatory overcollateralisation and the Institution is in compliance with any contractual overcollateralisation undertaking given by it (see further below "*The Cover-Assets Monitor*" and "*Overcollateralisation*").

#### **4. The Cover-Assets Monitor**

##### *Appointment of a Cover-Assets Monitor*

The ACS Act requires every Institution to appoint a qualified person (see "Qualifications of a Monitor" below) to be a Monitor in respect of the Institution. An appointment of a Monitor by an Institution does not take effect until it is approved in writing by the Authority. The Institution is responsible for paying any remuneration or other money payable to its Monitor in connection with the Monitor's responsibilities in respect of the Institution.

### *Monitor in Respect of DEPFA ACS*

The Monitor appointed in respect of DEPFA ACS at the date of this Prospectus is AIB International Financial Services Limited, an affiliate of Allied Irish Banks plc of Dublin, Ireland. The Authority has approved the appointment of AIB International Financial Services Limited as Monitor in respect of DEPFA ACS. The terms on which AIB International Financial Services Limited has been appointed and acts as Monitor in respect of DEPFA ACS are set out in an agreement entered into between AIB International Financial Services Limited and DEPFA ACS (the "Cover-Assets Monitor Agreement"). The Cover-Assets Monitor Agreement reflects the requirements of the ACS Act in relation to the appointment of a Monitor in respect of an Institution and provides for certain matters, such as overcollateralisation, the payment of agreed fees and expenses by DEPFA ACS to AIB International Financial Services Limited, and the resignation of AIB International Financial Services Limited as Monitor in respect of DEPFA ACS (see below).

### *AIB International Financial Services Limited*

AIB International Financial Services Limited ("AIBIFS") was established in 1988 and is a wholly owned subsidiary of AIB Capital Markets plc, which in turn, is a wholly-owned subsidiary of Allied Irish Banks plc. AIBIFS is authorized and regulated by the Authority under the Irish Investment Intermediaries Act, 1995 (as amended) and operates subject to AIB corporate group regulatory requirements and AIB banking group policies in terms of regulatory reporting, operational risk and best business practice. AIBIFS is involved in the provision of outsourced financial and related services for a global client base. AIBIFS administers transactions in Luxembourg, Hungary, the United Kingdom, Switzerland and Ireland.

### *Qualifications of a Monitor*

The Authority has specified in a regulatory notice that the qualifications for an appointment as a Monitor in respect of an Institution are:

- (a) a Monitor must be a body corporate or partnership, comprising personnel and partners respectively who are members of a professional representative body. The Monitor must demonstrate to the satisfaction of the Authority that it is experienced and competent in the following areas:
  - (i) financial risk management techniques;
  - (ii) regulatory compliance reporting; and
  - (iii) capital markets, derivatives, public credit business and mortgage credit business as applicable;
- (b) a Monitor must demonstrate that it has sufficient resources at its disposal, and its personnel or partners must have sufficient academic or professional qualifications and experience in the financial services industry to satisfy firstly the Institution and secondly the Authority that it is capable of fulfilling this role;
- (c) a Monitor should possess adequate professional indemnity insurance to the satisfaction of the Institution;
- (d) the books and records of a Monitor must be held in Ireland;



- (e) a Monitor must not be an affiliate of the Institution or of any affiliate of the Institution;
- (f) a Monitor or any of its affiliates must not be engaged as auditor or legal advisor to the Institution or any of its affiliates or (except where it is established to the satisfaction of the Authority that it will not create any relevant conflict of interest) provide other services to the Institution or any affiliate of the Institution;
- (g) a Monitor must not hold any shares or similar interest in the Institution or in any affiliate of the Institution; and
- (h) except as permitted by the ACS Act, the regulations and any regulatory notices or orders made under the ACS Act, a Monitor must not be involved in any decision-making function or directional activity of the Institution or any of its affiliates which could unduly influence the judgement of management of the Institution or its affiliates.

*Duties of the Monitor before an Institution Issues Asset Covered Securities*

Before an Institution issues Asset Covered Securities or enters into a cover assets hedge contract, the Monitor must take reasonable steps to verify:

- (a) that the Institution will be in compliance with the financial matching requirements of the ACS Act with respect to the Pool and Asset Covered Securities and will not be in contravention of the requirements in respect of location of Cover Assets or of the restrictions on the inclusion of substitution assets in the Pool as a result of issuing the Asset Covered Securities or entering into the hedge contract;
- (b) that the Institution will comply with the requirements of the ACS Act with respect to keeping its Business Register; and
- (c) such other matters relating to the business of Institutions as may be prescribed by regulations made by the Authority.

In relation to (c) above and matters in respect of which regulations have been made by the Authority, see "*Overcollateralisation*" below.

*Continuing Duties of the Monitor*

The Monitor is responsible for monitoring the Institution's compliance with the provisions of the ACS Act relating to financial matching criteria for the Pool and Asset Covered Securities, maintenance of a minimum level of regulatory Overcollateralisation, replacement of Cover Assets in the Pool, inclusion of substitution assets in the Pool, maintenance of the Institution's Business Register and such other matters as may be prescribed by regulations made by the Authority.

Under regulations adopted by the Authority, the Monitor is also responsible for monitoring the Institution's compliance with regulations regarding sensitivity to interest rate changes, the Institution's compliance with the requirement to include certain particulars in its Pool Hedge Collateral Register and with any contractual undertakings given by the Institution to maintain a level of Overcollateralisation of Cover Assets as against Asset Covered Securities (see further "*Overcollateralisation*" below).

### *Duty of the Monitor to Inform the Authority of Certain Matters*

As soon as practicable after the Monitor has become aware, or has formed a reasonable suspicion, that the Institution in respect of which it has been appointed has contravened or failed to comply with a provision of the ACS Act (which includes regulations made by the Authority under the ACS Act) that relates to the responsibilities of the Monitor, the Monitor is required to provide the Authority with a written report of the matter. The Monitor is also required to provide the Authority with reports and information as requested from time to time by the Authority regarding the Institution's compliance or non-compliance with the provisions of the ACS Act that relate to the responsibilities of the Monitor.

### *Power of the Monitor to Enter an Institution's Business Premises/Obtain Information from an Institution*

A Monitor may, upon giving the Institution in respect of which it has been appointed reasonable notice, enter at any reasonable time during ordinary business hours any place at which the Institution carries on its business for the purpose of carrying out the Monitor's responsibilities in relation to the Institution.

A Monitor may also, by notice in writing to the relevant Institution, require it to give to the Monitor, within such period as may be specified in the notice, any specified information or record that relates to the responsibilities of the Monitor in respect of the Institution, but only if the information or record is in the possession or under the control of the Institution.

### *Duties of an Institution to Inform its Monitor of Certain Matters*

An Institution is required to keep its Monitor informed of the following matters:

- (a) particulars of payments received by the Institution in respect of Cover Assets comprised in the relevant Pool, and at such times or intervals, as the Monitor requires;
- (b) any failure of any person who has a financial obligation in respect of those assets which are public credit assets or substitution assets (or, once the relevant provisions of the ACS Act come into operation, cover assets hedge contracts) to perform the obligation within 10 days (or such other period as may be specified in a regulatory notice published by the Authority) after it was due to be performed; and
- (c) any proceedings brought in relation to those Cover Assets against any such person by or on behalf of the Institution.

An Institution that, without reasonable excuse, fails to provide its Monitor with the above information commits an offence and is liable on summary conviction to a fine not exceeding EUR 1,000.

### *Priority of a Monitor on an Insolvency of the Institution*

The Monitor of an Institution, along with any manager that has been appointed to the Institution, constitute "super-preferred" creditors of the Institution. The claims of super-preferred creditors rank ahead of those of any other preferred creditors (including holders of Asset

Covered Securities). For a description of the priority afforded to the claims of preferred creditors of an Institution on the insolvency of such Institution, see "Insolvency of Institutions" below.

#### *Termination of Appointment of a Monitor by an Institution*

An Institution may terminate the appointment of its Monitor only with the written consent of the Authority. The Authority may direct an Institution to terminate the appointment of its Monitor and to appoint another qualified person in place of that Monitor. The notice issued by the Authority making that direction must specify the Authority's reasons.

#### *Resignation of a Monitor*

A Monitor may resign by giving at least 30 days' notice in writing to the Authority (unless the Authority agrees to a shorter notice period) and must include in such notice a statement of the reasons for its resignation.

#### *Effect of the Insolvency of an Institution on the Appointment of its Monitor*

The fact that an Institution, or its parent entity or any company related to the Institution, has become insolvent or potentially insolvent (within the meaning of the ACS Act) does not affect the appointment of the Monitor appointed in respect of it and the claims and rights of the Monitor in so far as those claims or rights relate to the appointment or arise under the ACS Act.

The obligations of the Institution towards the Monitor continue to have effect in relation to the Institution, and be enforceable, despite the Institution, or its parent entity or a company related to the Institution, becoming subject to an insolvency process.

#### *Limitation on the Civil Liability of a Monitor*

The Monitor, officers and employees of the Monitor, and persons acting under the direction of the Monitor are not liable in any civil proceedings for any act done, or omitted to be done, by the person for the purposes of or in connection with performing or exercising any function or power imposed or conferred on the Monitor by or under the ACS Act if the act was done, or was omitted, in good faith for the purposes of the ACS Act.

## **5. Overcollateralisation**

### *Contractual Overcollateralisation*

The terms and conditions applicable to the ACS Instruments require DEPFA ACS to maintain Overcollateralisation of the Pool with respect to Asset Covered Securities issued by it at a minimum level of five per cent. AIBIFS has agreed in the Cover-Assets Monitor Agreement to monitor compliance by DEPFA ACS with its undertaking regarding the level of Overcollateralisation. AIBIFS, in its capacity as Monitor, is also required by the regulations made by the Authority under the ACS Act to have regard to contractually agreed levels of Overcollateralisation and to monitor DEPFA ACS's observance of these levels.

In this context, "overcollateralisation" of the Pool with respect to Asset Covered Securities means the amount by which the prudent market value of the Pool (see "*Cover Assets Pool — Valuation of Assets Held by an Institution*") exceeds the total outstanding principal amount of Asset Covered Securities. See "*Cover Assets Pool — Financial Matching Criteria for the Pool and Asset Covered Securities*".

Since the Monitor must have regard to contractual undertakings with respect to overcollateralisation when performing its functions under the ACS Act, the Monitor could not agree to the removal or substitution of public credit or substitution assets in the Pool if the result of such removal or substitution was that the then current level of overcollateralisation would not be satisfied. In addition, the Monitor is required to take reasonable steps to verify compliance by DEPFA ACS with contractual undertakings in respect of overcollateralisation before the issue of any Asset Covered Securities, including ACS Instruments.

### *Regulatory Overcollateralisation*

Under the ACS Act, Institutions are required to maintain a minimum level of regulatory overcollateralisation. "Regulatory overcollateralisation" for this purpose means that the present value of the public credit assets and substitution assets comprised in the Pool, expressed as a percentage of the present value of the Asset Covered Securities in issue which are secured on that Pool, is a minimum of 103 per cent. after taking into account the effect of any cover assets hedge contract comprised in the Pool.

The Authority may, by regulatory notice, specify a formula or criteria to determine the present value of public credit assets and substitution assets comprised in a Pool and of Asset Covered Securities in issue which are secured on that Pool, and may specify the frequency of any determination by an Institution of those present values and the Authority issued such a regulatory notice on 31 August 2007.

The ACS Act provides that the requirement for Institutions to maintain a minimum level of regulatory overcollateralisation does not affect any contractual overcollateralisation undertaking made by an Institution, where that contractual overcollateralisation undertaking requires a higher level of Cover Assets to be maintained in the Pool. For this purpose a contractual overcollateralisation undertaking means a contractual undertaking by an Institution that the prudent market value of the Pool is to be maintained by the Institution at a specified level greater than the total of the principal amounts of Asset Covered Securities in issue which are secured on that Pool. The terms and conditions of the ACS Instruments relating to overcollateralisation described above constitute a contractual overcollateralisation undertaking for this purpose. Under the ACS Act, an Institution is required, as soon as practicable after becoming aware that it has contravened the requirement to maintain a minimum level of regulatory overcollateralisation or any applicable contractual undertaking to maintain a minimum level of overcollateralisation, to take all possible steps to prevent the contravention from continuing or being repeated. Until these steps have been taken, the Institution is prohibited from issuing any further Asset Covered Securities.

The Authority has made regulations requiring the Monitor appointed in respect of an Institution to take reasonable steps to verify that the Institution is in compliance with the requirement that it must maintain a minimum level of regulatory overcollateralisation before it issues Asset Covered Securities or entered into a Cover Assets Hedge Contract.

## **6. Insolvency of Institutions**

With respect to Institutions, Part 7 of the ACS Act supersedes the usual provisions of law that address insolvency of Irish companies and banks. Certain insolvency provisions relating to fraud continue to have effect, in addition to any enactment or rule of law that would render the security or contract void or unenforceable on the grounds of fraud or misrepresentation.

### *Effect of Insolvency or Potential Insolvency on Certain Obligations*

The fact that an Institution or its parent entity or any company related to the Institution has become insolvent or potentially insolvent does not affect:

- (a) the claims and rights of holders of Asset Covered Securities issued by the Institution;
- (b) the claims and rights of a person (other than the holder of an Asset Covered Security issued by the Institution) who has rights under or in respect of any such Asset Covered Security by virtue of any legal relationship with the holder;
- (c) the claims and rights that the other contracting party has under any cover assets hedge contract entered into by the Institution;
- (d) the appointment of a Monitor and the relevant claims and rights of such Monitor in so far as those claims and rights relate to the appointment or arise under the ACS Act. For a description of the role of a Monitor, see "*The Cover-Assets Monitor*";
- (e) the appointment of a manager in respect of the Institution and the relevant claims and rights of such manager in so far as those claims and rights relate to the appointment or arise under the ACS Act. For a description of the circumstances in which a manager may be appointed to an Institution, see "*Power of the Authority to Appoint the NTMA or a Recommended Person as Manager of an Institution*"; or
- (f) the functions of the National Treasury Management Agency under Part 6 of the ACS Act and the relevant claims and rights of the National Treasury Management Agency in so far as those claims and rights relate to those functions. See "*Power of the Authority to Appoint the NTMA or a Recommended Person as Manager of an Institution*".

### *Preferred and Super-Preferred Creditors*

Where an Institution, or its parent entity or any company related to the Institution becomes subject to an insolvency process, preferred creditors are, for the purpose of satisfying their claims and rights under Part 7 of the ACS Act, entitled to have recourse to the Cover Assets that are comprised in the Pool maintained by the Institution ahead of members of, and contributors to, the Institution and all other creditors of the Institution, its parent entity or company related to the Institution. This provision applies irrespective of whether the claims of creditors other than preferred creditors are preferred under any other enactment or any rule of law and whether those claims are secured or unsecured. However, with regard to the possible recognition of creditors' rights of set-off against Cover Assets in certain circumstances, see below under "*Certain Aspects of Insolvency Law Applicable to Credit Institutions*".

"Preferred creditors" are defined in the ACS Act as all or any of the following persons:

- (a) the holder of outstanding Asset Covered Securities issued by the Institution;
- (b) a person (other than the holder) who has rights under or in respect of any such Asset Covered Security by virtue of any legal relationship with the holder;

- (c) a person with whom the Institution has entered into a cover assets hedge contract, but only if the person is in compliance with the financial obligations imposed under the contract; and
- (d) a person who is a super-preferred creditor in relation to the Institution.

The claims of super-preferred creditors rank ahead of those of the other preferred creditors. "Super-preferred creditors" are defined in respect of an Institution as a Monitor or manager appointed in respect of that Institution. Once the ACS Act comes into operation, super preferred creditors will be extended to include the claims (approved by a manager or where no manager is appointed, the Monitor) of a security trustee which holds security (other than under the ACS Act) over assets outside Ireland in order to augment the security under the ACS Act (see "Creation of Security Interests over Cover Assets" below).

The claims of super-preferred creditors and the other preferred creditors have effect irrespective of when the security, contract or appointment of the Monitor or manager giving rise to a claim was issued or made, of when a claim of a preferred creditor arose and of the terms of that security, contract or appointment.

#### *Power of the Authority to Appoint the NTMA or a Recommended Person as Manager of an Institution*

The Authority may appoint the National Treasury Management Agency (the "NTMA") or a person recommended by the NTMA as manager of an Institution in the event of the insolvency or potential insolvency of an Institution or to safeguard the interests of holders of Asset Covered Securities, persons who have rights under cover asset hedge contracts or other creditors of the Institution.

In the event that an Institution or its parent or a related company becomes subject to an insolvency process, the obligation of the Institution to appoint a Monitor, and the powers of the Authority and the NTMA with respect to the appointment of a manager, continue to have effect until the claims of all preferred creditors have been fully satisfied and the functions of each relevant Monitor and manager appointed in respect of the Institution have been fully discharged.

#### *Status of Cover Assets*

Cover Assets that are comprised in the Pool are excluded from forming part of the assets of an Institution, its parent or a related company, for the purposes of any insolvency process until the claims secured by Part 7 of the ACS Act are fully discharged. Cover Assets that are comprised in the Pool are not liable to attachment, sequestration or other form of seizure, or to set-off by any persons, that would otherwise be permitted by law so long as claims secured under Part 7 of the ACS Act remain unsatisfied. However, with regard to the possible recognition of creditors' rights of set-off against Cover Assets in certain circumstances, see below under "Certain Aspects of Insolvency Law Applicable to Credit Institutions".

To the extent that the claims of all preferred creditors are not fully satisfied from the proceeds of the disposal of the Cover Assets included in the Pool maintained by the relevant Institution, such creditors become unsecured creditors in the insolvency process relating to the Institution, the claims of the super-preferred creditors ranking above those of the other preferred creditors in this regard.

A reference in Part 7 of the ACS Act to "Cover Assets" or a "Pool" includes:

- (a) in the case of public credit asset and substitution assets which constitute Cover Assets, any security, guarantee, indemnity and insurance held by the Institution in respect of such assets; and
- (b) in the case of cover assets hedge contracts, any security, guarantee, indemnity and insurance held by the Institution for, or pool hedge collateral provided to the Institution under, such contracts.

Any reference in Part 7 of the ACS Act to a "cover assets hedge contract" includes pool hedge collateral or security provided to the Institution under or for that contract.

#### *Creation of Security Interests over Cover Assets*

The ACS Act provides that an Institution may not create a security interest in respect of any Cover Assets in the Pool if Asset Covered Securities are outstanding or if a cover assets hedge contract is in existence and if such security interest would, but for Part 7 of the ACS Act, adversely affect the priority conferred by Part 7 of the ACS Act on preferred creditors. If an Institution creates any such security interest, the interest is void and any money secured by it is repayable immediately. If a Cover Asset comprised in a Pool is subject to a security interest which would contravene this requirement, the relevant Institution is required to replace such Cover Asset.

The ACS Act permits an Institution to create a security interest in respect of its Cover Assets if:

- (a) the relevant assets are located outside Ireland; and
- (b) the person who (directly or indirectly) has the benefit of the interest is the same person as the person who is entitled to security over those assets in accordance with the order of priority prescribed by Part 7 of the ACS Act.

For the purposes of (b) above, there may be disregarded claims over the relevant assets arising from mandatory laws in the relevant jurisdictions and any costs associated with administering the security interest and realising assets under the security interest.

The ACS Act makes provision for the holding by a security trustee of security (other than under the ACS Act) over Cover Assets comprised in the Pool which are located outside Ireland in order to augment the security provided for under the ACS Act. The Monitor or a manager appointed to an Institution may under the ACS Act enter into arrangements with the security trustee in connection with:

- (a) their respective functions under the ACS Act and operations relating to Cover Assets which are also subject to such additional security arrangements; and
- (b) their respective functions under the ACS Act and the enforcement or administration of Cover Assets which are also subject to such additional security arrangements.

### *Dissolution of an Institution*

An Institution may not be dissolved under an insolvency process until the claims and rights of all preferred creditors have been fully satisfied. However, if the Irish High Court is satisfied that the Institution has no assets capable of meeting the claims and rights of those creditors, it may make an order dissolving the Institution.

### *Certain Aspects of Insolvency Law Applicable to Credit Institutions*

Directive 2001/24/EC of the European Parliament and the Council of 4th April, 2001 on the reorganisation and winding up of credit institutions (the "Directive") was required to be implemented into the national law of the Member States of the European Community on 5th May, 2004. It was implemented in Ireland by the European Communities (Reorganisation and Winding-up of Credit Institutions) Regulations 2004 (the "2004 Regulations") with effect from 5th May, 2004.

The purpose of the Directive is to create unified proceedings for EU credit institutions that are subject to the imposition of reorganisation measures or the commencement of winding-up proceedings (as such terms are defined in the Directive and the 2004 Regulations). The Directive provides that, with some exceptions and exclusions, the application of reorganisation measures to, or the winding-up of, a credit institution (including in respect of its branches in other Member States) will be effected in accordance with the national law of its "home" Member State (the Member State in which it has been authorised as a credit institution). It also provides that only the administrative or judicial authorities in that home Member State can authorise the implementation of reorganisation measures or the opening of winding up proceedings in respect of the credit institution, including branches in other Member States.

To this end, the 2004 Regulations provide, among other things, that the "relevant applicable enactment" applies to and in relation to a reorganisation measure imposed, or to be imposed, in respect of an "authorised credit institution" (except as otherwise provided by the 2004 Regulations) and also applies to proceedings to wind up an "authorised credit institution".

An "authorised credit institution" is defined in the 2004 Regulations as including the holder of a licence under section 9 of the Irish Central Bank Act 1971, as amended, which would include an Institution. The term "relevant applicable enactment" would in the context of an Institution include the ACS Act. Therefore, the 2004 Regulations confirm, subject as described below, that the ACS Act will apply to any reorganisation measure imposed or to be imposed, or any proceedings to wind up, an Institution.

Reflecting the provisions of the Directive, the 2004 Regulations recognise that reorganisation measures or winding-up proceedings in respect of an Irish authorised credit institution should not affect certain rights in rem of its creditors to assets of the credit institution located in another Member State when the reorganisation measure is imposed or the winding-up proceedings commenced.

Again reflecting the provisions of the Directive, the 2004 Regulations provide that reorganisation measures or winding-up proceedings, in respect of an Irish authorised credit institution should not affect certain set-off rights of its creditors where such set-off is permitted by the law that applies to the institution's claims. To the extent that such law is Irish law, a creditor of an Irish authorised credit institution which is subject to reorganisation measures or



winding-up proceedings could only assert a right of set-off to the extent that Irish law would otherwise permit. With regard to the prohibition under the ACS Act of set-off against Cover Assets comprised in the Pool maintained by an Institution, see "*Status of Cover Assets*" above. However, to the extent that the law that applies to any claim of a relevant credit institution, within the meaning of the 2004 Regulations, is a law other than Irish law, the 2004 Regulations, together with that law, may operate to displace provisions of Irish law prohibiting the exercise of a right of set-off by a creditor against the relevant credit institution, including, in the context of Cover Assets comprised in a Pool maintained by an Institution, the provisions of the ACS Act referred to above.

It should be noted in this regard that neither the 2004 Regulations nor the Directive provide any guidance on the meaning of the term "the law applicable to the institution's claim" and so, in the absence of any Irish or EU judicial authority on the point, it is not possible to confirm, for example, whether this would comprise the governing law of the claim or, if different, the *lex situs* of the claim.

## **7. Supervision and Regulation**

### *Introduction*

The Authority is primarily responsible for the supervision and regulation of Institutions such as DEPFA ACS.

### *Regulation of Institutions under Banking Legislation other than the ACS Act*

Institutions are subject to regulation under Irish legislation and regulations relevant to all banking activities other than the activities regulated by the ACS Act (such legislation and regulations being referred to herein as the "Irish Banking Code") in addition to regulation under the ACS Act in respect of the activities regulated thereby. See "Irish Banking Code" below.

### *General Functions of the Authority*

The ACS Act provides that the functions of the Authority are as follows:

- (a) to designate credit institutions for the purposes of the ACS Act;
- (b) to administer the system of supervision and regulation of designated credit institutions in accordance with the ACS Act in order to promote the maintenance of the proper and orderly regulation and supervision of those institutions; and
- (c) to perform such other functions as are prescribed by or under the ACS Act.

In addition, the Authority is given a general power to do all things necessary or expedient to be done for or in connection with, or incidental to, the performance of its functions.

Where the Authority makes an order, regulation, regulatory notice or other notice under the ACS Act, the Authority will be required to have regard to the following principals and policies to the extent applicable:

- (a) the facilitation of the establishment and operation in Ireland of designated credit institutions (which include Institutions);
- (b) the facilitation of the establishment and operation of a market in asset covered securities so as to make available further sources of funds to those institutions;

- (c) the need to develop the business of one or more types of designated credit institutions having regard to domestic or international markets in which the institutions operate or may propose to operate;
- (d) the need to protect the interests of preferred creditors or other creditors of one or more types of designated credit institutions;
- (e) the need for proper and proportionate regulation of one or more types of designated credit institutions;
- (f) the Recast Codified Banking Directive and any regulations and directives made by competent organs of the EU which have been implemented in Irish law relevant to article 22(4) securities and asset covered securities.

### *Irish Banking Code*

As an Irish incorporated credit institution authorised by the Authority under the Irish Banking Code, an Institution is subject to the regulatory and supervision requirements of the Irish Banking Code as well as those under the ACS Act. Banking activities in Ireland are regulated and supervised by the Authority. The Irish Banking Code consists primarily of the Central Bank Acts, 1942 to 2001, regulations made by the Irish Minister for Finance under the European Communities Act, 1972, and regulatory notices issued by the Authority. These ministerial regulations and regulatory notices implement EU directives relating to banking regulation, including the First and Second Banking Coordination Directives, the Deposit Guarantee Scheme Directive, the Large Exposures Directive, the Capital Adequacy Directive, the Own Funds Directive, the Solvency Ratio Directive, the Consolidated Supervision Directive and the Post BCCI Directive. Most of the above directives were consolidated, and in some cases amended, under Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast) (the "Recast Codified Banking Directive"). At the end of 2006, the Recast Codified Banking Directive was implemented with respect to credit institutions to the extent required under Irish law under the European Communities (Capital Adequacy of Credit Institutions) Regulations 2006.

To the extent that areas of banking activity are the subject of EU directives, the provisions of Irish banking law reflect the requirements of those directives.

The Bank of International Settlements in June 2004 issued a capital adequacy framework commonly known as Basel II. The Recast Codified Banking Directive introduced Basel II capital adequacy standards as adopted in the EU. Pending full application of the Recast Codified Banking Directive capital adequacy standards, a minimum solvency ratio of eight per cent. applies to Irish licensed banks such as DEPFA ACS. Under the Recast Codified Banking Directive capital adequacy standards, that ratio will continue to apply with respect to credit risk and dilution risk of all business activities, subject to certain exceptions. The Recast Codified Banking Directive also imposes regulatory capital requirements for trading book business, position risk, settlement and counterparty risk, large exposures, foreign exchange risk and operational risk.

### *Relationship between ACS Act and Irish Banking Code*

As regards the relationship between the Authority's powers and functions under the Irish Banking Code and those under the ACS Act, the ACS Act provides that the Authority has, in relation to Institutions and other persons to whom the ACS Act relates, the functions imposed and powers conferred on the Authority by or under the Irish Banking Code in relation to credit institutions within the scope of the Irish Banking Code, except as required or provided by the ACS Act and subject to such modifications to those functions and powers as are necessary in order to adopt those functions and powers for the purposes of the ACS Act.

### *Limitation on the Civil Liability of the Authority/Irish State*

The Authority, members and employees of the Authority, and persons acting under the direction of the Authority, are not liable in any civil proceedings for any act done, or omitted to be done, by the person for the purposes of, or in connection with, performing or exercising any function or power imposed or conferred on the Authority by or under the ACS Act if the act was done, or was omitted, in good faith for the purposes of the ACS Act.

The CBFSAIA further provides that the Authority is not liable for damages for anything done or omitted in the performance or purported performance or exercise of any of its functions or powers, unless it is proved that the act or omission was in bad faith. The fact that the Authority has authorised or revoked the authorisation, or regulates the activities, of a person (including an Institution), under any of its functions (including its functions under the ACS Act) is not a warranty by the Authority as to the person's solvency or performance. Neither the Irish State nor the Authority is liable for losses incurred because of the insolvency, default or performance of such a person.

## **8. Registration of Institutions/Revocation of Registration**

### *Registration of Institutions*

A person may not, among other things, purport to issue Asset Covered Securities in accordance with the ACS Act unless the person is registered as an Institution under the ACS Act.

A person is eligible for registration under the ACS Act only if it is a credit institution incorporated or formed in Ireland that holds an authorisation issued by the Authority authorising it to carry on business as a credit institution.

The Authority may register an applicant as an Institution only if it is satisfied that the applicant:

- (a) is or will be able to carry out, in a proper manner, the responsibilities that an Institution is required by the ACS Act to carry out; and
- (b) complies with, or will be able to comply with, such requirements (if any) relating to Institutions as are prescribed by the regulations made and regulatory notices published by the Authority under the ACS Act.

The Authority may impose conditions specific to the applicant with respect to the orderly and proper regulation of the applicant's business which it considers appropriate. The Authority has not imposed any such conditions on DEPFA ACS.

The Authority may from time to time vary a condition of an Institution's registration or impose on the Institution a new condition, but only after giving to the Institution concerned notice in writing of its intention to do so and after giving the Institution an opportunity to make written representations to the Authority in relation to the proposed variation or proposed new condition.

The Authority may vary a condition imposed, or impose a condition, which the Authority considers to be necessary, incidental, consequential or supplementary to the implementation of, or compliance with, the Codified Banking Directive or any directive or regulation made by competent organs of the European Union which has been implemented under the laws of Ireland, and is relevant to article 22(4) securities which qualify as covered bonds for the purposes of the Recast Codified Banking Directive.

#### *Revocation of Registration as an Institution*

At the request of the Institution, the Authority may revoke its registration under the ACS Act, but only if it is of the opinion that the Institution has fully satisfied all claims and liabilities that are secured in respect of the Institution as provided by Part 7 of the ACS Act. See "*Insolvency of Institutions*".

The Authority may, with the consent of the Minister for Finance of Ireland, revoke the registration of an Institution in circumstances where the revocation is not requested by the Institution. These circumstances arise when the Authority is satisfied on reasonable grounds that, among other things, the Institution's registration was obtained by means of a false or misleading representation, the Institution is not in compliance with a provision of the ACS Act or a regulatory notice published by the Authority, the Institution has become subject to an insolvency process within the meaning of the ACS Act, the Institution no longer has sufficient "own funds" (as referred to in the EU Codified Banking Directive), the Cover Assets comprised in a Pool maintained by the Institution do not comply with relevant provisions of the ACS Act or the Institution or any of its officers is convicted of certain criminal offences. A registration may also be revoked where the Institution has come under the control of any other entity that is not supervised by the Authority to such an extent that the Institution can no longer be supervised to the satisfaction of the Authority.

In the case of an Institution whose registration has been revoked, but which is not being wound up, the Institution is required to continue to carry out the financial obligations of the Institution that are secured under Part 7 of the ACS Act (see "*Insolvency of Institutions*" above) until all those obligations have been fully discharged.

#### *Direction of the Authority Requiring an Institution to Suspend its Business*

If the Authority reasonably believes that there may be grounds for revoking the registration of an Institution, it may, subject to Part 7 of the ACS Act (see "*Insolvency of Institutions*" above), prohibit the Institution from engaging in the certain business activities except with the permission of the Authority.

#### *Position of a Liquidator*

In the case of an Institution whose registration is revoked and that is being wound up, the ACS Act provides that, except as otherwise provided by the ACS Act, the liquidator of the

Institution has a duty to ensure that the Institution performs the obligations of an Institution under the ACS Act.

## SUBSCRIPTION AND SALE

Instruments may be sold from time to time by DEPFA plc, the Pfandbriefbank or DEPFA ACS, as the case may be, Pfandbrief Instruments may be sold from time to time by the Pfandbriefbank and ACS Instruments may be sold from time to time by DEPFA ACS to any one or more of ABN AMRO Bank N.V., Banco Bilbao Vizcaya Argentaria, S.A., Banco Santander, S.A., Barclays Bank PLC, Bear, Stearns International Limited, BNP Paribas, Citigroup Global Markets Limited, Commerzbank Aktiengesellschaft, Credit Suisse Securities (Europe) Limited, Daiwa Securities SMBC Europe Limited, DEPFA BANK plc, Deutsche Bank AG, London Branch, Dresdner Bank Aktiengesellschaft, Goldman Sachs International, HSBC Bank plc, J.P. Morgan Securities Ltd., Lehman Brothers International (Europe), Merrill Lynch International, Mizuho International plc, Morgan Stanley & Co. International plc, Nomura International plc, Royal Bank of Canada Europe Limited, The Royal Bank of Scotland plc, The Toronto-Dominion Bank and UBS Limited (the "Dealers"). The arrangements under which Instruments may from time to time be agreed to be sold by DEPFA plc, the Pfandbriefbank or DEPFA ACS, as the case may be, Pfandbrief Instruments may be sold from time to time by the Pfandbriefbank and ACS Instruments may from time to time be agreed to be sold by DEPFA ACS to, and purchased by, Dealers are set out in an amended and restated dealership agreement dated 9 May 2008 (the "Dealership Agreement", which expression shall include any amendments or supplements thereto) and made between the Issuers and the Dealers. Any such agreement will, *inter alia*, make provision for the form and terms and conditions of the relevant Instruments, Pfandbrief Instruments or ACS Instruments, the price at which such Instruments, Pfandbrief Instruments or ACS Instruments will be purchased by the Dealers and the commissions or other agreed deductibles (if any) payable or allowable by the relevant Issuer in respect of such purchase. The Dealership Agreement makes provision for the resignation or termination of appointment of existing Dealers and for the appointment of additional or other Dealers either generally in respect of the Programme or in relation to a particular Tranche of Instruments, Pfandbrief Instruments or ACS Instruments.

### **United States of America**

The Instruments, Pfandbrief Instruments and ACS Instruments have not been and will not be registered under the United States Securities Act of 1933 (as amended) (the "Securities Act") and are subject to U.S. tax law requirements. Subject to certain exceptions, Instruments, Pfandbrief Instruments and ACS Instruments may not be offered, sold or delivered within the United States or to U.S. persons. Each Dealer has agreed that it will not offer, sell or deliver any Instruments, Pfandbrief Instruments or ACS Instruments within the United States or to U.S. persons except as permitted by the Dealership Agreement. In addition, until 40 days after the commencement of the offering an offer or sale of Instruments, Pfandbrief Instruments or ACS Instruments within the United States by any Dealer (whether or not participating in the offering) may violate the registration requirements of the Securities Act.

For the purposes of any issue of Instruments, Pfandbrief Instruments and ACS Instruments in relation to which the Final Terms specifies that U.S. Treasury Regulation §1.163-5(c)(2)(i)(D) (the "D Rules") shall apply, the following shall apply:

Each Dealer has represented and agreed that:

- (i) except to the extent permitted under U.S. Treas. Reg. §1.163-5(c)(2)(i)(D) (the "D Rules"), (a) it has not offered or sold, and will not offer or sell during the restricted period Instruments and Pfandbrief Instruments and ACS Instruments in bearer form to a person who is within the United States or its possessions or to a United States person, and (b) it has not delivered and will not deliver within the United States or its possessions definitive Instruments in bearer form that are sold during the restricted period;
- (ii) it has, and throughout the restricted period it will have, in effect procedures reasonably designed to ensure that its employees or agents who are directly engaged in selling Instruments and Pfandbrief Instruments and ACS Instruments in bearer form are aware that such Instruments and Pfandbrief Instruments and ACS Instruments may not be offered or sold during the restricted period to a person who is within the United States or its possessions or to a United States person, except as permitted by the D Rules;
- (iii) if such Dealer is a United States person, it will represent that it will be acquiring the Instruments and Pfandbrief Instruments and ACS Instruments in bearer form for purposes of resale in connection with their original issuance and, if such Dealer retains Instruments and Pfandbrief Instruments and ACS Instruments in bearer form for its own account, it will only do so in accordance with the requirements of U.S. Treas. Reg. §1.163-5(c)(2)(i)(D)(6); and
- (iv) with respect to each affiliate (if any) that acquires from such Dealer Instruments and Pfandbrief Instruments and ACS Instruments in bearer form for the purposes of offering or selling such Instruments and Pfandbrief Instruments and ACS Instruments during the restricted period, such Dealer either (a) will represent and agree on behalf of such affiliate (if any) to the effect set forth in sub-paragraphs (i), (ii) and (iii) of this paragraph or (b) will agree that it will obtain from such affiliate (if any) for the benefit of the Issuer the representations and agreements contained in sub-paragraphs (i), (ii) and (iii) of this paragraph.

Terms used in the above paragraph have the meanings given to them by the U.S. Internal Revenue Code and Regulations thereunder, including the D Rules.

In addition, under U.S. Treas. Reg. §1.163-5(c)(2)(i)(C) (the "C Rules") where the C Rules are specified in the relevant Final Terms as being applicable in relation to any Tranche of Instruments or, in the case of Pfandbrief Instruments, as specified in the applicable terms and conditions for the Tranche of Pfandbrief Instruments, Instruments, Pfandbrief Instruments and ACS Instruments in bearer form must be issued and delivered outside the United States and its possessions in connection with their original issuance. Each Dealer has represented and agreed that it has not offered, sold or delivered, and will not offer, sell or deliver, directly or indirectly Instruments, Pfandbrief Instruments and ACS Instruments in bearer form within the United States or its possessions in connection with the original issuance. Further, each Dealer has

represented and agreed in connection with the original issuance of Instruments, Pfandbrief Instruments and ACS Instruments in bearer form, it has not communicated, and will not communicate, directly or indirectly, with a prospective purchaser if such purchaser is within the United States or its possessions and will not otherwise involve its U.S. office in the offer of sale of Instruments, Pfandbrief Instruments or ACS Instruments in bearer form. Terms used in this paragraph have the meanings given to them by the U.S. Internal Revenue Code and regulations thereunder, including the C Rules.

### **Public Offer Selling Restriction Under the Prospectus Directive**

In relation to each Member State of the European Economic Area which has implemented the Prospectus Directive (each, a "Relevant Member State"), each Dealer has represented and agreed, and each further Dealer appointed under the Programme will be required to represent and agree, that with effect from and including the date on which the Prospectus Directive is implemented in that Relevant Member State (the "Relevant Implementation Date") it has not made and will not make an offer of Instruments, Pfandbrief Instruments or ACS Instruments which are the subject of the offering contemplated by the Prospectus as completed by the Final Terms in relation thereto to the public in that Relevant Member State except that it may, with effect from and including the Relevant Implementation Date, make an offer of such Instruments, Pfandbrief Instruments or ACS Instruments to the public in that Relevant Member State:

- (a) *Approved prospectus*: if the Final Terms in relation to the Instruments, Pfandbrief Instruments or ACS Instruments specify that an offer of those Instruments, Pfandbrief Instruments or ACS Instruments may be made other than pursuant to Article 3(2) of the Prospectus Directive in that Relevant Member State (a "Non-exempt Offer"), following the date of publication of a prospectus in relation to such Instruments, Pfandbrief Instruments or ACS Instruments 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, provided that any such prospectus has subsequently been completed by the Final Terms contemplating such Non-exempt Offer, in accordance with the Prospectus Directive, in the period beginning and ending on the dates specified in such prospectus or final terms, as applicable;
- (b) *Authorised institutions*: 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) *Significant enterprises*: 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 EUR43,000,000 and (3) an annual net turnover of more than EUR50,000,000, as shown in its last annual or consolidated accounts; or
- (d) *Fewer than 100 offerees*: at any time to fewer than 100 natural or legal persons (other than qualified investors as defined in the Prospectus Directive) subject to obtaining the prior consent of the relevant Dealer or Dealers nominated by the Issuer for any such offer; or



- (e) *Other exempt offers:* at any time in any other circumstances falling within Article 3(2) of the Prospectus Directive.

provided that no such offer of Instruments, Pfandbrief Instruments or ACS Instruments referred to in (b) to (e) above shall require the Issuer or any Dealer to publish a prospectus pursuant to Article 3 of the Prospectus Directive or supplement a prospectus pursuant to Article 16 of the Prospectus Directive.

For the purposes of this provision, the expression an "offer of Instruments, Pfandbrief Instruments or ACS Instruments to the public" in relation to any Instruments, Pfandbrief Instruments or ACS Instruments 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 Instruments, Pfandbrief Instruments or ACS Instruments to be offered so as to enable an investor to decide to purchase or subscribe the Instruments, Pfandbrief Instruments or ACS Instruments, 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.

#### **Selling Restrictions Addressing Additional United Kingdom Securities Law**

Each Dealer has represented and agreed that:

- (a) ***No deposit-taking:*** in relation to any Instruments, Pfandbrief Instruments or ACS Instruments having a maturity of less than one year:
- (i) it is a person whose ordinary activities involve it in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of its business; and
  - (ii) it has not offered or sold and will not offer or sell any Instruments, Pfandbrief Instruments or ACS Instruments other than to persons:
    - (A) whose ordinary activities involve them in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of their businesses; or
    - (B) 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 Instruments, Pfandbrief Instruments or ACS Instruments would otherwise constitute a contravention of Section 19 of the FSMA by the Issuer;

- (b) ***Financial promotion:*** it has only communicated or caused to be communicated and will only communicate or cause to be communicated any invitation or inducement to engage in investment activity (within the meaning of section 21 of the FSMA) received by it in connection with the issue or sale of any Instruments, Pfandbrief Instruments or ACS Instruments in circumstances in which section 21(1) of the FSMA would not apply to DEPFA plc, the Pfandbriefbank or DEPFA ACS if DEPFA plc, the Pfandbriefbank or DEPFA ACS were not authorised persons; and

- (c) **General compliance:** it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to any Instruments, Pfandbrief Instruments or ACS Instruments in, from or otherwise involving the United Kingdom.

### **Japan**

The Instruments, Pfandbrief Instruments and ACS Instruments have not been and will not be registered under the Financial Instruments and Exchange Law of Japan (Law No. 25 of 1948, as amended) and, accordingly, each Dealer has undertaken that it will not offer or sell any Instruments, Pfandbrief Instruments and ACS Instruments, directly or indirectly, in Japan or to, or for the benefit of, any Japanese Person or to others for re-offering or resale, directly or indirectly, in Japan or to any Japanese Person except under circumstances which will result in compliance with all applicable laws, regulations and guidelines promulgated by the relevant Japanese governmental and regulatory authorities and in effect at the relevant time. For the purposes of this paragraph, "Japanese Person" means any person resident in Japan, including any corporation or other entity organised under the laws of Japan.

### **Ireland**

Each Dealer has represented and agreed (and each further Dealer appointed under the Programme will be required to represent and agree) that:

- (a) in connection with any offer, sale, placement or underwriting of Instruments, Pfandbrief Instruments or ACS Instruments, it will comply with all applicable provisions of the European Communities (Markets in Financial Instruments) Regulations 2007 of Ireland, as amended (the "MiFID Regulations") (including any applicable requirements imposed, or deemed to have been imposed, by the Irish Financial Services Regulatory Authority ("IFSRA") pursuant to the MiFID Regulations);
- (b) in connection with any offer, sale, placement or underwriting of Instruments, Pfandbrief Instruments or ACS Instruments, if acting within the terms of an authorisation to do so granted to it for the purposes of Directive 2006/48/EC of the European Parliament and the Council of 14 June 2006 relating to the taking up and the pursuit of the business of credit institutions, as amended, replaced or consolidated from time to time, it has complied with any codes of conduct or practice made under section 117(1) of the Central Bank Act 1989 of Ireland, as amended;
- (c) in connection with any offer, sale, placement or underwriting of instruments, Pfandbrief Instruments or ACS Instruments, it will comply with the provisions of the Prospectus (Directive 2003/71/EC) Regulations 2005 of Ireland and any rules issued by IFSRA under section 51 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005 of Ireland, as amended;
- (d) in connection with any offer, sale, placement or underwriting of Instruments, Pfandbrief Instruments or ACS Instruments, it will comply with the provisions of the Market Abuse (Directive 2003/6/EC) Regulations 2005 of Ireland and any rules issued by IFSRA under section 34 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005 of Ireland, as amended; and

- (e) in respect of any Instruments or ACS Instruments in any jurisdiction that are not listed on any stock exchange:
  - (i) its action in any jurisdiction will comply with the then applicable laws and regulations of that jurisdiction;
  - (ii) it will not knowingly offer or sell such Instruments or ACS Instruments to an Irish resident, or to persons whose usual place of abode is Ireland, and it will not knowingly distribute or cause to be distributed in Ireland any offering material in connection with such Instruments or ACS Instruments;
  - (iii) it will not offer, sell or deliver any such Instruments or ACS Instruments to any person in an aggregate principal amount of less than EUR500,000 or its equivalent notwithstanding that the denominations in which transfers of the Instruments or ACS Instruments, as the case may be, may subsequently be carried out (as specified in the relevant Final Terms) may be less than this amount; and
  - (iv) such Instruments or ACS Instruments will be cleared through a recognised clearing system.

### **General**

Save for the Issuers having obtained the approval of this document by IFSRA in its capacity as the Irish competent authority for the purposes of the Prospectus Directive and relevant implementing measures in the Republic of Ireland, as a base prospectus issued in compliance with the Prospectus Directive and relevant implementing measures in the Republic of Ireland, no action has been or will be taken in any country or jurisdiction by any Issuer or the Dealers that would permit a public offering of Instruments, Pfandbrief Instruments and ACS Instruments, or possession or distribution of any offering material in relation thereto, in any country or jurisdiction where action for that purpose is required. Persons into whose hands this Prospectus comes are required by the Issuers and the Dealers to comply with all applicable laws and regulations in each country or jurisdiction in or from which they purchase, offer, sell or deliver Instruments, Pfandbrief Instruments and ACS Instruments or have in their possession or distribute such offering material, in all cases at their own expense.

## GENERAL INFORMATION

1. The admission price of the Instruments, Pfandbrief Instruments and ACS Instruments admitted to listing on the Official List of the Irish Stock Exchange Limited will be expressed as a percentage of their principal amount (exclusive of accrued interest). Any Tranche of Instruments, any Tranche of Pfandbrief Instruments and any Tranche of ACS Instruments intended to be so admitted to listing and to trading will be so admitted upon submission to the relevant listing authority or stock exchange of the relevant Final Terms and, in the case of Pfandbrief Instruments and ACS Instruments, the relevant Final Terms and any other information required by the relevant listing authority or stock exchange, subject to the issue of the relevant Instruments, Pfandbrief Instruments or ACS Instruments. Prior to official listing, dealings will be permitted by the relevant listing authority or stock exchange in accordance with its rules. Transactions will normally be effected for delivery on the third working day after the day of the transaction.

However, Instruments, Pfandbrief Instruments and ACS Instruments may be issued pursuant to the Programme which will not be admitted to listing on the Irish Stock Exchange or any other listing authority, stock exchange or quotation system or which will be admitted to listing, trading or quotation on such listing authority, stock exchange or quotation system as the relevant Issuer and the relevant Dealer(s) may agree.

2. The establishment of the Programme was authorised by a resolution of the Managing Board of DEPFA Deutsche Pfandbriefbank AG passed on 6 December 2001 and by a resolution of the Board of Directors of DePfa-Bank Europe plc passed on 17 December 2001 (DePfa-Bank Europe plc ceased to be an Issuer under the Programme on 26 November 2002). The accession of DEPFA BANK plc as an Issuer of Instruments under the Programme was authorised by a resolution of a committee of the Board of Directors of DEPFA plc on 22 November 2002. The accession of DEPFA ACS as an Issuer of ACS Instruments under the Programme was authorised by a committee of the Board of Directors of DEPFA plc, the Managing Board of the Pfandbriefbank and a committee of the Board of Directors of DEPFA ACS on 7 July 2003, 8 July 2003 and 7 July 2003 respectively. Pfandbriefbank resigned as an Issuer under the Programme in 2004. The issue by DEPFA ACS of Instruments under the Programme was approved by a committee of the Board of Directors of DEPFA ACS on 26 July 2004. The re-accession of the Pfandbriefbank as Issuer under the Programme was authorised on 29 June 2006. The update of the Programme was authorised by committees of the Boards of Directors of Pfandbriefbank in April 2008 and by each of DEPFA plc, and DEPFA ACS on 8 May 2008.

3. There are no, nor have there been any, legal, governmental, arbitration or administrative proceedings involving any of DEPFA plc or any of its subsidiaries or the Pfandbriefbank or any of its subsidiaries or DEPFA ACS (and no such proceedings are pending or threatened) which may have or have had during the years ended 31 December 2007 and 2006, and during the 12 months prior to the date of this document, a significant effect on the financial position of DEPFA plc, the Pfandbriefbank or DEPFA ACS or of DEPFA plc and its subsidiaries or of the Pfandbriefbank and its subsidiaries taken as a whole.

4. Save as disclosed herein, since 31 December 2007, the last day of the financial year in respect of which the most recent audited consolidated financial statements of DEPFA plc, the most recent audited unconsolidated financial statements of Pfandbriefbank, and the most recent audited unconsolidated financial statements of DEPFA ACS, were published, there has been no material adverse change in the financial position or prospects of DEPFA plc, Pfandbriefbank or DEPFA ACS or of DEPFA plc and its subsidiaries taken as a whole, and since 31 March 2008, the date of the most recent publicly available unaudited consolidated interim financial statements of DEPFA plc, there has been no significant change in the financial or trading position of DEPFA plc and its subsidiaries taken as a whole.

5. The consolidated financial statements of DEPFA plc have been audited for the years ended 31 December 2006 and 31 December 2007 by PricewaterhouseCoopers and unqualified opinions have been obtained thereon. The unconsolidated financial statements of Pfandbriefbank have been audited for the years ended 31 December 2006 and 31 December 2007 by PricewaterhouseCoopers Aktiengesellschaft, Wirtschaftsprüfungsgesellschaft and unqualified opinions have been obtained thereon. The unconsolidated financial statements of DEPFA ACS have been audited for the years ended 31 December 2006 and 31 December 2007 by PricewaterhouseCoopers and unqualified opinions have been obtained thereon. Group accounts of DEPFA ACS for the purposes of the European Communities (Credit Institutions: Accounts) Regulations, 1992 of Ireland in respect of the financial year ended 31 December 2006 have not been prepared because DEPFA ACS is not required to prepare group accounts.

6. The audited consolidated financial statements of DEPFA plc and the audited unconsolidated financial statements of DEPFA ACS for the years ended 31 December 2007 and 31 December 2006 incorporated by reference into this Prospectus are included in the 2006 and 2007 Annual Reports of DEPFA plc and DEPFA ACS. These financial statements have been prepared in accordance with IFRS. Copies of the accounts of DEPFA plc and DEPFA ACS for the year ended 31 December 2006 required by the European Communities (Credit Institutions: Accounts) Regulations, 1992 of Ireland to be annexed to an annual return of DEPFA plc have been so annexed and filed with the Irish Registrar of Companies. The accounts of DEPFA plc and DEPFA ACS for the financial year ended 31 December 2007 so required to be annexed have not been so annexed to their respective annual returns for the relevant period, but will be so annexed when the relevant annual returns are filed with the Irish Registrar of Companies within the permitted period. The auditors of DEPFA plc and DEPFA ACS have made reports under section 193 of the Companies Act, 1990 of Ireland in respect of the accounts of the relevant entity for the financial years ended 31 December 2006 and 31 December 2007, in each case without any qualification referred to in section 193.

7. For the period of 12 months following the date of this Prospectus, copies of the following documents may be inspected by physical or electronic means during normal business hours at the registered offices in Ireland of DEPFA plc and DEPFA ACS and at the specified offices of the Fiscal Agent and each of the Paying Agents:

- (a) the constitutive documents of each of the Issuers;
- (b) the current Prospectus in relation to the Programme, together with any amendments or supplements thereto and any document incorporated therein by reference;

- (c) the Agency Agreement;
- (d) the Deed of Covenant;
- (e) the Dealership Agreement;
- (f) the Cover-Assets Monitor Agreement;
- (g) (i) the consolidated financial statements of DEPFA plc in respect of each of the financial years ended 31 December 2006 and 31 December 2007 together with the audit reports prepared in connection therewith; and (ii) the most recently published unaudited consolidated interim financial statements of DEPFA plc. DEPFA plc currently prepares unaudited consolidated interim financial statements on a quarterly basis;
- (h) the annual financial statements of DEPFA ACS in respect of each of the financial years ended 31 December 2006 and 31 December 2007, together with the audit reports prepared in connection therewith;
- (i) the unaudited interim financial statements of DEPFA ACS for the three months ended 31 March 2008 and 31 March 2007;
- (j) the annual financial statements of the Pfandbriefbank in respect of each of the financial years ended 31 December 2006 and 31 December 2007, together with the audit reports prepared in connection therewith;
- (k) the unaudited half-yearly financial statements of the Pfandbriefbank, beginning with the period ended 30 June 2008;
- (l) the cashflow statements of the Pfandbriefbank for the years ended 31 December 2006 and 31 December 2007 and the accountants' reports thereon;
- (m) any Final Terms; provided however, that in the case of a Tranche of Instruments in relation to which application has not been made for admission to the Official List of the Irish Stock Exchange Limited or for admission to listing, trading or quotation on any other listing authority, stock exchange or quotation system copies of the relevant Final Terms will only be available for inspection by a holder of, or (as the case may be) a Relevant Account Holder (in each case as defined in the Deed of Covenant) in respect of, such Instruments;
- (n) the 2001 ACS Act and the 2007 ACS Act; and
- (o) the DEPFA 2003 Terms and Conditions, the Pfandbriefbank 2003 Terms and Conditions, the DEPFA ACS 2003 Terms and Conditions, the DEPFA 2004 Terms and Conditions, the DEPFA ACS 2004 Terms and Conditions, the DEPFA 2005 Terms and Conditions, the DEPFA 2006 Terms and Conditions, the DEPFA 2007 Terms and Conditions, the Pfandbriefbank 2006 Terms and Conditions, the Pfandbriefbank 2007 Terms and Conditions, the DEPFA ACS 2005 Terms and Conditions, the DEPFA ACS 2006 Terms and Conditions and the DEPFA ACS 2007 Terms and Conditions.

8. The Instruments, Pfandbrief Instruments and ACS Instruments have been accepted for clearance through Euroclear and CBL. The Instruments, Pfandbrief Instruments and ACS Instruments may be settled through CBF, *inter alia*, if they are to be listed on the Frankfurt Stock Exchange. The appropriate Common Code and International Securities Identification Number in relation to the Instruments, Pfandbrief Instruments or ACS Instruments of each Series and any other clearing system as shall have accepted the relevant Instruments, Pfandbrief

Instruments or ACS Instruments for clearance will be specified in the Final Terms relating thereto.

9. Settlement arrangements will be agreed between the relevant Issuer, the relevant Dealer and the Fiscal Agent or, as the case may be, the German Fiscal Agent in relation to each Tranche of Instruments and ACS Instruments.

10. There are no material contracts having been entered into outside the ordinary course of the business of each of DEPFA plc, Pfandbriefbank and DEPFA ACS and which could result in any group member being under an obligation or entitlement that is material to the ability of each of DEPFA plc, Pfandbriefbank and DEPFA ACS to meet its obligation to holders of Instruments, Pfandbrief Instruments and ACS Instruments.

11. Save as discussed in the relevant Final Terms, so far as the Issuer is aware, no person involved in the offer of the Instruments, Pfandbrief Instruments or the ACS Instruments has an interest material to the offer.

12. The Listing Agent for the Programme is McCann Fitzgerald Listing Services Limited whose address is Riverside One, Sir John Rogerson's Quay, Dublin 2, Ireland.

13. No website referred to in this Prospectus forms part of the Prospectus.

14. To the extent that part only of a document is incorporated by reference herein, the non-incorporated part of such document is either not relevant for an investor or is covered elsewhere in the Prospectus.

15. Any foreign language included in this Prospectus is for convenience purposes only and does not form part of the Prospectus.

**REGISTERED/HEAD OFFICES OF THE ISSUERS**

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Ireland

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**DEALERS**

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**Banco Santander, S.A.**  
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Boadilla del Monte  
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**Barclays Bank PLC**  
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London E14 4BB United Kingdom

**Bear, Stearns International Limited**  
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**BNP Paribas**  
10 Harewood Avenue  
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**Citigroup Global Markets Limited**  
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**Commerzbank Aktiengesellschaft**  
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**Mizuho International plc**

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**Nomura International plc**

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**Deutsche Bank AG, London Branch**

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**Goldman Sachs International**

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London EC4A 2BB  
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**J.P. Morgan Securities Ltd.**

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**Merrill Lynch International**

Merrill Lynch Financial Centre  
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United Kingdom

**Morgan Stanley & Co. International plc**

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**Royal Bank of Canada Europe Limited**

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**The Royal Bank of Scotland plc**

135 Bishopsgate  
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United Kingdom

**The Toronto-Dominion Bank**

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**UBS Limited**

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*to DEPFA plc as Issuer*

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**PricewaterhouseCoopers Aktiengesellschaft  
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