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# CREST International Manual

November 2020

## Contents

<b>Chapter 1: Introduction.....</b>	<b>4</b>
Section 1: General.....	4
Section 2: Definitions.....	6
<b>Chapter 2: Free of payment links: introduction .....</b>	<b>8</b>
Section 1: Applicability of the CREST Reference Manual .....	8
Section 2: Structure of international settlement links .....	9
Section 3: Securities.....	10
Section 4: Logical structures.....	11
Section 5: The paper interface .....	13
Section 6: Transaction types.....	14
Section 7: Protection of securities of participants and those of their clients.....	15
<b>Chapter 3: Free of payment links: settlement.....</b>	<b>17</b>
Section 1: Settlement of transfers of international securities.....	17
Section 2: Settlement of transfers of CREST securities .....	21
Section 3: Legal framework for cross-border settlement.....	23
Section 4: Other core functions.....	28
Section 5: System controller functions .....	28
Section 6: Networks and system messages .....	30
Section 7: Reconciliation .....	30
<b>Chapter 4: Free of payment links: corporate actions, benefit claims, automatic transformations clawbacks, voting and shareholder identification.....</b>	<b>31</b>
Section 1: Corporate actions.....	31
Section 2: Benefit claims.....	39
Section 3: Automatic transformations .....	43
Section 4: Clawbacks.....	44
Section 5: Meeting announcements and voting .....	46
Section 6: Shareholder identification.....	47
<b>Chapter 5: Free of payment links: stamp duty and other taxes .....</b>	<b>49</b>
Section 1: Stamp Duty.....	49
Section 2: Taxation .....	51
<b>Chapter 6: Delivery versus Payment link with SIX SIS .....</b>	<b>53</b>
Section 1: General.....	53
Section 2: Input, matching and central deletion of settlement instructions .....	54
Section 3: Settlement.....	56
Section 4: Tolerance Matching .....	58
Section 5: Legal Framework .....	59
<b>Chapter 7: Terms and conditions for international settlement links .....</b>	<b>60</b>
1 Scope of International Settlement Links Service .....	60
2 Depository, Issue of CDIs and Member’s obligations and the Nominee Arrangement .....	60
3 Protection of transferor participants of CSDs in transactions with CREST members .....	62
4 Charges etc .....	62
5 Further acknowledgements by the Member.....	63
6 EUI to assume liability in damages etc in place of Depository and Custodian.....	65
7 Liability to pay Stamp Duty Reserve Tax .....	66

8	Further services where CSD is not a CREST member.....	66
9	General.....	66
<b>Chapter 8: Global deed poll .....</b>		<b>68</b>
1	Interpretation .....	68
2	Form and issue of Depository Interests .....	72
3	Appointment of Custodian .....	73
4	Deposit of Deposited Property: further provisions .....	73
5	Declaration of trust; no security interest; duties with respect to Deposited Property .....	74
6	Withdrawal of Deposited Property on transfer and related matters.....	74
7	Compulsory withdrawal.....	75
8	Authorisations, consents, etc .....	76
9	Liability .....	76
10	Depository’s fees and expenses.....	79
11	Indemnities .....	79
12	Agents .....	79
13	Resignation of the Depository .....	80
14	Termination of Deed .....	80
15	Substitution of replacement Depository Interests .....	80
16	Cancellation of Depository Interests and issue of Third Party Depository Interests .....	81
17	Amendment of Deed .....	81
18	Disclosure of ownership, etc .....	82
19	Notices.....	82
20	Severability .....	82
21	Copies of Deed.....	83
22	Governing law and jurisdiction .....	83
23	Overriding provisions .....	83

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## Chapter 1: Introduction

### ***Section 1: General***

This CREST International Manual forms a part of the CREST Manual for the purposes of the definition of 'CREST Manual' and 'CREST Requirements' in the agreements entered into by users and participants with EUI.

It describes the international settlement links which EUI currently has with the following CSDs:

- SIX SIS;
- DTCC; and
- EB.

The arrangements put in place with EB and DTCC enable CREST members to hold and settle transactions in international securities but do not enable them to deliver CREST securities to participants in those CSDs or receive CREST securities from them.

The arrangements put in place with SIX SIS enable CREST members to hold and settle transactions in CREST securities and international securities.

With the exception of the DvP link to SIX SIS (described in Chapter 6), these links operate on a free of payment basis (settling off-exchange trades).

The term "international security" currently includes non-participating domestic securities and certain securities issued under the laws of the following countries:

- Australia<sup>1</sup>;
- Austria;
- Belgium;
- Bermuda;
- British Virgin Islands;
- Canada;
- Cayman Islands
- Denmark;
- Finland;
- France;
- Germany;
- Italy;
- Luxembourg;
- Netherlands;
- Norway;
- Portugal;
- Spain;
- Sweden;
- Switzerland; and
- USA.

Members should be aware that it is their responsibility to identify and ensure compliance by all relevant persons with any restrictions that may apply with respect to their participation in the

<sup>1</sup> Limited issuers only

International Settlement Links Service including in respect of which securities they may hold and any parties in the holding chain.

Examples of restrictions in the context of holdings or transfers include, but are not limited to, restrictions on certain types of persons in the holding chain (e.g. corporates, individuals etc.) or on resident/non-resident holders in each case of securities of a specific country. Further information on the laws and rules governing securities is set out below under the heading: 'The CREST Nominee's participation in the CSD' in Chapter 2, Section 2.

EUI's rights and powers (see below under the heading 'Use of securities' in Chapter 2, Section 7) including making deductions from international securities (or income or capital arising from them) in scenarios including obligations to account for a tax liability or a loss or liability suffered in respect of a holding may, as applicable, be exercised in the context of a restriction.

CREST members are required to obtain and hold records of the nationality and residence status of parties to transactions in the context of evidence being required to verify a claim that an exemption from overseas tax is due (see below under the heading 'Reporting Issues' in Chapter 5, Section 2). Members may also be required, from time to time, to provide information and/or evidence relating to the disclosure of ownership such as nationality or residence status of the legal or beneficial owner(s) (Deed Poll, clause 18).

**Section 2: Definitions**

For the purposes of this CREST International Manual (save for Chapters 7 and 8) the following definitions apply:

CBL	Clearstream Banking SA, Luxembourg;
CDI	a CREST depository interest representing an international security, as described in Section 2 of Chapter 2;
CREST currency	Sterling, Euros or US Dollars (as applicable);
CREST Depository	CREST Depository Limited, a subsidiary of EUI;
CREST members	CREST members which are not CSDs;
CREST Nominee	CREST International Nominees Limited or (in connection with the link to EB only) CIN (Belgium) Limited, each a subsidiary of CREST Depository, or any other body appointed to act as a nominee on behalf of the CREST Depository including the CREST Depository itself;
CREST securities	securities which are participating securities other than CDIs;
CSD	a central securities depository or a person which is a participant in such a depository and provides services as a custodian or sub-custodian with which EUI has established an international settlement link (or, where the context admits, a nominee acting on behalf of such central securities depository or person);
Deed Poll	a deed poll constituting CDIs representing international securities held in one or more CSDs in substantially the same form as that set out in Chapter 8;
DTCC	The Depository Trust Company, a US CSD;
DvP link	the arrangements with SIX SIS for cross border settlement of transactions in DvP securities on a delivery versus payment basis against a Crest currency;
DvP securities	CREST securities and Swiss securities identified as eligible for the DvP link in the Cross Border Links for Security List;
EB	Euroclear Bank SA/NV, an international CSD based in Belgium;
EUI	Euroclear UK & Ireland Limited;
ICSD	a CSD which holds international securities through a link to one or more third country CSDs or custodians;
international securities	securities which are not participating securities, are eligible to be held within or through a CSD and in respect of which a CDI has been, or is to be, issued by the CREST Depository; but excluding such securities or classes of securities as the CREST Depository may from time to time determine;
International Service Description	the document called the "International Service Description" which is available on the Euroclear website ( <a href="http://www.euroclear.com">www.euroclear.com</a> );
ISD	intended settlement date;
Issuer	an issuer (being a person) of international securities;
non-participating domestic securities	securities which are not participating securities, but which are prima facie eligible to be participating securities;
non-UK CREST securities	CREST securities constituted under the laws of Ireland, Jersey, Guernsey, or the Isle of Man;

Operator Register	the record maintained by EUI pursuant to Regulation 22(3) of the UK Regulations recording the names of persons holding CDIs;
participating securities	has the meaning given to such term in the CREST Regulations;
SIX SIS	SIX SIS AG, the Swiss CSD;
Swiss securities	all securities (i) constituted under the laws of Switzerland which are settleable in SIX SIS; or (ii) in respect of which SIX SIS is the primary CSD;
third country CSD	a CSD with whom an ICSD has a link and through whom international securities may be held by that ICSD;
third country securities	international securities which are held by an ICSD via a link to a third country CSD; and
UK CREST securities	CREST securities constituted under the laws of England and Wales, Scotland or Northern Ireland.

In this CREST International Manual (save for Chapters 7 and 8), unless otherwise specified:

- references to sections or chapters are to sections or chapters of this CREST International Manual;
- references to a 'person' shall be construed so as to include any individual, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having a separate legal personality) howsoever and wheresoever incorporated;
- references to any statute or statutory instrument or any provision thereof shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted;
- words importing the singular shall include the plural and vice versa unless the context otherwise requires;
- references to fees, costs, charges, expenses or other payments which are, or may become, due to EUI, the Depository or the Custodian, shall be exclusive of any value added tax or similar tax charged or chargeable in respect thereof; and when any value added tax is chargeable, and such person so entitled shall be entitled to recover that tax in addition to the stated fees, costs, charges, expenses or other payments;
- words and phrases defined in the Glossary to the CREST Manual which are not defined in this CREST International Manual shall have the same meanings where used in this CREST International Manual unless the context otherwise requires;
- in construing this CREST International Manual, general words shall not be given a restrictive meaning by reason of the fact that they are preceded or followed by words indicating a particular class of acts, matters or things or by particular examples intended to be embraced by the general words; and
- references to 'the CREST Manual' or 'the CREST Rules' or any other agreement or document shall be construed as a reference to the CREST Manual or the CREST Rules or such other agreement or document as the same may from time to time be amended, varied, supplemented, novated or replaced and shall include any document which is supplemental to, or is expressed to be collateral to, or is entered into pursuant to or in accordance with the CREST Manual or the CREST Rules or, as the case may be, such other agreement or document.

## Chapter 2: Free of payment links: introduction

This Chapter introduces the arrangements for cross border settlement of transactions in international securities on a free of payment basis.

### ***Section 1: Applicability of the CREST Reference Manual***

The following chapters in the CREST Reference Manual apply to free of payment links without further amendment:

Chapter 1: ..... General;  
Chapter 5: ..... Registration;  
Chapter 6: ..... The CREST payment mechanism;  
Chapter 9: ..... External data view;  
Chapter 11 (section 3): ..... Attribution and addressing of system instructions; and  
Chapter 12: ..... Serving of notices.

The remaining chapters in the CREST Reference Manual are amended or supplemented to in this Chapter and Chapters 3- 5 of this CREST International Manual in the manner specified.

## **Section 2: Structure of international settlement links**

### **Holding international securities in the CREST system**

The UK Regulations only facilitate the holding and transfer of securities in the CREST system where those securities are constituted under the laws of England and Wales, Scotland or Northern Ireland. It is for this reason that equivalent regulations have been made in Ireland, the Isle of Man, Jersey and Guernsey to enable securities constituted under the laws of those jurisdictions to be held in the CREST system. The UK Regulations do not provide for securities constituted under the laws of other countries to be held or transferred in the CREST system directly.

However, the UK Regulations allow securities constituted under English law but which represent an interest in other securities (which may be securities constituted under the laws of other countries) to be issued into, held and transferred in the CREST system<sup>2</sup>. This provides a basis under which the CREST Depository, acting as a depository in respect of international securities, may issue dematerialised depository interests (CDIs) representing international securities, as independent securities. The CREST Depository will therefore issue CDIs to CREST members which will represent an entitlement in relation to the underlying international securities. The CDIs issued by the CREST Depository will be constituted under English law by virtue of the Deed Poll and will be 'participating securities' within the meaning of the UK Regulations. In consequence the CDIs will be transferable by means of the CREST system to other CREST members in the same way as other participating securities.

Clause 8.5 of the Terms and Conditions is specifically drawn to the attention of participants using the International Settlement Links Service. In particular, participants should note that the defined term "international securities" encompasses both non-participating domestic securities and foreign securities.

### **The nature of the CREST member's interest in international securities**

The CREST Nominee is a participant in other CSDs and holds rights to securities held within the other CSDs on behalf of the CREST Depository for the account of CREST members. The CREST Depository's relationship with CREST members is governed by the Deed Poll entered into under and governed by English law. The form of the Deed entered into by the CREST Depository appears in Chapter 8. It will be seen that the CREST Depository holds its rights to international securities (such rights being held on its behalf by the CREST Nominee) upon trust for the holders of the related CDIs.

### **The CREST Nominee's participation in the CSD**

The CREST Nominee, acting on behalf of the CREST Depository, participates in each CSD and therefore is subject to the laws relevant to that CSD and to its rules (suitably amended in some instances). Consequently, different laws and rules will govern its holdings of securities in each jurisdiction. These laws and rules (and the laws and rules relevant to rights in and transfers of the relevant international securities, which may include laws of jurisdictions other than that of the CSD) affect the nature of the rights (or 'title') which the CREST Nominee has in relation to the securities which it holds, transfers of those securities and the arrangements to be applied in the event of an insolvency, including the insolvency of a counterparty which is also a participant in the CSD.

### **The CREST Depository and CREST Nominee's participation in the CREST system**

The CREST Depository and CREST Nominee will not themselves be CREST Users. Communications through the CREST system will therefore be effected on their behalf by EUI as their sponsor.

<sup>2</sup> The definition of 'securities' in the UK Regulations includes both rights under a depository receipt (within the meaning of paragraph 4 of Schedule 2 to the Criminal Justice Act 1993) and 'interests in a security', which is defined as 'any legal or equitable interest or right in relation to a security, including – (a) an absolute or contingent right to acquire a security created, allotted or issued or to be created, allotted or issued; and (b) the interests or rights of a person for whom a security is held by a custodian or depository'.

**Section 3: Securities****Introduction**

Each CSD provides EUI with the relevant security details for those international securities for which it is the 'home CSD' and for securities for which they act as an ICSD. These security details may be viewed in CREST.

CDIs are assigned to security categories reflecting the underlying international security which they represent in accordance with the terms of the CREST Reference Manual. This means that, the underlying security is categorised rather than the CDI (for example, it may appear in security category F10). As a result indirectly held securities appear in security categories in respect of which settlement banks attribute margin stock value and they will also appear in the relevant delivery by value (DBV) category based on the security category they are allocated to. Any non-participating domestic security which is not otherwise categorised will be placed in OTH rather than OIS (being where other international securities not included in the above categories are placed).

Where possible, the ISIN attaching to a CDI is the same as that used for the underlying international security.

**Available securities**

The international securities which are currently available for settlement across an international settlement link are listed in the CREST Securities Database and are assigned to one of the international security categories listed above (other than 'reporting only securities'). Additional international securities may be added to the list of available securities at the request of CREST members, though in some cases it may be necessary for EUI to carry out some due diligence on the type of security requested by a member and in a few cases it may not be possible for particular types of instrument or a particular security to be made available for settlement across an international settlement link.

CREST members may determine which link is relevant to a particular security either by checking the GUI against the relevant ISIN or by checking the list available on the Euroclear website.

**Holdings of third country securities in ICSDs**

SIX SIS, DTCC and EB act as ICSDs in respect of certain third country securities which are accessible to CREST members by means of the International Settlement Links Service. These third country securities include, but are not limited to:

- DTCC link: in respect of Canadian securities;
- EB link: in respect of securities that CREST members may request to be eligible for the link from time to time and are settleable in CBL through the 'bridge' with EB; and
- SIX SIS link: in respect of a range of non-Swiss securities.

In such cases (and in contrast with other CSDs or these CSDs themselves in respect of securities for which they act as 'home CSD'), when acting as ICSDs these CSDs generally hold such third country securities either in an account in the third country CSD or by means of a custodian which has an account in the third country CSD. For more information relating to ICSDs please see Chapter 3, Section 1.

## **Section 4: Logical structures**

### **Chapter 2 of the CREST Reference Manual describes the logical system structures used in the CREST system. 'Opt in'/'opt out' flag**

CREST members have the ability to opt in to, or out of, the ability to receive CDIs or CREST securities as a result of settlement of an XDL transaction (described in further detail below in Chapter 3, Section 1: Settlement of transfers of international securities and Chapter 3, Section 2: Settlement of transfers of CREST securities). The system maintains a flag as part of the Participant details of each member to indicate the member's choice.

For CREST members which are corporate bodies, the flag is set with a default of 'opt in'.

For CREST members who are individuals, the flag is set with a default of 'opt out'.

EUI will amend the flag to 'opt out' or 'opt in' at the written request of the CREST member signed by an authorised signatory. A CREST member who has opted out of this function may not receive CREST securities across a link but may receive CDIs in some circumstances, including among others:

- as a result of a transfer from another CREST member (e.g. in settlement of a DEL transaction);
- as a result of an issue of new international securities in a corporate action affecting a holding of CDIs which a CREST member has acquired as a result of a transfer of a CDI from another member; or
- where international securities are issued across a link as consideration in a takeover of a CREST security.

CREST members who have opted out may deliver CDIs or CREST securities to a CSD (or, where the relevant CSD is not a CREST member, the CREST Nominee or other relevant entity in place of the CSD).

### **CSD Participants in the CREST system**

The CREST Rules apply to CSDs in the manner specified in the agreements executed by EUI and each CSD.

Additionally, the following other parts of the CREST Manual also apply to CSDs without further amendment:

- the CCSS Operations Manual;
- the Daily Timetable; and
- the Glossary of Terms.

The CREST Application Procedures do not apply to CSDs and individual arrangements will be agreed with each CSD.

CSDs may be set up in CREST as a Participant type 'CSD' and not, in system terms, as a 'member'. The distinction is a technical one to reflect the different range of functionality available to CSDs and does not affect the legal status of a CSD under the CREST Regulations as a 'system-member'.

A CSD has one or more member accounts (i.e. designations on the register) and each member account has a stock account in respect of each security which it holds. Each stock account has the following balance types:

- an available balance: the functionality of this balance is identical to that available to all CREST members (see Chapter 2, Section 5 of the CREST Reference Manual) and is the normal holding balance of a CSD's securities;
- a reserve balance: this balance is used during the course of settlement and provides the 'blocking' mechanism (described in further detail below in Chapter 3, section1 and Chapter 3, section 2) for use when a CREST member delivers securities to a CSD for the account of one of its participants<sup>3</sup>; and

<sup>3</sup> The reserve balance used as part of the 'blocking' mechanism is only used in the context of the link with SIX SIS. See Chapter 3, Section 3 below.

12 CREST International Manual  
November 2020

- an escrow balance: the functionality of this balance is identical to that available to all CREST members (see Chapter 7, section 3 of the CREST Reference Manual).

Securities credited to the available balance, the reserve balance and the escrow balance comprise the standard stock account.

***Section 5: The paper interface***

Stock deposit and stock withdrawal functionality is available to CSDs which operate CSD memberships with CREST in respect of CREST securities only by special arrangement with EUI and CSDs may not input STD or STW transactions across a CSD link.

Stock deposit and stock withdrawal functionality is not generally available to CREST members in respect of CDIs, subject to the exceptions set out in the Deed Poll under which the CDIs are issued.

Mechanisms by which CREST members may deposit or withdraw certificates representing international securities to the account of the CREST Nominee in a CSD may be available in exceptional circumstances by special arrangement with EUI. EUI reserves the right to make an additional charge for this service.

**Section 6: Transaction types**

The transaction types used in the cross border settlement of transfers of international securities and CREST securities are as follows:

The cross border delivery transaction (XDL) is used by:

- the CREST Depository to credit newly created and issued units of a CDI to a CREST member;
- a CREST member to instruct the transfer of units of an international security or a CREST security to a counterparty which is a participant in another CSD;<sup>4</sup>
- a CREST member to receive international securities (in respect of the links with EB (acting as both a CSD and ICSD) and SIX SIS (acting as an ICSD)); and
- to account for stamp duty on receipt of stampable securities (in respect of the links with DTCC, SIX SIS and EB).

The cross border delivery confirm transaction (XDC) is used by the CREST system to debit CREST securities from SIX SIS's reserve balance and credit them to SIX SIS's available balance<sup>5</sup>. This transaction type is not visible to CREST members.

If a CSD is unable to process a transfer in the manner described in this Chapter, the cross border delivery reverse transaction (XDR) is used by the CREST system to return the 'blocked' security back to the transferor CREST member as follows:

- (i). for transfers involving a CREST security, the security is debited from the reserve balance of a CSD<sup>5</sup> and credited to the available balance of the transferor CREST member;
- (ii). for transfers involving a CDI security, the CDI is debited from the 'blocked' escrow balance of the transferor CREST member and credited back to the available balance.

The other transaction types referenced within this CREST International Manual (Negative registrar's adjustment and a Registrar adjustment) are described in Chapter 5, section 2 of the CREST Reference Manual.

<sup>4</sup> International securities can be sent by XDL to SIX SIS, DTCC and EB.  
CREST securities can be sent by XDL to SIX SIS, but not to DTCC or EB.

International securities and CREST securities may also be sent by DEL to SIX SIS as part of the DvP link, please refer to Chapter 6 for more information.

<sup>5</sup> Not relevant in relation to the DTCC and EB links.

**Section 7: Protection of securities of participants and those of their clients**

The CREST International Settlement Links Service, including the CREST Depository and CREST Nominee arrangements, is operated by EUI in its capacity as a recognised clearing house or recognised CSD.

The CREST Terms and Conditions provide that, to the extent that the CREST International Settlement Links Service involves the holding in safe custody and administration of assets, EUI accepts responsibility for these services (with functions performed by the CREST Depository and the CREST Nominee for these purposes)<sup>6</sup>. EUI also undertakes to CREST members that it will be responsible to the member for acts and omissions of the CREST Depository and the CREST Nominee<sup>7</sup>.

**Segregation of securities**

In respect of the segregation of CREST Depository Interests held in the CREST system, see the CREST Reference Manual, Chapter 1, section 15.

The CREST Nominee is a participant in other CSDs and holds rights to securities held within the other CSDs on behalf of the CREST Depository for the account of CREST members. Rights to securities of different CREST members may be held in one or more securities account in the CSDs (ie are subject to omnibus client segregation).

The use of nominee holding arrangements by EUI in the CREST International Settlement Links Service provides a clear and effective method of identifying and segregating assets of clients. This in turn provides a high degree of protection by ensuring to the fullest extent possible that the assets could not be considered assets of EUI. As a matter of UK law, assets held on behalf of CREST members would not be considered to be assets beneficially owned by EUI.

**Use of securities**

EUI and its subsidiaries have no charge or other security interest over international securities but have rights or powers reserved under the declaration of trust and terms and conditions under which international securities are held. EUI may make deductions from international securities (or income or capital arising from them) or sell international securities or take payment from CREST members in order to recover unpaid fees, charges, costs and expenses in connection with the member's holdings of international securities.

In particular, in accordance with the terms of the International Settlement Links Service and the Deed Poll relevant provisions include the following:

- where the CREST member is deemed to have requested withdrawal or cancellation of securities, CREST Depository Interests and/or international securities may be transferred to another person to hold on behalf of the CREST member (Deed Poll, clause 7.2.2);
- where the CREST member is deemed to have requested withdrawal or cancellation of securities, international securities may be liquidated and the net proceeds transferred to the CREST member (Deed Poll, clause 7.2.3);
- where the CREST member is deemed to have requested withdrawal or cancellation of securities, EUI is entitled to deduct fees, costs, duties, taxes and charges or other sums owing (Deed Poll, clause 7.2);
- the CREST member may be responsible for any defective or deficient title to international securities (Deed Poll, clause 9.4);
- EUI may make deductions from international securities (or income or capital arising from them) or sell international securities in order to comply with its obligations to account for any tax liability in respect of them (Deed Poll, clause 9.11);
- EUI may make deductions from international securities (or income or capital arising from them) or sell international securities in order to account for any loss or liability suffered in respect of them (Deed Poll, clause 9.14);

<sup>6</sup> CREST Terms and Conditions, Schedule 1, paragraph 1.2.

<sup>7</sup> CREST Terms and Conditions, Schedule 1, paragraph 6.1.

16 CREST International Manual  
November 2020

- EUI may make deductions from international securities (or income or capital arising from them) or sell international securities in order to discharge any unpaid fees of the member in respect of them (Deed Poll, clause 10.2);
- EUI may make deductions from international securities (or income or capital arising from them) or sell international securities in order to discharge obligations incurred in respect of the holding of international securities by the member (Deed Poll, clause 11.1);
- upon termination of the International Settlement Links Service, EUI may sell international securities and pay the net proceeds of sale to the member (Deed Poll, clause 14).

In addition, in accordance with the terms of the CREST International Settlement Links Service and the CREST International Manual:

- corporate actions may be processed in the manner described in the CREST International Manual, Chapter 4, section 1;
- members authorise EUI to create payment instructions attributable to the member as described in the CREST Terms and Conditions, Schedule 1, paragraph 4.2.1;
- corporate actions rights and distributions may be sold and net proceeds paid to the member in the circumstances described in the CREST International Manual, Chapter 4, section 1;
- certain fractional entitlements may be retained by EUI as an additional fee as described in the CREST International Manual, Chapter 4, section 1 and the CREST Terms and Conditions, Schedule 1, paragraph 5.1.12;
- securities and/or cash may be subject to clawback in the circumstances described in the CREST International Manual, Chapter 4, section 4.

CREST Depository Interests may be cancelled by the Depository pursuant to the Deed Poll clauses 6 (transfer by member), 7 (compulsory withdrawal) and 9.4 (defective title) and, so far as the Depository considers appropriate, in the circumstances contemplated in clauses 9.11 (taxes payable), 9.14 (liabilities of Depository etc), 10.2 (unpaid fees), 11.1 (indemnity) and 16 (transfers from CDI to DIs) or otherwise in accordance with the provisions prescribed in or pursuant to the CREST International Manual.

Relevant Swiss, New York and Belgian law matters are summarised in the CREST International Manual, Chapter 3, section 3.

The foregoing summary shall not limit the terms of the provisions it seeks to summarise. In particular it should not be regarded as a substitute for reading the terms of the relevant documents.

## Chapter 3: Free of payment links: settlement

This Chapter describes the arrangements for cross border settlement of transactions in international securities and CREST securities on a free of payment basis.

### **Section 1: Settlement of transfers of international securities**

This section describes the general procedures for settlement of acquisitions and disposals together with any variations to those general procedures which are applicable to a particular link.

#### **General Procedures**

##### **Settlement of an acquisition of an international security by a CREST member**

The CSD sends a delivery message to the CREST system. The delivery message is an unmatched transaction and indicates to the CREST system that the international securities the subject of the transfer have, in system terms, been 'blocked' by the CSD. The system effect of blocking the securities in the overseas CSD is to prevent their being used to satisfy any other transaction and to earmark them solely for the transaction specified in the delivery message; this may involve blocking the securities in an account of the transferor or provisionally crediting them to an account of the CREST Nominee in the CSD, depending upon the practices of each individual CSD.

On receipt of the delivery message, the CREST system checks the participant details of the transferee and the contents of the delivery message.

If the transferee has opted out of cross-border settlement functionality or if the delivery message is in any other way incapable of being processed:

- the CREST system sends a message to the CSD to reject the transfer;
- the CSD unblocks the securities in its accounts and, if removed from the transferor's account at the time of blocking, recredits them to the normal account of the transferor in the CSD; and
- the CREST system makes no further attempt to settle the transaction.

If the transferee has opted into cross border settlement functionality and the delivery message is capable of being processed, the CREST system simultaneously:

- creates CDIs by means of a REG transaction and issues them in respect of the securities that are the subject of the transaction and credits them to the escrow balance<sup>8</sup> of the membership account of the acquiring CREST member;
- creates an XDL which then proceeds to settlement subject to the normal pre-settlement checks (such as the security and relevant participants being enabled) thereby resulting in the CDIs being debited from the acquiring member's escrow balance and being credited to the available balance.

:

on settlement of the XDL transaction, the CREST system sends a message to the CSD to confirm that settlement is accepted and to request the CSD to complete the transfer to the CREST Nominee in its system; and

on receipt of the confirmation message, the CSD (if necessary) unblocks the securities (which may involve debiting the account of the transferor and crediting the account of the CREST Nominee or changing the status of a credit to the account of the CREST Nominee from blocked to unblocked).

##### **Settlement of a disposal of an international security by a CREST member**

The CREST member inputs an XDL transaction to the CREST system. The input may be forward dated by the CREST member but may only be deleted or amended prior to the blocking of stock. The XDL transaction is an unmatched transaction and the CREST system does not send any message to the CSD before the ISD.

<sup>8</sup> This escrow balance is 'blocked' and configured with the relevant CSD assigned as the Escrow Agent.

Settlement of the XDL transaction is subject to the normal CREST pre-settlement checks<sup>9</sup>. On successful completion of the pre-settlement checks on the ISD, the CREST system:

- debits the CDIs from the available balance of the transferor CREST member (which debit is not revocable by the member) and credits the transferor CREST member's escrow balance<sup>10</sup>;
- sends a delivery message to the CSD.

If the CSD is able to process the transaction it sends a confirmation message to the CREST system, accepting the credit to its account in the CREST system.

Then the CDIs are removed from the escrow balance of the transferor CREST member (by means of NEG REG transaction) and the CDIs are thereby cancelled (and removed from the Operator Register). The transaction is then complete.

If the CSD is unable to process the transaction it sends a rejection message to the CREST system. Using an XDR transaction, the CREST system then:

- debits the CDIs from the escrow balance of the transferor CREST member and credits them back to their available balance; and
- makes no further attempt to settle the transaction.

### **SIX SIS link**

The general procedures described above apply with the following variations:

When delivering stock to the Italian CSD, the delivery instruction to SIX SIS is not sent on ISD but on the business day prior to ISD ('ISD - 1').

*Settlement of an acquisition of an international security (other than a Swiss security) by a CREST member where the counterparty is not a SIX SIS participant<sup>11</sup>*

SIX SIS, as the ICSD, will not send a delivery message (indicating the security has been blocked) to the CREST system as the first step of the settlement process. Instead, the CREST member will be required to input an XDL transaction including, in addition to the usual details, information relating to the CREST member's counterparty and his custodian or third country CSD where the relevant international securities (other than Swiss Securities) are held. The CREST member cannot delete or amend the XDL, once input. If a CREST member does wish to delete the XDL they must contact EUI.

The CREST system will then send a delivery (receipt) message to SIX SIS including the third party information. SIX SIS then passes this information to its sub-custodian for onward delivery to the custodian or third country CSD acting for the CREST member's counterparty to the transaction. Once the sub-custodian has successfully matched and settled the transaction in the local market and has informed SIX SIS of the same, SIX SIS sends a delivery receipt confirmation message to the CREST system confirming that settlement has taken place. The CREST Depository then creates and issues CDIs in respect of the relevant international securities and, by use of a REG transaction, they are credited to the escrow balance<sup>12</sup> of the membership account of the acquiring CREST member. The XDL transaction then proceeds to settlement subject to the normal pre-settlement checks, thereby resulting in the CDIs being simultaneously debited from the escrow balance and credited to the membership account of the acquiring CREST member<sup>13</sup>.

### **DTCC link**

The general procedures described above apply with the following variations.

*Settlement of an acquisition by a CREST member*

<sup>9</sup> Including, inter alia, the settlement priority specified by the CREST member, availability of the required quantity of securities and the effect of settling the transaction on any secured cap (see Chapter 6, section 3 of the CREST Reference Manual).

<sup>10</sup> This escrow balance is 'blocked' and configured with the relevant CSD assigned as the Escrow Agent.

<sup>11</sup> For example where the settlement account of the CREST member's counterparty is with the same sub-custodian as is used by SIX SIS, or with a third country CSD.

<sup>12</sup> This escrow balance is 'blocked' and configured with the relevant CSD assigned as the Escrow Agent.

DTCC does not operate a blocking mechanism for the purposes of this link. Accordingly, when DTCC sends a delivery message to the CREST system, that message signifies that the securities have been credited definitively to the DTCC account of the CREST Nominee. If the CREST Nominee wishes to reject the transfer, the transfer of the securities to the DTCC account of the CREST Nominee having occurred, the rejection takes the form of an instruction to DTCC to re-transfer the securities in DTCC to the original transferor.

Once the issue of the appropriate CDIs has taken place, and the account of the CREST member credited, the CREST system takes no further action. No confirmation message is required by DTCC.

#### *Settlement of a disposal by a CREST member*

As previously noted, the balance to which CDIs are credited is the escrow balance of the transferor CREST member. The message which DTCC sends to CREST confirming that settlement has occurred is accordingly not taken as an acknowledgement of the movement of the CDI in CREST.

### **EB Link**

The general procedures described above apply with the following variations.

EB does not operate a blocking mechanism for the purposes of this link.

The settlement process for delivery instructions to EB does not commence on ISD but on the evening of the business day prior to ISD ('ISD - 1').

#### *Settlement of an acquisition by a CREST member*

EB will not initiate the process by sending a delivery message (indicating the security has been blocked) to the CREST system. Instead, the CREST member will be required to input an XDL transaction including, in addition to the usual details, information relating to the CREST member's counterparty in EB, or CBL or such other relevant third party CSD depending where such counterparty holds the relevant international securities. The CREST member cannot delete or amend the XDL, once input. If a CREST member does want to delete the XDL they must contact EUI.

The CREST system will then send a delivery (receipt instruction) message to EB. In the EB system, the delivery (receipt) instruction sent by the CREST system will match the corresponding message input by the counterparty (or be available for matching by the counterparty).

It is our understanding, that the settlement process in EB does not commence on ISD but on the evening of the business day prior to ISD ('ISD - 1').

If the XDL transaction is input on or before ISD-1 and the instruction message from the CREST system reaches EB before the cut off point for the overnight batch process in the EB system the instruction will be put forward for settlement in an overnight batch on ISD-1. If the instruction in EB fails to settle in the overnight batch it will be automatically put forward for intra-day settlement cycles on ISD except where the counterparty is in CBL (and in each case provided the counterparty has opted into intra-day settlement in EB).

If EB is able to process and settle the instruction, it sends a confirmation message to the CREST system. Such message signifies that the securities have been credited definitively to the EB account of the CREST Nominee. Once the issue of the appropriate CDIs has taken place, and the account of the CREST member credited, the CREST system takes no further action.

#### *Settlement of a disposal by a CREST member*

The CREST member will be required to input a XDL transaction as for an acquisition of international securities. On ISD-1 the CREST system will debit the CDIs from the available balance of the transferor CREST member (which debit is not revocable by the member) and credits the member's escrow balance<sup>14</sup> before sending a delivery message to EB. In the EB system, the transaction will then match the corresponding input by the counterparty (or be available for matching by the counterparty). Following matching in the EB system, EB will send a message to the CREST system confirming that the transaction has been matched. No processing is performed in the CREST system against this message.

If the transaction is input on or before ISD-1 and the instruction from the CREST system is matched in EB on ISD-1 before the cut off point for the overnight batch process the transactions will be put

<sup>14</sup> This escrow balance is 'blocked' and configured with the relevant CSD assigned as the Escrow Agent.

forward for settlement. If the XDL fails to settle in the overnight batch it will automatically be put forward for intra-day settlement cycles on ISD except where the counterparty is in CBL (and in each case provided the counterparty has opted into intra-day settlement in EB).

After the transaction has settled, EB sends a confirmation message to CREST. Such message signifies that the securities have been credited definitively to the EB account of the CREST member's counterparty.

#### *Cancellations*

There are two situations where cancellations of transactions may take place in relation to the EB link:

1) EUI will seek to undertake deletion of unsettled internal<sup>15</sup> and bridge<sup>16</sup> transactions within EB if they remain unsettled one month after ISD. In the case of an unsettled disposal transaction for the delivery to a EB (or CBL) participant, the CREST system will return the stock back to the CREST member by creating and settling a Cross Border Delivery Reversal (XDR) transaction in order to credit the CDIs to the CREST member's account. The CREST member will be notified of the unsuccessful settlement of any transaction via the transaction status changes. To re-submit a transaction, CREST members must re-input the XDL in the CREST system; and

2) when a CREST member requests the deletion of a settlement instruction on external<sup>17</sup> transactions, EUI seeks to cancel the transaction as soon as it becomes possible to do so. In some markets to which EB has established a link, it is not possible to cancel transactions usually due to transactions being irrevocable from the point of matching. In such cases the transaction remains unsettled, with the CDIs remaining in the escrow balance of the transferor CREST member. However, unless EUI or the CREST Nominee has been able to effect a cancellation in accordance with EB's Operating Procedures (on or before ISD-1), EB has indicated that it will be only 'in exceptional circumstances' (and with the prior agreement of EB) that the EB system will accept the cancellation of a settlement instruction on ISD-1. ICSD links with third country CSDs

Where deliveries may be effected via a CSD as an ICSD, between CREST members and participants in third country CSDs or custodians with which the ICSD has links, the CREST International Manual does not (save as outlined above in relation to the SIX SIS link) describe the instructions and arrangements which apply in relation to the movement of securities between the ICSD and the participants in the third country CSD or custodian; information on these matters, so far as required by CREST members, may be found in the International Service Description as published from time to time.

#### **Back-dated and forward-dated XDL transactions**

Where an XDL is sent by a CREST Participant to a CSD it should not be backdated. If a CREST Participant nevertheless specifies an ISD in the past, the ISD will be automatically adjusted by the CREST system to the date when the XDL is actually forwarded to the relevant CSD. CREST Participants should note that if they do specify an ISD in the past, this adjustment may trigger matching failure in the CSD.

Where an XDL is sent by a CSD to a CREST Participant this restriction does not apply.

An XDL may be forward dated if it is sent by a CREST participant in order for that participant to dispose of international securities. However, if the forward dated XDL does not reach a status of "settled, awaiting confirmation" on the specified ISD then the ISD will be automatically adjusted by the CREST system to the next available settlement date.

An XDL may not be forward dated if it is sent by a CREST participant in order for that participant to acquire international securities.

<sup>15</sup> Internal transactions are between a CREST member and EB member.

<sup>16</sup> Bridge transactions are between a CREST member and a CBL member.

<sup>17</sup> External transactions are between a CREST member and a third party CSD member (excluding CBL).

**Section 2: Settlement of transfers of CREST securities**

This section applies to the link with SIX SIS only.

**Settlement of an acquisition of a CREST security by a CREST member**

SIX SIS sends a delivery message to the CREST system. The delivery message is an unmatched transaction and indicates to the CREST system that the CREST securities the subject of the transfer have, in system terms, been 'blocked' by SIX SIS in the SIX SIS account of the transferor. The system effect of blocking the securities is to prevent their being used to satisfy any other transaction and to earmark them for the transaction specified in the delivery message.

On receipt of the delivery message, the CREST system checks the participant details of the transferee and the contents of the delivery message.

If the transferee has opted out of cross-border settlement functionality or if the delivery message is in any other way incapable of being processed:

- the CREST system sends a message to SIX SIS to reject the transfer;
- SIX SIS unblocks the securities in its accounts and, if removed from the transferor's account at the time of the blocking, re-credits them to the normal account of the transferor; and
- the CREST system makes no further attempt to settle the transaction.

For UK and Irish stamp duty purposes, a transferee CREST member who has opted in to cross-border settlement functionality must input and match an XDL transaction relating to an acquisition by him of CREST securities on the ISD.

If the transferee CREST member has not input an XDL transaction (or has input an XDL transaction which does not match), then the CREST system sends a message to SIX SIS to reject the transfer.

If the transferee CREST member has opted in to cross-border settlement functionality, the delivery message is capable of being processed, and the CREST member has input an XDL transaction which the CREST system is able to match, CREST generates an RUR for retrieval by the registrar.

If the RUR relates to UK CREST securities, on generation of the RUR the CREST system also:

- debits the securities from the available balance of the SIX SIS CSD participant;
- credits the securities to the available balance of the transferee CREST member (using the default account specified by the CREST member in their participant details for this purpose); and
- sends a message to SIX SIS to confirm the settlement in the CREST system has occurred.

If the RUR relates to non-UK CREST securities, the above process applies save that the message to SIX SIS to confirm that settlement in the CREST system has occurred is not sent unless the CREST system receives an RUR response from the registrar, confirming that the transfer of securities to the CREST member has been registered.

If the registrar refuses to register a transfer of non-UK CREST securities to the CREST member, the CREST system using a BDR transaction:

- debits the securities from the available balance of the transferee CREST member;
- credits the securities to the available balance of SIX SIS; and
- makes no further attempt to settle the transaction.

**Settlement of a disposal of a CREST security by a CREST member**

The CREST member inputs an XDL transaction into the CREST system. The input may be forward dated by the CREST member but may not be deleted or amended once the blocking of the stock has taken place. The XDL transaction is an unmatched transaction and the CREST system does not send any message to SIX SIS before the ISD.

Settlement of the XDL transaction on ISD is subject to the normal CREST pre-settlement checks<sup>18</sup>.

<sup>18</sup> Including, inter alia, the settlement priority specified by the CREST member and availability of the required quantity of securities and the effect of settling the transaction on any secured cap (see Chapter 6, Section 3 of the CREST Reference Manual)

On successful completion of the pre-settlement checks on the ISD, the CREST system simultaneously:

- debits the CREST securities from the member account of the transferor CREST member (which debit is not revocable by the member);
- credits the CREST securities to the reserve balance of SIX SIS;
- generates an RUR for retrieval by the registrar; and
- sends a delivery message to SIX SIS.

If the RUR relates to non-UK CREST securities, a message to transfer the securities to SIX SIS is not sent unless the CREST system receives an RUR response from the registrar, confirming that the transfer of securities to SIX SIS has been registered.

If the CSD is able to process the transaction, it sends a confirmation message to the CREST system, accepting the credit to its account in the CREST system. The CREST system then debits the CREST securities from the reserve balance of SIX SIS and credits them to the available balance of SIX SIS using an XDC transaction. The transaction is then complete.

If SIX SIS is unable to process the transaction it sends a rejection message to the CREST system. Using an XDR transaction, the CREST system then:

- debits the CREST securities from the reserve balance of SIX SIS;
- credits the CREST securities to the available balance of the CREST member;
- generates an RUR for retrieval by the registrar; and
- makes no further attempt to settle the transaction.

If the registrar refuses to register a transfer of non-UK CREST securities to SIX SIS, the CREST system using a BDR transaction:

- debits the securities from the reserve balance of SIX SIS;
- credits the securities to the available balance of the CREST member; and
- makes no further attempt to settle the transaction.

#### **ICSD links with third country CSDs**

The same considerations apply as detailed in the equivalent paragraph in Chapter 3, Section 1.

#### **Back-dated and forward-dated XDL transactions**

The same considerations apply in relation to CREST securities as detailed in relation to international securities in the equivalent paragraph in Chapter 3, Section 1.

### **Section 3: Legal framework for cross-border settlement**

#### **When the relevant CSD is a CREST member**

The following provisions apply when the relevant CSD has been admitted to CREST as a member with the participant type 'CSD'<sup>19</sup>.

When a CREST member inputs an instruction to transfer CREST securities or CDIs (in either case, 'relevant securities') utilising the international settlement links and using the transaction type XDL, they irrevocably and unconditionally accept that, immediately prior to the credit of the relevant securities by the CREST system to the CSD's reserve balance and without further action on the part of the member, their entitlement to the relevant securities shall become a 'seller entitlement' and the CSD shall have a 'buyer entitlement'.

A 'seller entitlement' is one which:

- on receipt by the Operator of the message from the relevant CSD confirming its acceptance of settlement of the transfer, shall terminate automatically;
- on receipt by the Operator of either, in the case of non-UK CREST securities, a message from the relevant registrar rejecting the RUR in respect of the transfer to the relevant CSD's reserve balance or, in the case of any security, a message from the relevant CSD confirming its rejection of the settlement of the transfer, shall entitle the member to have the relevant securities credited to the available balance of his relevant member account free from any buyer entitlement, and
- where the relevant securities are CDIs, shall entitle the member to receive all rights and benefits attributable to the relevant securities to which the CSD may become entitled during the period when the relevant securities are credited to the the member's escrow balance (where the CSD is assigned as the Escrow Agent)<sup>20</sup>.

A 'buyer entitlement' is one which:

- on receipt by the Operator of the message from the relevant CSD confirming its acceptance of settlement of the transfer, shall entitle the relevant CSD to have the relevant securities debited from its reserve balance (or the member's escrow balance in the case of CDIs) and either cancelled (in the case of CDIs) or credited to its available balance (in the case of CREST securities) free from any seller entitlement; and
- on receipt by the Operator of either, in the case of non-UK CREST securities, a message from the relevant registrar rejecting the RUR in respect of the transfer to the relevant CSD's reserve balance or, in the case of any security, a message from the relevant CSD confirming its rejection of the settlement of the transfer, shall terminate automatically.

The trusts declared by the member by such input shall be constituted by the credit of the relevant securities to the reserve balance of the relevant CSD without any action or further action on the part of the relevant CSD.

#### **When the relevant CSD is not a CREST member**

The following provisions apply when the relevant CSD has not been admitted to CREST as a member with the participant type 'CSD'<sup>21</sup> and accordingly the account to which CDIs are transferred in the circumstances described below will be the escrow balance of the relevant member account of the transferor CREST member and not an account of a CSD.

When any CREST members inputs an instruction to transfer CDIs ('relevant securities') utilising the international settlement links and using the transaction type XDL, they thereby irrevocably and unconditionally accept that, immediately prior to the credit of the relevant securities by the CREST system to the escrow balance of the relevant member account and without further action on the part of the member, their entitlement to the relevant securities shall become a 'seller entitlement' and the CSD (as the escrow agent) shall have a 'buyer entitlement'.

A 'seller entitlement' is one which:

<sup>19</sup> SIX SIS.

<sup>20</sup> Any such right or benefit shall be delivered to the transferring CREST member in the manner described in Chapter 4.

<sup>21</sup> DTCC and Euroclear.

- on receipt by the Operator of a message from the relevant CSD confirming its acceptance of settlement of the transfer, shall terminate automatically;
- on receipt by the Operator of a message from the relevant CSD confirming its rejection of the settlement of the transfer, shall entitle the member to have the relevant securities debited from the escrow balance and credited to the available balance of their relevant member account free from any buyer entitlement.

A 'buyer entitlement' is one which:

- on receipt by the Operator of the message from the relevant CSD confirming its acceptance of settlement of the transfer, shall entitle the relevant CSD to have the relevant securities debited from the escrow balance of the relevant member account of the transferor CREST member and cancelled; and
- on receipt by the Operator of a message from the relevant CSD confirming its rejection of the settlement of the transfer, shall terminate automatically.

### **When delivery to or by a participant in a CSD is legally effective**

The legal analysis of acquisitions and transfers between participants in different jurisdictions, or affecting securities outside the jurisdiction of one or both participants, is necessarily complex. It is possible that the same transaction may be analysed in different ways in each particular jurisdiction concerned. Moreover, even though all jurisdictions have rules which specify, where more than one jurisdiction is involved, which jurisdiction's laws should apply to particular aspects of a particular transaction, even those rules are not uniform in all jurisdictions.

Consequently, EUI has had to make certain legal assumptions in establishing the international settlement links service, which, while believed to be viable in practice, cannot be guaranteed to be correct. The principal assumptions have been, essentially, the following:

- that when a credit is made to the CREST Nominee's reserve balance in a particular CSD, or securities are blocked for transfer to the CREST Nominee in that particular CSD, the subsequent credit of those securities to the CREST Nominee's safekeeping balance will generally be conditional only upon the relevant delivery being capable of being processed in CREST, so that the CREST Depository may, subject to such capability, properly issue a CDI representing the relevant securities;
- that when a credit is made to the CREST Nominee's safekeeping balance in a particular CSD, in respect of securities held within that CSD, that credit will generally be unconditional and irreversible;
- that the CSD will not recognise third party claims to securities credited to the CREST Nominee;
- that the CREST Nominee may validly hold international securities, or entitlements thereto, by participating in the CSD notwithstanding that it acts as a nominee (although in the CSD's jurisdiction the CREST Nominee may be viewed as a full owner);
- that, in the case of a depository interest constituted under English law and registered on a register in England, but representing international securities, it is English law which determines the manner in which that depository interest is transferable and the time and circumstances in which transfer is effective; and
- that a CSD, which is a CREST member, acquiring a security (including a CDI) from a CREST member, with a view to holding the security (or underlying security) for the account of a participant in that CSD, will not be able to inhibit the return of the security from its reserve balance (or the transferor member's escrow balance in the case of CDIs) to the CREST transferor which CREST will effect upon receipt of a rejection message (see earlier in this Section).

These assumptions should be read in the light of the qualifications in relation to particular links set out below.

### **Swiss law matters**

In relation to the link with SIX SIS, the practical viability of the above assumptions should be considered in the context of the following (except where otherwise indicated, the following qualifications apply both to securities constituted under the laws of Switzerland and to securities constituted under the laws of jurisdictions other than Switzerland, entitlements to which are credited to participants in SIX SIS):

- When securities are blocked in a transferor's account in SIX SIS for transfer to the CREST Nominee, the blocking is thought not to confer on the CREST Nominee any legally recognised interest in the securities (although in relation to bearer securities the issue remains legally untested in Switzerland).
- Notwithstanding that the blocking mechanism may confer no legal interest, the CREST Depository will issue CDIs to acquiring CREST members when the securities are blocked in the transferor's account and before the securities concerned have been credited to the CREST Nominee's safekeeping balance in SIX SIS. SIX SIS has undertaken to procure the delivery of the appropriate number of securities to the CREST Nominee's safekeeping balance in SIX SIS within one business day if the movement of the blocked securities from the transferor's account in SIX SIS to the safekeeping balance of the CREST Nominee does not occur. Accordingly, while there is a risk that the CREST Depository may need to cancel such CDIs, that risk has been reduced.
- In the case of securities in bearer form, the time of credit of those securities to the CREST Nominee's safekeeping balance in SIX SIS is generally understood to represent the time of effective transfer, but this principle is not at present fully reflected in SIX SIS's membership terms and conditions.
- In the case of securities constituted under the laws of Switzerland which are not represented by physical certificates, including 'registered shares with deferred printing' (a category embracing many shares in Swiss issuers), the transfer of title to the CREST Nominee is legally effected by the execution of a written assignment by SIX SIS as agent on behalf of the transferor, normally following close of business on the day of settlement.
- Under Swiss law, transfers of securities are not generally made void as a result of the subsequent insolvency of the transferor.
- In common with many securities depositories, SIX SIS stipulates that, if a shortfall of securities of a particular issue is found to exist, the shortfall is borne pro-rata by SIX SIS participants (including the CREST Nominee) holding securities of that issue. This is an example of a circumstance in which the CREST Depository would be compelled to exercise its powers under the terms and conditions and/or the Deed Poll to cancel CDIs and/or require cash payments by CDI holders.
- In the case of securities constituted under the laws of jurisdictions other than Switzerland, the underlying securities, entitlements to which are credited to participants in SIX SIS, are generally held outside Switzerland by custodians on behalf of SIX SIS; while no assessment is made by EUI of the impact, if any, of the laws of any jurisdiction other than Switzerland, SIX SIS has confirmed to EUI that, with some exceptions in relation to credits arising from corporate actions (see below), it does not credit such securities to the account of the CREST Nominee until SIX SIS itself has been unconditionally credited with the relevant securities by its custodian.
- In the case of securities constituted under the laws of jurisdictions other than Switzerland which are held outside Switzerland by custodians on behalf of SIX SIS, certain custodians are considered to have rights of lien or other rights which may affect the availability of the underlying securities to SIX SIS; SIX SIS has undertaken to indemnify the CREST companies in respect of such rights (except to the extent resulting from failure by the CREST companies to make a required payment to SIX SIS).
- In relation to securities constituted under the laws of jurisdictions other than Switzerland, credits to participants' accounts in SIX SIS of securities or cash arising as a result of corporate actions are in a number of cases provisional (commonly known as 'contractual income') and subsequently reversible. However, SIX SIS generally treats such credits as available for onward delivery; accordingly, the CREST Depository may issue CDIs (or the CREST Nominee distribute cash) at the point when SIX SIS has made such a provisional credit to the CREST Nominee's securities or cash account, notwithstanding that the credit may subsequently be reversed. If SIX SIS then reverses this credit out of the CREST Nominee's account, the CREST Depository would be compelled to exercise its powers under the terms and conditions and/or the Deed Poll to cancel CDIs and/or require cash payments by CDI holders.

### **New York law matters**

In relation to the link with DTCC, the practical viability of the principal assumptions should be considered in the context of the following matters. Under New York law, securities clearance and settlement systems, including DTCC, are termed 'securities intermediaries', which hold 'financial assets' and create 'securities entitlements' in favour of their 'entitlement holders'.

- DTCC does not operate reserve balance accounts and therefore when a credit is made to the CREST Nominee's account in DTCC the assumption made by EUI is that it is this credit which is unconditional and irreversible.
- It is thought that New York law (being the law which governs the relationship between DTCC and its participants) will regard the CREST Nominee as the owner of the security entitlements against DTCC, which is a securities intermediary, and also as a securities intermediary itself in its relationship with DTCC. (The effect of this status is thought to be that an unsecured creditor of the CREST Nominee would not have rights to the security entitlements held by the CREST Nominee at DTCC to the extent that the CREST Nominee requires the security entitlements to satisfy the claims of CREST members.) It is also thought that New York law generally will not recognise the claims of CREST members as claims against DTCC.
- New York law confers on the CREST Nominee, as a participant in DTCC, a pro rata property interest in all interests in the particular financial asset held by DTCC, but does not afford the CREST Nominee any direct rights to that particular financial asset except in very narrow circumstances related to the failure of DTCC. Whilst DTCC has certain duties to exercise due care in accordance with reasonable commercial standards to maintain financial assets which correspond to the entitlements of its participants, there could be circumstances in which DTCC participants holding security entitlements corresponding to a particular issue may have to bear a shortfall pro rata, in which case the CREST Depository would be compelled to exercise its powers under the Deed Poll to cancel CDIs and/or require cash payments by CDI holders.
- DTCC may itself in some circumstances pledge to third parties, or claim to satisfy liabilities owed to it, securities which are credited to the CREST Nominee's account, reducing the CREST Nominee's entitlements accordingly. This is a further example of a circumstance in which the CREST Depository would be compelled to exercise its powers under the Deed Poll to cancel CDIs and/or require cash payments by CDI holders.

### **Belgian law matters**

In relation to the link with EB, the practical viability of these assumptions should be considered in the context of the following:

- The EB system operates under Belgian law and affords participants both contractual rights against the operator and co-ownership rights in relation to the underlying securities, which rights are in each case governed by Belgian law. However, the underlying securities held within EB are constituted under the laws of a variety of jurisdictions and are frequently physically held outside Belgium; no assessment has been made by EUI of the impact (if any) of the laws of any jurisdiction other than Belgium.
- The EB system does not operate reserve balance or blocking mechanisms in respect of securities in the course of delivery and therefore when a credit of a security is made to the CREST Nominee's account in EB following settlement, the CREST Depository generally issues a CDI in respect of it, although as explained below, some credits are subsequently reversible.
- The operator of the EB system has, by virtue of Belgian legislation, a statutory lien over both securities and cash balances of participants, but has, waived this lien over the balance of securities credited to securities clearance accounts which have been expressly identified in writing by a participant as being accounts to which solely customer securities are credited; the CREST Nominee made such identifications. The EB operator also has contractual rights to treat all the cash accounts of a participant as one account and to combine them accordingly. Additionally, the operator has contractual powers of set-off and retention over both cash and securities of a participant whose participation in EB is terminated or resigned, in respect of amounts due to the operator from such a participant.
- The operator of the EB system has power in a number of circumstances to block both securities and cash accounts of participants.
- In a number of circumstances (particularly following initial deposits of securities into the EB system or deliveries from other systems into EB), credits of securities or cash to participants' accounts in EB are provisional and subsequently reversible. (In this context, it is relevant that securities held in EB are constituted under the laws of a variety of jurisdictions and are frequently lodged with custodians on behalf of EB within those jurisdictions.) However, EB generally treats such credits as available for onward delivery; accordingly, the CREST Depository may issue CDIs (or the CREST Nominee distribute cash) at the point when EB has made such a provisional credit to the CREST Nominee's securities or cash account, notwithstanding that the credit may

subsequently be reversed. If EB then reverses this credit out of CREST Nominee's account, the CREST Depository would be compelled to exercise its powers under the terms and conditions and/or the Deed Poll to cancel CDIs and/or require cash payments by CDI holders.

- In common with many securities depositories, EB stipulates that if a shortfall of securities of a particular issue is found to exist, the shortfall is borne pro-rata by EB participants (including the CREST Nominee) holding securities of that issue at a time determined in accordance with EB's terms and conditions. This is an example of a circumstance in which the CREST Depository would be compelled to exercise its powers under the terms and conditions and/or the Deed Poll to cancel CDIs and/or require cash payments by CDI holders.

**Section 4: Other core functions****Stock loans and deliveries by value**

Stock loan and delivery by value functionality (described in Sections 1 and 2 of Chapter 7 of the CREST Reference Manual):

- is available to CREST members in respect of transactions in CDIs with other CREST members but not with CSDs; and
- is not available to CSDs.

**Escrow balances**

Escrow functionality (described in Section 3 of Chapter 7 of the CREST Reference Manual):

- is available to CREST members in respect of transactions in CDIs with other CREST members but not with CSDs; and
- is not available to CSDs by means of electronic messages input by the CSD. However, EUI may, by special arrangement with a CSD, input TTE and/or TFE transactions in its capacity as CREST Sponsor of the CSD.

**Nationality Declaration**

In line with a number of existing domestic securities which are settled through the CREST system and require the transferee to make a declaration relating to their nationality, or to the nationality of the beneficial owner(s) with an interest in the securities being transferred, the International Service is normally able to offer, for an additional fee, an issuer the ability to pass the data to the relevant registrar (see below) in electronic format, using existing Registrar Update Request (RUR) functionality.

Where a CREST Depository Interest (CDI) exists, or is being created, and the issuer of the security is required to monitor and reconcile the ownership of the security, the CREST system enables an issuer to appoint a CREST Registrar to monitor the nationality of its holders on its behalf whilst retaining the cross border functionality applicable to CDIs.

The CREST Registrar is able to complete a daily reconciliation against the CDI balance in order to identify transfers that have been instructed and monitor the ownership to ensure the relevant threshold has not been breached.

**Client money and assets**

Members can confirm securities and cash balances for reconciliation purposes by using the CREST system's enquiry functions in respect of:

- balances and transactions in CREST Depository Interests;
- USE transactions, which the member instructs, that affect delivery of securities and/or CREST Currency cash to the CREST Depository (until the pay date of the relevant event);
- USE transactions or REG transactions, which EUI instructs (as set out in Chapter 4, section 1) in respect of events involving a stock and/or CREST Currency cash distributions (until settlement of that transaction);
- in the case of non-CREST Currency cash payments to or from the CREST Depository and in certain other exceptional circumstances, EUI will promptly confirm cash balances on a case-by-case basis.

USE transactions will be generated promptly following receipt by the CREST Depository of cash balances, although members should note that in certain limited circumstances such balances may be held by the CREST Depository for longer than one day prior to the generation of the USE.

Where EUI is notified that cash held by the CREST Depository in respect of a particular member relates to underlying clients of that member, EUI, the Depository and the Custodian will consider all cash held in respect of that member (which is held on a pooled, collective non-segregated basis) relates to such underlying clients only and is not proprietary cash of the CREST Member itself.

**Section 5: System controller functions**

In accordance with the Terms and Conditions, EUI is authorised to create instructions attributable to CREST members for the creation of a CREST payment in favour of EUI's, the CREST Depository's or the CREST Nominee's payment bank, to facilitate the collection of sums due to or payable by EUI, the CREST Depository or the CREST Nominee, whether in relation to benefit claims, interest claims, clawbacks, tolerance adjustments, SDRT or related liabilities or otherwise.

The CREST system enables EUI, as System Controller, to take the action envisaged by these provisions. Any instructions so created may carry a System Controller priority determined by EUI.

**Section 6: Networks and system messages**

Schedule 1 of the Terms and Conditions, set out in Chapter 7 (in particular clause 5.1.1) refers to the communications links with CSDs. Information received over these links includes information which leads to the issue and cancellation of CDIs and information relating to corporate events on international securities. These messages are sent using the S.W.I.F.T. Fin Service, which has been adopted by the European Central Securities Depositories Association, or the proprietary communications network of any particular CSD, which are not accredited networks.

In order for the links to operate it is usually necessary for the CSD to be a system-member and thus able to communicate with the CREST system by means of an accredited network. In addition, CREST Depository Limited has to be able to communicate the issue and cancellation of CDIs by an accredited network. Accordingly EUI acts as a sponsoring system-participant to CREST Depository Limited, to the CREST Nominee and also usually to the CSD.

When acting as sponsor EUI receives the S.W.I.F.T. Fin messages (or proprietary CSD messages) and processes them in order to make them capable of transmission across an accredited network. This process does not alter the core content of the message received across the S.W.I.F.T. Fin Service (or proprietary CSD communications network). The message is then transmitted to the CREST system via one of the network providers' CREST Communications Host by means of a gateway computer.

CREST can take no responsibility for messages arriving as S.W.I.F.T. Fin messages (or proprietary CSD messages), or purporting to do so. No independent verification of such messages or their content is undertaken.

In CREST terminology, by virtue of operating a gateway computer on behalf of the CSD and also CREST Depository Limited and the CREST Nominee, EUI acts as 'sponsor'. The CSD is a 'sponsored member'. The CSD Membership Agreement contains provisions relating to EUI providing a service as sponsor to the CSD.

Section 3 of Chapter 11 of the CREST Reference Manual contains provisions relating to the attribution and addressing of system instructions relating to international settlement links.

**Section 7: Reconciliation**

This section describes the reconciliation procedures between the CREST system and CSDs with which EUI has CSD links.

Each CSD provides EUI with daily statements with information specifying the following in respect of CDIs, per securities account in each CSD and per securities issue:

- the aggregated opening balance;
- the individual movements during the day;
- the aggregated closing balance.

EUI conducts a daily comparison of the opening balance and the closing balance communicated to it by each CSD with the records maintained by the CREST system in respect of CDIs.

Where a CSD suspends a securities issue for settlement (following their reconciliation process revealing the undue creation or deletion of securities in that CSD), EUI shall subsequently suspend the relevant securities issue for settlement.

In the event of a corporate action on stocks that reduces the balances of CDIs:

- settlement instructions in the relevant securities issues shall not be processed by the CREST system until the corporate action has been fully processed by the other CSD; and
- the CREST system shall not update member accounts to reflect the corporate action until the corporate action has been fully processed by the other CSD.

## **Chapter 4: Free of payment links: corporate actions, benefit claims, automatic transformations clawbacks, voting and shareholder identification**

This Chapter describes the arrangements for corporate actions, benefit claims, automatic transformations, clawbacks, voting and shareholder identification relating to securities held via the International Settlement Links Service.

### **Section 1: Corporate actions**

In order to facilitate the provision of the International Settlement Links Service, the CREST Nominee appears in the books of the relevant CSD as the person entitled to the international securities. EUI offers a range of custody services which enable it (through the CREST Depository and the CREST Nominee) to intermediate in corporate actions between the Issuer (or relevant CSD) and the CREST member for whose account the international securities are ultimately held.

EUI will generally communicate with CREST members only through the CREST system: sponsors therefore need to make arrangements with their sponsored members to enable them to receive the information and give instructions.

The potential range of corporate actions is such that it is not possible to prescribe absolutely the mechanisms which will be adopted in each case. Accordingly, EUI retains absolute discretion to determine the means by which distributions are made to holders of CDIs and the basis upon which such holders participate in corporate events, make elections and give directions to EUI (or, where EUI requires, the CREST Depository) in respect of the underlying international securities.

This Section therefore describes in outline those procedures which are likely to be adopted in each case. From time to time, EUI may publish in more detail the procedures which will normally be adopted in each case and the terms on which participation in corporate actions will take place on behalf of CREST members. If, once published, the normal procedures and terms are not to apply in any case this will be specified in the textual description contained in the relevant corporate actions data message (KCAP). In such cases the KCAP will also indicate where the alternative procedures and terms can be found.

### **Notification of corporate actions**

EUI notifies CREST members of an event as soon as possible after receipt by the CREST Depository or the CREST Nominee of complete notification of the corporate action from the CSD (normally shortly after the announcement by the Issuer (for equities) or, in general, as soon as it is reasonably able before the record date (for debt securities)).

For those corporate action events that fall under SRDII, EUI will make event information received available to CREST members within the timeframes set out in SRDII following receipt of such information.

The method of notification of corporate actions is as detailed in the CREST Reference Manual.

### **Cash and stock distributions**

The mechanism for crediting cash and stock distributions to members forms the central part of many corporate actions. Together, these processes cater for:

- cash dividends (CHD);
- interest payments (ITP);
- capital repayments (CRP);
- compulsory redemptions (RDM)\*;
- capitalisations/bonus issues (CAP);
- consolidations (CSL)\*;
- compulsory conversions (CVN)\*;
- distributions of rights (RII);

- pari passu issues (PPU)\*;
- sub-divisions (SDV)\*;
- scrip dividends (CD);
- schemes of arrangement (SOA) \*; and
- subscription offer (SUB) \*.

Corporate action types marked with an asterisk usually involve the deletion of an old line of securities, using the securities expiry procedure (see section 6 of Chapter 2 of the CREST Reference Manual).

### Cash distributions

This section relates to any cash dividend or other cash distribution received by the CREST Depository in respect of international securities (including any amounts received in the liquidation of the Issuer). The CREST Depository is under no obligation to distribute funds until it or the CREST Nominee has received them in an account maintained with its payment bank.

References to 'receipt' of funds by the CREST Depository or the CREST Nominee mean, unless otherwise indicated, receipt of the funds into the CREST Nominee's account with the CREST Depository's or, as appropriate, the CREST Nominee's CREST payment bank, being the account to which funds are generally transferred by the CSD. However, the following exceptions may apply

- in the case of Swiss Franc payments by SIX SIS, the CREST Depository may arrange for their transfer direct to the Swiss Franc accounts of CREST members outside of the CREST system and, in these circumstances, they are treated as received by the CREST Nominee once the account of the CREST Nominee in SIX SIS is credited accordingly; and
- in the case of the link with DTCC<sup>22</sup>, where the CREST Nominee has an account with JP Morgan (JPM), its US Settlement Bank. Cash distributions made by DTCC are paid to JPM. Once JPM has credited the CREST Nominee's account, this is notified to the CREST Nominee and the funds are transferred to the CREST Nominee's account with the CREST Depository's payment bank.

It is not possible for CREST members to choose to receive cash distributions in a non-CREST currency where this is not the original currency of the distribution.

Typically cash distributions are made net of any applicable withholding tax (see Chapter 5) <sup>23</sup>.

The procedure to be followed depends on whether the CREST member is receiving the distribution in the original currency<sup>24</sup> and whether this is a CREST currency, giving rise to four possibilities:

*Possibility 1: CREST member receives original currency, which is a CREST currency and no nomination made*

The CREST Depository makes all cash distributions to CREST members in the currency of the original distribution where:

- this is a CREST currency;
- the receiving member has a cash memorandum account (CMA) in that currency; and
- the member has not nominated another default payment currency.

Example: dividend paid in euros, CREST member receives euros.

After the CREST Nominee has confirmed that it has received the distribution in an account maintained with the CREST Depository's payment bank and reconciled the amount received against the aggregate expected amount, USE transactions are created in favour of those CREST members who had a balance in the relevant security on the record date.

*Possibility 2: CREST member receives default currency (which must be a CREST currency in which such CREST member has a CMA) which is not the original currency*

<sup>22</sup> DTCC also provides withholding tax services to the CREST Nominee.

<sup>23</sup> The exception to this is if EUI offers relief at source in the relevant jurisdictions.

<sup>24</sup> In this section, references to the currency of the original distribution mean the currency in which the relevant CSD makes the distribution to the CREST Nominee.

The CREST Depository will make all cash distributions to CREST members in a CREST currency nominated by that member for such purpose and in which such member has a CMA. The choice of default currency must be made at the participant level, not at the security or member account level.

Example: dividend paid in euros, CREST member receives Sterling or dividend paid in Swedish Krona, CREST member receives euros.

In this case a currency conversion is required. Once the CREST Nominee has confirmed that it has received the distribution and reconciled the amount received against the aggregate expected entitlement, the CREST Depository enters into a foreign exchange transaction on such terms as it considers fair and reasonable to convert the CREST member's entitlement into the default currency or his chosen currency at the then current market rate<sup>25</sup>. The USE transaction will be created when the CREST Nominee has received (in the currency required) the out turn in an account maintained with the CREST Depository's payment bank. In the case of mixed stock and cash out turns, the stock will be distributed at the same time as the cash (CDIs in respect of underlying international securities held via DTCC are credited on a pay date plus 1 basis).

*Possibility 3: CREST member receives CREST currency, which is not original currency and no default currency nominated*

Where the member does not have a CMA in the currency of the original distribution and has made no valid nomination or election, the member will be deemed to have nominated as the default currency the first of the following in which it has a CMA - euros, sterling or US dollars.

Example: dividend paid in Swedish Krona, Swiss Francs or US Dollars but CREST member receives Euros.

The procedure followed is the same as that set out in a relation to Possibility 2 above (although references to 'chosen currency' should be replaced with references to Sterling, Euro or US Dollars, as appropriate).

*Possibility 4: CREST member receives original currency, which is not a CREST currency*

For cash distributions in Swiss Francs, CREST members may elect to receive the cash distribution outside of the CREST system in Swiss Francs.

Example: dividend paid in Swiss francs, CREST member receives Swiss francs.

After the CREST Nominee has confirmed that it has received the distribution and reconciled the amount received against the aggregate amount expected, the CREST Depository notifies the CREST member of his entitlement by means of a non-settling USE transaction. Payment is made through the appropriate payment system to the bank account nominated by the CREST member.

*The CREST member should notify the CREST Depository if, by close of business on the day after pay date, the member has not received the sum notified in the non-settling USE transaction, or has received a different amount (see paragraph 5.1.7 of Schedule 1 of the Terms and Conditions set out in Chapter 7). Other matters relating to cash distributions*

In certain circumstances there may have been prior foreign exchange transactions in the holding chain before the distribution reaches the CREST Nominee. No liability is accepted by the CREST Nominee, CREST Depository or EUI in respect thereof.

Any payment due to a CREST member in respect of CDIs which remains unclaimed<sup>26</sup> after a period of twelve years from the expected date of payment in accordance with any of the procedures referred to above (or such other procedures as the CREST Depository may consider appropriate in the circumstances) shall be retained by the CREST Depository or EUI as an additional fee (inclusive of value added tax) and the payee and its successors in title shall cease to have any rights to such sum.

The CREST Depository or EUI may deduct and retain from all monies received by the CREST Depository which are attributable to CDIs held by a CREST member all fees and other sums to which the CREST Depository, and/or EUI is entitled from such member pursuant to the Deed Poll or provision of the International Settlement Links Service or under any applicable law and all costs and expenses which the CREST Depository and/or EUI shall have incurred in respect of CDIs or the underlying international securities held for the account of such member or any sale thereof or in

<sup>25</sup> A movement of exchange rates may have an effect (favourable or unfavourable) on the value of the distribution.

<sup>26</sup> For example, where the relevant CREST membership is disabled.

connection with any related payment or delivery of rights, securities or other property to be distributed, or otherwise in the course of providing services or discharging its duties to such member.

### Stock distributions

If the distribution comprises securities which are identical in all respects to existing international securities<sup>27</sup>, the CREST Depository credits, by means of REG transaction, CDIs representing the new securities to the stock accounts of the CREST members entitled thereto in accordance with the terms set out in the corporate action details<sup>28</sup>.

If the distribution comprises securities which are not identical in all respects to existing international securities, the CREST Depository, if it considers it appropriate to do so, constitutes depository interests in respect of such securities on the terms of, or substantially similar to those of, the Deed Poll and distributes the new CDIs to the CREST members.

In the case of both identical and non-identical securities, on pay date after the CREST Nominee has been credited in the accounts of the relevant CSD with the distribution of the new securities and has reconciled the number of such securities with which it has been credited with the aggregate expected entitlement, EUI creates a REG transaction for immediate settlement in order to credit the stock distribution to CREST members. Securities credited to a CREST member's account in this way are immediately available for the settlement of other transactions in the CREST system, to support secured credit limits and for other cross-border transactions.

**If a distribution comprises both cash and securities, the distribution is made by means of a USE transaction in the manner described above, the CREST Nominee having confirmed that it has received the monies in an account maintained with its payment bank, reconciled the amount received against the aggregate expected amount and that the securities have been credited to its account with the relevant CSD.**

### Other matters relating to stock distributions

The range of property which may be distributed in respect of international securities is such that it may not always be lawful or appropriate in the opinion of the CREST Depository (which shall have absolute discretion to determine such matters) for further depository interests to be constituted in respect of such property. In such cases, the distribution, and the amount of it referable to the CREST member, is notified by means of a non-settling USE transaction. The CREST Depository may distribute or cause to be distributed such property to the CREST members entitled thereto in such manner as it may consider most practicable.

If, however, the CREST Depository considers any such distribution to all or any of the holders:

- is not practicable for any reason (whether due to the fractions which would otherwise result or to any requirement imposed upon the relevant Issuer, the CREST Nominee or the CREST Depository or any of their respective agents to withhold an amount in respect of or on account of any tax or other governmental charge or otherwise); or
- is contrary to any applicable law, rule or regulation,

the CREST Depository shall, so far as may be reasonably practicable, sell the distributed property or any part thereof in such manner and on such market or by auction or private treaty as it, in its absolute discretion, thinks fit and for such price as it considers to be reasonable in all the circumstances and shall distribute the net proceeds of such a sale as a cash distribution to the CREST members entitled thereto in such manner as the CREST Depository shall consider appropriate.

If the Issuer or any other person notifies the CREST Depository that any registration or similar requirement is imposed in any jurisdiction under any applicable law, rule or regulation, in respect of any rights, securities or other property to be distributed in order to enable the Issuer to offer such rights or distribute such securities or other property to holders of international securities or to sell the securities represented by such rights, the CREST Depository will not be obliged to distribute or make available to holders of CDIs any right to subscribe for or to purchase any such securities or other rights in respect thereof unless it believes that such registration or similar requirements have

<sup>27</sup> For these purposes, securities will be taken to be identical in all respects to existing international securities if further units of the security could (if both securities were CREST eligible) be admitted to CREST without application pursuant to CREST Rule 7.

<sup>28</sup> Usually in proportion to the number of such CDIs held by them on the record date or qualifying date.

been complied with or unless the distribution, offering or sale of such securities to such holders is, in the opinion of lawyers acceptable to the CREST Depository and/or in terms satisfactory to the CREST Depository, exempt from such registration or other relevant requirement.

Neither the CREST Depository nor the CREST Nominee shall be liable to comply with any registration or similar requirement which is imposed in any jurisdiction and which would need to be complied with by the CREST Depository or the CREST Nominee prior to it performing any obligation imposed upon it pursuant to the Deed Poll or this CREST International Manual and neither the CREST Depository nor the CREST Nominee shall be liable to the holders of the relevant CDIs for any losses, damages or expenses resulting from any failure to comply with any such obligation, or otherwise in relation to any registration or similar right.

Securities resulting from a corporate action that are not eligible in the relevant CSD will be exited immediately. Typically a certificate is subsequently issued in the name of the CREST Depository in respect of such securities. On receipt, the certificate is then broken down into its constituent parts into the names on the underlying CDI holders. This process can take between 6-8 weeks. The total cost will be shared between the relevant CDI holders and debited accordingly.

If securities resulting from a corporate action are not eligible for the International Service, CREST members will be given the opportunity to have the position transferred to another agent within the local market. If an agent nominated by the CDI Holder is not able to accept such securities or if no such agent is nominated, EUI will request that the position is withdrawn and transferred to the relevant CREST member. If a security cannot be held in dematerialised form or otherwise can not be transferred to the relevant CREST member then EUI may arrange to sell the securities on behalf of the CREST member and account to the CREST member for the proceeds (less costs and expenses).

### **Fractions**

Fractional entitlements are not generally distributed but are retained by the CREST Depository or EUI as an additional fee (inclusive of any value added tax) and the CREST members who would otherwise have been entitled to the fractional entitlements and their successors in title shall cease to have any rights to such entitlements.

### **Other corporate action types**

The processing of other corporate action types follows similar lines to those described above for cash and stock distributions.

#### *Subscriptions, elections and acceptances*

The timing and means by which CREST members holding CDIs notify the CREST Depository of their elections in relation to CDIs or to corporate actions in the underlying international securities which are optional, or which are compulsory but may involve elections, varies according to the nature of each event. If EUI considers it practicable, the last acceptance deadline set by the CREST Depository for subscriptions, elections and acceptances will be no more than 24 hours prior to the corresponding deadline set by the relevant CSD in which the underlying international securities are held by the CREST Nominee. CREST members should note that subscriptions, elections and acceptances made after the deadline notified by the CREST Depository may not be accepted or actioned and accordingly such subscription, election or acceptance may be treated as not having been made.

EUI endeavours to use procedures commonly used in relation to UK CREST securities - such as the USE transaction (which offers a mechanism for delivering control of the securities and may indicate a wish to convert, redeem or subscribe for securities), and the transfer to escrow (which delivers control of securities when accepting a takeover) where it considers it appropriate to do so.

In particular, CREST members may hold CDIs representing international securities which confer an entitlement to participate in an offer or to subscribe for or acquire securities (whether by way of rights or otherwise). In such circumstances, the CREST Depository may (to the extent that it considers it to be lawful and practicable to do so) make arrangements to enable CREST members to request the CREST Depository to accept such offer/exercise such rights on their behalf. In order to do so, the CREST Depository may require the CREST member to:

- pay in such manner and to such account as the CREST Depository may direct the subscription or acquisition price in the relevant currency (together with such fees, tax, duties, charges, costs and expenses as may be required under the Deed Poll), including where the subscription currency is not a CREST designated currency;

- deliver CDIs representing subscription or other rights in such manner and to such account as the CREST Depository may direct; and
- deliver such undertakings, declarations, certificates and other documents as the CREST Depository may reasonably require (including legal opinions from lawyers acceptable to it and in terms satisfactory to it).

On receipt of the above, the securities so subscribed shall be distributed to the CREST members entitled to them in such manner as the CREST Depository, in its absolute discretion, thinks fit. Where reasonably practicable, such securities shall be distributed in the form of a CDI.

Where a CREST member transfers non-CREST Currency cash to the CREST Depository (ie cash transfers made outside of the CREST system) related to delivery of CDIs by way of a USE instruction, the member must confirm the non-CREST Currency type and amount in the Shared Note field of the relevant USE instruction. Failure by the CREST member to provide the relevant cash confirmation by means of the USE instruction may result in EUI not processing the corporate action on behalf of the member and the return of the cash paid.

If and to the extent that the CREST Depository considers any such arrangements to be contrary to any applicable law or regulation or not to be reasonably practicable for any reason, the CREST Depository may:

- if such offer is transferable, dispose of such rights in such manner and on such market or by auction or by private treaty as it thinks fit and for such price as it considers to be reasonable in all the circumstances; or
- if such offer is not transferable, in its discretion, arrange for such rights to be exercised and the resulting shares or securities sold; or
- allow the offer to lapse;

and in each case, distribute the net proceeds (if any) of such sale (or lapsing) as a cash distribution to the holders entitled thereto.

#### *Subdivisions and consolidations*

If any change is made in the nominal value of international securities as a result of any subdivision or consolidation or by reason of any other capital reorganisation the CREST Depository may, insofar as it considers it lawful and practicable to do so:

- impose such restrictions on the right of any CREST member to transfer a CDI to another CREST member or to a CSD as it may consider necessary or desirable; and/or
- cancel a series of depository interests and issue further depository interests to holders to reflect any such subdivision or consolidation; and/or
- impose such restrictions as it may consider to be necessary on the right of any CREST member to withdraw international securities where, in consequence of a consolidation or other capital reorganisation, the international securities comprise fractions of security; and/or
- take such other action as the CREST Depository may consider necessary or desirable in the interests of the CDI holders as a whole.

### **General**

#### *Record date*

The CREST Depository may fix a record date, which may specify a time on that date, for determining which CREST members holding CDIs are entitled to any dividend or other distribution of any kind or any bonus or rights issue or any other matter in relation to the underlying international securities. If EUI has received notification of the record date from a CSD in which those international securities are held by the CREST Nominee, where reasonably practicable, the record date fixed by the CREST Depository will be the date set by the CSD. If EUI has not received notification of the record date from such CSD, then the CREST Depository shall fix a record date which it, in its sole discretion, considers appropriate (in the majority of circumstances such date is likely to be the business day preceding the day upon which the CREST Nominee receives the relevant corporate action outturn, proceeds or instruction request). Details of the record date so fixed by the CREST Depository will be contained in the corporate actions data of the relevant security and references in this Chapter to 'record date' are references to that date, unless a contrary intention is clear.

*Restrictions on transfer and withdrawal*

The CREST Depository may make arrangements which restrict the rights of CREST members to transfer a CDI to another CREST member or to a CSD in circumstances where it reasonably considers it necessary or desirable to do so. In practice, in relation to corporate actions, this power is most likely to be used where it is necessary or desirable to secure the performance by a CREST member of an election or acceptance made by it or where it is desirable that delivery of a CDI (or underlying international security) be guaranteed at a particular time, for example, to meet a drawing to be made on the holding of the CREST Nominee.

*Copies of accounts and issuer notices*

CREST international settlement links functionality does not facilitate the sending of Issuers' reports and accounts or other notices to holders of CDIs.

*Discretion*

The CREST Depository reserves the right in its sole discretion to extend any period for, or alter the mechanisms for, making any notification, acceptance or election or making or receiving any payment or distribution. In normal circumstances, this discretion is only likely to be exercised in the event of any interruption, failure or breakdown of the CREST system (or of any part thereof) or, in relation to payment or distributions to a particular CREST member, where the membership has been suspended or disabled for any reason.

**Custody services for certificated CDIs**

The custody services described in this sub-section apply to holdings of CDIs in certificated form only.

The CREST Depository will not notify holders of certificated CDIs of any corporate action nor exercise any rights, make any elections or any acceptances in respect of such holdings. If, notwithstanding that it takes no action, it receives cash or securities attributable to certificated CDIs, the cash or securities will be distributed in the following manner:

*Stock distributions*

Stock distributions attributable to a holder of certificated CDIs may, if the CREST Depository considers it reasonably practicable to do so, be:

- transferred or assigned to the holder; or
- sold in such manner and in such market or by auction or private treaty as the CREST Depository thinks fit and for such price as it considers to be reasonable in all the circumstances and the net proceeds of such sale distributed as a cash distribution to the holders entitled thereto in such manner as the CREST Depository shall consider appropriate,

as the CREST Depository shall, in its absolute discretion, determine.

Exceptionally, the CREST Depository reserves the right, in its absolute discretion, to constitute depository interests in respect of such securities on the terms of (or substantially similar to those of) the Deed Poll and distribute the new depository interest (or the benefit thereof) to the holder in such manner or on such terms as the CREST Depository may reasonably determine.

**Custody services in relation to holdings of CDIs in the transferor CREST member's escrow balance (where the relevant CSD is assigned as the Escrow Agent) or the CREST Nominee's reserve balance**

Where the relevant CSD or the CREST Nominee:

- holds CDIs in the member escrow balance or the reserve balance pending their cancellation or return to the CREST member; or
- becomes entitled to any right or benefit in relation to the CDIs or the international securities represented by them,

neither the relevant CSD nor the CREST Nominee may exercise any rights or make any elections or acceptances in respect of such holdings in their respective balances.

The following rights and benefits are accordingly those rights and benefits to which they may become entitled notwithstanding that no action is taken.

38 CREST International Manual  
November 2020

Where international securities are held in the escrow balance of the relevant member account of the transferor CREST member on a record date, any rights and benefits arising from the corporate action will, to the extent detailed above, be delivered to the transferor CREST member. If the settlement is confirmed as being successful, any corresponding entitlement to the benefit will be raised as a claim in favour of the counterparty by the relevant claims process (if any) in use for that link. Where no claims process operates in relation to that link, the transferring CREST member should contact his counterparty direct to arrange the delivery of the benefit.

**Section 2: Benefit claims**

Benefit claims in respect of transactions between CREST members and CSDs involving CREST securities or CDIs are raised and processed in the manner set out in section 5 of Chapter 7 of the CREST Reference Manual.

If practicable, the CREST system creates non-settling claim instructions (NC CLA) on the basis of the transaction details available in the CREST system as advance notification of the claims adjustments referred to below.

**Cross-border benefit claims in respect of international securities across the SIX SIS link**

SIX SIS provides benefit claims functionality which is available to the CREST Nominee, participating in the SIX SIS system, in respect of unsettled free of payment transactions and the DvP link as described in Chapter 6.

*Where a CREST member is due to receive a benefit claim*

Where a CREST member is due to receive a benefit claim, SIX SIS credits the benefit (either securities or cash) to the account of the CREST Nominee in SIX SIS and the benefit is distributed to relevant CREST members in the manner described in Section 1 of this Chapter 4.

*Where a CREST member is due to pay a benefit claim in the form of cash*

Where a CREST member is due to pay a benefit claim in the form of cash, in addition to notifying EUI of the original benefit distribution, SIX SIS also notifies EUI, at the time of settlement of the transaction in respect of which the claim arises, of the payment which is due in respect of the claim. EUI subtracts the amount of the claim from the amount of the distribution to determine a net distribution (which may be either a net credit or net debit).

The net amount is processed in the appropriate manner described below.

Net credits (representing monies owed to the CREST member) are made by means of a USE transaction which, upon settlement:

- where the claim is denominated in a CREST currency in which the CREST member has a CMA, results in a net credit to the CREST member's CMA denominated in that currency;
- where the claim is denominated in a CREST currency in which the CREST member does not have a CMA, results in a net credit to the CREST member's default CMA;
- where the claim is denominated in a CREST currency in which the CREST member does not have a CMA and the CREST member has no default CMA, results in a net credit to the CREST member's CMA in the first of the following in which the CREST member has a CMA-Euros, Sterling, US Dollars;
- where the claim is denominated in Swiss francs and the CREST member has elected not to receive distributions in that currency outside of the CREST system, results in a net credit to the CREST member's default CMA or if there is no default CMA, the CREST member's CMA in the first of the following in which the CREST member has a CMA- Euros, Sterling, US Dollars; or
- where the claim is denominated in Swiss francs, and the CREST member has elected to receive distributions in Swiss Francs outside of the CREST system, a net credit is made to the CREST member's nominated Swiss franc bank account.

Net debits (representing monies owed by the CREST member) are made by means of a USE transaction which is created with a high priority which the CREST member cannot alter and result in a net debit:

- where the claim is denominated in a CREST currency, either from the CREST member's relevant CMA (where the CREST member has a CMA in that currency), or from the CREST member's default CMA (where the CREST member does not have a CMA in that currency) or the CREST member's CMA in the first of the following in which the CREST member has a CMA- Euros, Sterling, US Dollars (where the CREST member does not have a CMA in the relevant currency and has no default account); or
- where the claim is denominated in Swiss francs from the CREST member's default CMA.

Where currency conversions apply, the net credit or net debit (as applicable) results in the currency value being converted prior to netting at such exchange rate as EUI reasonably considers appropriate.

In addition to these procedures, EUI may require CREST members to provide:

- a direct debit mandate; and
- a bank guarantee from a CREST settlement bank to an amount and in a form acceptable to EUI to be used or called upon if, for whatever reason, the USE transaction is unable to settle within five business days of the settlement date of the underlying transaction.

#### **Where a CREST member is due to deliver a benefit claim in the form of securities**

Where a CREST member is due to deliver a benefit claim in the form of securities, in addition to notifying EUI of the original benefit distribution, SIX SIS also notifies EUI, at the time of settlement of the underlying transaction, of the securities delivery which is due in respect of the claim. The CREST system then subtracts the quantity of securities of the claim from the quantity of securities of the distribution and creates a USE/REG transaction for the net amount.

Where the net amount specified in the transaction represents a positive distribution to be made to the CREST member, units of a CDI are created and issued in accordance with the arrangements described in Section 1 of Chapter 3.

Where the net amount specified in the transaction represents a net delivery of securities to be made by the CREST member and the number of units of the relevant CDI credited to the account of that member is greater than or equal to the amount due to be delivered, the negative USE/REG transaction settles immediately and the units of the CDIs are cancelled in accordance with the procedures described in Section 1 of Chapter 3.

Where the net amount calculated above represents a net delivery of securities to be made by the CREST member and such net amount is greater than the number of units of the relevant CDI credited to the relevant member account:

- the negative USE/REG transaction is created for such number of units of the relevant CDI as are credited to the member account and those units are cancelled in accordance with the procedures described in Section 1 of Chapter 3; and
- the CREST member concerned is required to procure delivery of the balance of securities required to deliver the claim either in the form of the relevant CDI credited to the member's account or in the form of the underlying international security credited to the account of the CREST Nominee in SIX SIS within five business days of the settlement of the underlying transaction.

If the CREST member is unable to procure such delivery, for whatever reason, EUI reserves the right to purchase, or procure the purchase, at the expense of the CREST member of the necessary securities either in the form of the relevant CDI or in the form of the underlying international security credited to the account of the CREST Nominee in SIX SIS. Where EUI does so, it shall recover all the costs involved by one or more of the following means:

- a negative cash USE settling against a CMA of the member;
- use of any direct debit mandate granted by the member for the purpose;
- calling upon the bank guarantee granted by a CREST settlement bank for the purpose; or
- by sale of other property held by the CREST Nominee for the member.

#### *Where a CREST member is due to deliver a benefit claim in the form of both cash and securities*

Where a CREST member is due to deliver a benefit claim in the form of both cash and securities, the transaction created to settle the benefit claim is a USE transaction and is processed in the manner described above.

Where the net amount of securities to be delivered by the CREST member is greater than the number of units of the relevant CDI credited to the relevant member account, the member is required to procure delivery of the balance of the securities and EUI shall recover any costs arising in the manner described above.

**Cross-border benefit claims in respect of international securities across the DTCC link**

*Where a CREST member is due to receive a benefit claim*

The process is the same as described above for the SIX SIS link.

*Where a CREST member is due to pay a benefit claim*

No claims functionality is available where a CREST member is due to pay a benefit claim and it is the responsibility of CREST members concerned to deal direct with counterparties where such benefit claims arise.

**Cross-border benefit claims in respect of international securities held across the EB Link**

Benefit claims are generated by EB automatically on all transactions, save for those transactions involving the bridge to CBL.

EUI will only forward outturns from benefit claims received from EB to CREST members once such outturn has been confirmed as being in final, reconciled funds.

External transactions involving a CSD to which EB has established a link may be subject to benefit claims in the local market. It is not possible to detail every possible scenario which may arise, consequently EUI reserves the right to deal with any benefit claim in any manner it sees fit. Members should note that the timing of such claims vary according to the rules of the local market. Generally the arrangements below will apply.

*Where a CREST member is due to receive a benefit claim*

The process is the same as described above for the SIX SIS link.

*Where a CREST member is due to pay a benefit claim in the form of cash*

Where a CREST member is due to pay a benefit claim in the form of cash this will be debited from the CREST Nominee's cash account with EB. EUI may recover the sum from the CREST member on behalf of the CREST Nominee/the CREST Depository by deducting the amount payable from any monies owing to the CREST Member. Alternatively, or if there are no monies due to the CREST member, where the claim is denominated in a currency in which the CREST member has a CMA, a USE transaction is created with a high priority which the CREST member cannot alter which, on settlement, will debit the relevant amount from the CMA of the CREST member. Where the claim is denominated in a currency in which the CREST member does not have a CMA, the debit is made by means of a USE transaction which, upon settlement, results in a debit to the member's default CMA<sup>29</sup>, the currency value being converted at such exchange rate as EUI may reasonably consider appropriate. The USE is created with a high priority which the CREST member cannot alter.

In addition to these procedures, EUI may require CREST members to provide:

- a direct debit mandate; and
- a bank guarantee from a CREST settlement bank to an amount and in a form acceptable to EUI

to be used or called upon if, for whatever reason, the USE transaction is unable to settle within five business days of the settlement date of the underlying transaction.

If a cash claim is made or to be made from the CREST Nominee's EB cash account, in order to ensure minimal disruption to the settlement of members' transactions in EB, EUI may, at its sole discretion, instruct EB to transfer the obligation to fund the claim to a separate EB cash account (also in the name of the CREST Nominee) not ordinarily used for settlement purposes. The arrangements described in this International Manual for recovering monies from relevant CREST members apply in this situation also.

*Where a CREST member is due to deliver a benefit claim in the form of securities*

Where a CREST member is due to deliver a benefit claim in the form of securities and EUI is aware of the claim before settlement of the original benefit distribution, the CREST system will generate a REG or USE for the resulting net quantity as explained in the procedure of SIX SIS above. As this is

<sup>29</sup> This is the CMA which relates to the default payment currency specified from time to time by the member.

usually not always possible EUI will debit the relevant number of units of the CDI from the member account of the CREST member using a negative REG transaction after the initial distribution is made. This will only occur when settlement of the market claim has been confirmed by EB.

Where the amount of the benefit claim represents a delivery of securities to be made by the CREST member is greater than the number of units of the relevant CDI credited by the original distribution:

- the negative REG transaction is created for such number of units of the relevant CDI as are credited to the membership and those units are cancelled; and
- the CREST member concerned is required to procure delivery of the balance of securities required to deliver the claim either in the form of the relevant CDI credited to the member's membership or in the form of the underlying security credited to the account of the CREST Nominee in EB within five business days of the settlement of the underlying transaction.

If the CREST member is unable to procure such delivery, for whatever reason, EUI reserves the right to purchase at the expense of the CREST member the necessary securities either in the form of the relevant CDI or in the form of the underlying security credited to the account of the CREST Nominee in EB. Where EUI does so, it shall recover all the costs involved by one or more of the following means:

- a negative cash USE settling against a CMA of the member;
- use of any direct debit mandate granted by the member for the purpose;
- calling upon the bank guarantee granted by a CREST settlement bank for the purpose; or
- by sale of other property held by the CREST Nominee for the member.

*Where a CREST member is due to deliver a benefit claim in the form of both cash and securities*

Where a CREST member is due to deliver a benefit claim in the form of both cash and securities, the transaction created to settle the benefit claim is a USE transaction and is processed in the manner described above.

Where the amount of securities to be delivered by the CREST member is greater than the number of units of the relevant CDI credited to the relevant membership, the member is required to procure delivery of the balance of the securities and EUI shall recover any costs arising in the manner described above.

**Section 3: Automatic transformations**

The arrangements in this section apply to holdings of international securities held with SIX SIS across the CREST free of payment link or the DvP link (described in Chapter 6); and with DTCC and EB across their respective free of payment links.

**Unsettled transactions between CREST members**

Unsettled transactions between CREST members involving international securities are included in the automatic transformations functionality described in section 6 of Chapter 7 of the CREST Reference Manual.

**Unsettled free of payment transactions between a CREST member and a participant in SIX SIS or DTCC**

Where an unsettled free of payment transaction between a CREST member and a participant in SIX SIS or DTCC in respect of a security held in that CSD (whether involving a CREST security or an international security) is to be transformed as a result of a corporate action:

- where the CREST member is due to deliver securities across the link with the CSD and has input a forward-dated instruction as transferor, the CREST system automatically transforms the unsettled transaction such that the instruction sent to the CSD (in accordance with the arrangements described in Chapter 3 Section 1 ) reflects the transformed details; and
- where the CREST member is due to receive securities across the link with the CSD (and in respect of which, in accordance with the arrangements described in Chapter 3 Section 1, no details are received in the CREST system before the ISD):
  - the SIX SIS system automatically transforms any forward dated unsettled transaction such that the instruction sent to the CREST system on the ISD reflects the transformed details; or
  - the DTCC system transforms the unsettled transactions before an instruction is sent to the CREST system, such that the instruction sent to the CREST system on the ISD reflects the transformed details.

**Unsettled free of payment transactions between a CREST member and a participant in EB**

Unsettled transactions between a CREST member and a participant in EB involving securities held in EB may occasionally be transformed in EB. CREST will transform unsettled transactions to reflect (so far as practicable) the transformation in EB.

**Unsettled delivery versus payment (SIX SIS) transactions**

Where a transformation happens with a security across the DvP link with SIX SIS, the transactions will be centrally deleted and members will be required to re-instruct with the new line of stock. For further details of the processing of delivery versus payment transactions refer to Chapter 6.

**Section 4: Clawbacks**

Some CSDs have the power to debit securities and/or cash from a participant's account without prior notice or consent, inter alia:

- where the amount credited in a cash or securities distribution was incorrect;
- where the CSD has made a cash or securities distribution on pay date but where the Issuer or its paying agent has defaulted on its payment or delivery of a cash or securities distribution (or otherwise where cash or securities accounts have been credited before the underlying security or funds has/have been received); or
- where the CSD has powers to unwind transactions (e.g. in the context of the default or insolvency or another participant in that CSD).

These powers may be exercisable for some while after the event giving rise to the clawback (e.g. an incorrectly made distribution).

If such clawbacks occur in respect of the CREST Nominee's participation in a CSD, EUI reserves the right to recover any monies or securities from relevant CREST members in accordance with the arrangements described in this Section. As soon as is reasonably practicable after EUI becomes aware that a clawback has occurred or is to occur, EUI will endeavour to notify its users (or relevant users) by such means as it considers appropriate of that fact. Such notification may not, however, precede the implementation of the arrangements described below.

**Cash clawbacks**

Where the cash to be recovered is denominated in a currency in which the CREST member has a CMA, EUI debits the monies by means of a USE transaction which, upon settlement, results in a debit on the CMA denominated in that currency. The USE is created with a high priority which the CREST member cannot alter.

Where the cash to be recovered is denominated in a currency in which the CREST member does not have a CMA (including in a currency which is not a CREST settleable currency), EUI debits the monies by means of a USE transaction which, upon settlement, results in a debit on the member's default CMA, the currency value being converted at such exchange rate as EUI may reasonably consider appropriate. The USE is created with a high priority which the CREST member cannot alter.

Where a distribution which is to be recovered has been the subject of withholding tax relief at source it may be necessary (depending upon the requirements of the relevant tax authorities and/or the relevant CSD) to recover the gross amount from a CREST member.

Where the CREST member has insufficient headroom within his cap to enable the USE transaction to settle (or such USE transaction otherwise does not settle), he shall use his best endeavours to secure additional headroom or take such other action necessary to ensure that settlement can occur.

If, for whatever reason, the USE transaction is unable to settle, the CREST Depository is entitled, pursuant to the terms of the Deed Poll, to dispose of any assets held by the CREST Nominee in respect of the member to cover any shortfall.

There may be circumstances in which the amount originally received by the CREST member is less than the amount to be clawed back in respect of such payment. For example: (i) the original currency of distribution is Euros and the CREST Nominee receives €1,000; (ii) the CREST member has no Euro CMA but has nominated its sterling CMA as its default CMA; (iii) a foreign exchange transaction is carried out and the CREST member receives £900; (iv) a claim is subsequently raised in respect of the payment and this requires the CREST Nominee to make payment of the €1000 received by it; (v) EUI will debit such amount from the CREST member as is then equal to €1000 (i.e. this may be an amount greater than the £900 received by the CREST member). The CREST Depository, the CREST Nominee and EUI bear no risk associated with foreign exchange transactions (other than in respect of any of their negligence, wilful default or fraud) and rate fluctuations and the CREST member accepts such risk.

**Securities clawbacks**

Where securities are to be recovered and the number of units of the relevant CDI credited to the membership of the relevant CREST member is greater than or equal to the amount due to be recovered, a negative REG transaction is created for immediate settlement. Upon settlement of the REG transaction, the units of the CDIs are cancelled in accordance with the procedures described in Section 1 of Chapter 3.

Where securities are to be recovered and the number of units of the relevant CDI credited to the membership of the relevant CREST member is less than the amount due to be recovered:

- a negative REG transaction is created in respect of such number of units of the relevant CDI as are credited to the membership; upon settlement of the REG transaction, those units are cancelled in accordance with the procedures described in Section 1 of Chapter 3; and
- the CREST member concerned is required to procure delivery of the balance of securities which are to be recovered either in the form of the relevant CDI credited to the member's membership or in the form of the underlying international security credited to the account of the CREST Nominee in the relevant CSD within five business days of being notified of such requirement by EUI.

If the CREST member is unable to procure such delivery, for whatever reason, EUI reserves the right to purchase, or procure the purchase, at the expense of the CREST member of the necessary securities either in the form of the relevant CDI or in the form of the underlying international security credited to the account of the CREST Nominee in the relevant CSD. Where EUI does so, it shall recover all the costs involved by one or more of the following means:

- a negative cash USE settling against a CMA of the member; or
- by sale of other property held by the CREST Nominee for the member.

Where the CREST Depository is to recover the cost of purchasing replacement securities by means of a USE transaction and the CREST member has insufficient headroom within his cap to enable the USE transaction to settle, the member shall use his best endeavours to secure additional headroom to ensure that settlement can occur.

#### **Clawbacks with EB**

If a cash clawback is made or to be made from the CREST Nominee's EB cash account (which may include a deduction representing interest for late settlement of transactions), in order to ensure minimal disruption to the settlement of members' transactions in EB, EUI may, at its sole discretion, instruct EB to transfer the obligation to fund the clawback to a separate EB cash account (also in the name of the CREST Nominee) not ordinarily used for settlement purposes.

With a view to minimising the incidence of clawbacks, EUI may from time to time (but shall have no obligation to) impose conditions as to the creditworthiness of the issuer of a security in determining the eligibility of that security for the EB link. Otherwise the arrangements are as detailed above.

If a stock clawback is made or to be made from the CREST Nominee's EB account the CREST member is required to procure delivery of the balance of securities required to deliver the claim. If the CREST member is unable to procure such delivery, for whatever reason, EUI reserves the right to purchase at the expense of the CREST member the necessary securities either in the form of the relevant CDI or in the form of the underlying security credited to the account of the CREST Nominee in EB.

**Section 5: Meeting announcements and voting**

This section describes the arrangements that are in place to provide CREST members with access to meeting and voting services in respect of holdings of CDIs.

EUI has partnered with a third party service provider, Broadridge Financial Solutions Limited ("Broadridge") to facilitate the voting service. CREST members who hold CDIs on behalf of underlying clients which represent underlying securities which are subject to SRDII will need to complete the relevant forms made available on the Euroclear website.

The meeting and voting service offered enables CREST members to:

- receive notification of the meeting announcements related to their CDI holdings;
- submit voting instructions (including proxy appointments) on such events; and
- receive vote confirmations where this is facilitated by the CSD (and also elsewhere in the holding chain, where applicable) in which the international securities are being held by the CREST Nominee.

Whilst EUI is not responsible for a CREST member's compliance with SRDII, the proxy voting service facilitates a CREST member's compliance with their SRDII obligations where the CDIs they hold represent underlying securities which are subject to SRDII. In order to make use of such service a CREST member must provide EUI with at least one of the following for each participant ID:

- SWIFT BIC;
- Broadridge ProxyEdge ID; and/or
- Email address.

For meeting events that require CDIs to be blocked prior to the exercise of voting rights, CREST members will be required to move such CDIs to an escrow account in the CREST system (facilitated via an SOA corporate action) prior to sending their vote instructions to Broadridge. In such circumstances, an Operational Bulletin and/or a corporate action notification may be published.

Incentive fees related to applicable meeting events will be credited to CREST members once the meeting has completed and the CREST Nominee has received the distribution from the CSD. Payment fees will be distributed in the CREST system by way of corporate action. In such circumstances a market bulletin and/or a corporate action notification may be published.

The CREST Depository reserves the right in its sole discretion to choose the securities that will be available for the proxy voting service where such service is not required to be carried out pursuant to SRDII (i.e. for CDIs which represent underlying securities which are not subject to SRDII).

In order to facilitate the voting service, EUI will provide Broadridge with a daily report of CDI balances held in the CREST system.

**Additional voting related services available**

As an alternative to the above, Issuers may appoint a voting service provider in the manner outlined in the CREST Reference Manual.

Issuers may, on payment of a fee, enter into a CDI Register Agreement with EUI. Pursuant to such agreement, EUI may provide Issuers (or third party agents, if requested) with a copy of the register of holders of CDIs issued in respect of that Issuer's underlying security at any given date and an 'Omnibus Proxy' that passes the voting right down to underlying CDI holders.

In the event that an Issuer requires additional services in order to comply with local law or otherwise, that are not obligated pursuant to SRDII, EUI may, on payment of a fee, enter into a bespoke agreement with an Issuer in order to facilitate such compliance. For example, an Issuer may be required to ensure that voting rights are passed through the holding chain, or that CDIs exercising voting rights are blocked in escrow. In such circumstances a market bulletin and/or a corporate action notification may be published.

**Section 6: Shareholder identification**

This section describes the arrangements that are in place to enable EUI to respond to and forward on Shareholder Disclosure Requests to intermediaries in the holding chain. CREST members who hold CDIs on behalf of underlying clients which represent underlying securities which are subject to SRDII must provide EUI with one of the following for each participant ID:

- SWIFT BIC; and/or
- Email address.

**Shareholder Disclosure Requests**

Shareholder Disclosure Requests can be received by EUI either through the holding chain or directly from an Issuer or their appointed agent. When sent through the holding chain, EUI will rely on the first intermediary to validate the content and sender of the Shareholder Disclosure Request. Shareholder Disclosure Requests sent directly by an Issuer or their appointed agent to EUI must be sent in an SRDII compliant format via SWIFT or via email using the defined CSV format as described on the Euroclear website.

In order for a request to be processed, an Issuer or their appointed agent must ensure their Shareholder Disclosure Request:

- Meets the minimum requirements as regards the format of a request set out in Table 1 of the Annex to the Implementation Regulation;
- Specifies an ISIN for a CDI which represents underlying securities which are subject to SRDII;
- Where sent via SWIFT, the SWIFT message Business Application Header contains a unique identifier for Euroclear;
- Where sent by email:
  - is digitally signed and secured by the issuer with a SMIME compliant signature (or such other industry standard certificates agreed by the Parties) with an assurance level of high; and
  - if sent by someone who is not the Issuer (i.e. their appointed agent), be supported by a statement from the issuer confirming the appointment of the requestor that is digitally signed and secured by the issuer with an eIDAS compliant signature with an assurance level of high ("Statement of Appointment").

**Responses to Shareholder Disclosure Requests**

EUI, in its capacity as an intermediary in the holding chain for an international security, will respond to and forward on to the relevant CDI holder any Shareholder Disclosure Requests it receives provided that the intended recipient has provided EUI with an up to date SWIFT BIC or email address. For CDIs which represent underlying securities which are not subject to SRDII, EUI may seek further clarification and confirmation from the requester of information prior to further processing.

Should Shareholder Disclosure Requests sent to EUI request identification information for a past date or a date from which securities have been held, EUI will only provide shareholder identification information according to the data held in the CREST system. In the event the Shareholder Disclosure Request relates to balances and dates that are not identifiable in the CREST system, EUI will populate the response with the earliest balance/date information held.

For requests containing a 'date from which shares have been held', EUI will calculate this date from the first date from which the shares have been continuously held by the CREST member on a last in/first out basis only.

**Forwarding of Shareholder Disclosure Requests to CREST members**

Where requested or required, EUI will forward Shareholder Disclosure Requests it has received to CDI holders.

Those CREST members who hold CDIs on behalf of underlying clients which represent underlying securities which are subject to SRDII and those wishing to receive Shareholder Disclosure Requests

48 CREST International Manual  
November 2020

must complete the relevant forms as specified on the EUI website and provide EUI with the relevant and valid information contained within these forms.

EUI will share the contents of these forms with Broadridge to enable the requests to be forwarded to the CREST member.

EUI, through Broadridge, will then forward on Shareholder Disclosure Requests it has received to CREST members that have an interest in the international security stated in the request (or subsequently gain a holding in the security during the required period).

## Chapter 5: Free of payment links: stamp duty and other taxes

This Chapter describes the tax treatment of international securities settled via the international settlement links service.

### **Section 1: Stamp Duty**

#### **General**

Chapter 8 of the CREST Reference Manual describes the arrangements in CREST for the calculation and collection of UK stamp duty reserve tax and Irish stamp duty.

UK and Irish law generally requires buyers of equities (including bonds convertible into equities but generally not non-convertible bonds) to pay stamp duty reserve tax (SDRT) or stamp duty respectively on their purchases. This is true, even if the purchaser does not appear on the register (e.g. a transfer within a nominee), if there is a transfer of beneficial ownership. For transfers made by means of the CREST system, CREST calculates and collects the tax due, taking account of any exceptional rates of duty payable.

In the UK, the standard rate of duty is 0.5% of the value of the stampable consideration of the equities being transferred.

In Ireland, the standard rate of duty is 1% of the value of the stampable consideration of the equities being transferred.

No stamp duty or stamp duty reserve tax is payable on transfers of Isle of Man or Jersey securities (unless registered on a UK register).

#### **CSDs as clearance services**

CSDs are established automatically within CREST as 'clearance services', unless the CSD CREST member has reached alternative arrangements with the UK and Irish tax authorities. Where a transfer is made into a clearance service, a 1.5% rate of duty on the consideration is paid on the initial transfer into the account by the clearance service. Note that a new issue of equities (rather than a transfer of existing equities) into a clearance service should not be subject to stamp duty. Subsequent transfers within the account of the CSD are free of duty.

#### **CSDs accounting directly for internal transfers**

A CSD may, alternatively, elect to account directly to the UK and Irish tax authorities for transfers between its participants at the standard rate, subject to such evidential requirements as the authorities may specify for the collection and reporting of the tax liabilities arising. Where a CSD has chosen to account for each internal transfer in this manner, lower rates of duty or exemptions may apply for some transfers. The scope of these reliefs is set out in full in Chapter 8 of the CREST Reference Manual. In particular:

- Some reliefs from duty are available to certain types of person (e.g. a purchaser which has charitable status).
- Some reliefs are available in the UK to firms trading on their own account (rather than for clients) i.e. intermediaries, depending on inter alia the status of the intermediary and whether the securities are regularly traded on regulated markets, multilateral trading facilities, or recognised foreign exchanges or recognised foreign options exchanges. Where the CSD is not treated as a clearance service (i.e. the standard rate of SDRT applies) its CREST member participants may be able to claim such reliefs. The authorities have indicated that they are in principle willing to discuss such arrangements.
- If these exemptions are to be claimed, it will be necessary for the CSD CREST member to reach agreement with the UK authorities on how the CSD can provide evidence to the authorities that the conditions are met.
- A CSD may (subject to complying with the applicable requirements) account for duty as a clearance service or at the level of individual internal transfers or may have two member accounts in CREST, one under each heading.

#### **SDRT treatment of CREST Depository Interests**

The Stamp Duty Reserve Tax (UK Depository Interests in Foreign Securities) Regulations 1999 (as amended) provide for certain exemptions from liability to pay SDRT on transfers of securities involving CDIs. Broadly speaking, and subject to certain exceptions, the purpose of these regulations is to ensure that a transfer involving a CDI is treated comparably to a transfer of the underlying international security (or an interest in such a security) or depository receipt for the purposes of SDRT. Accordingly, for certain international securities no SDRT should be payable on the transfer, issue or cancellation of CDIs covered by these provisions.

The international securities in respect of which the exemption applies are securities which:

- are issued or raised by a body corporate not incorporated, and whose central management and control is not exercised, in the United Kingdom;
- are not registered in a register kept in the United Kingdom by or on behalf of the body corporate by which they are issued or raised;
- are of the same class in the body corporate as securities which are listed on a recognised stock exchange (including the London Stock Exchange) or are of a type which would have been so listed immediately before 28 November 2001.

Although there are other tax reliefs in the Finance Act 1986 (as amended) which mean that certain transfers involving CDIs (for instance CDIs representing certain debt securities) are not subject to SDRT, CREST Members should be aware that the transfer of CDIs representing some types of securities may be liable to SDRT, in particular certain non-participating domestic securities.

It is the responsibility of CREST Members acquiring or disposing of CDIs to ensure that they qualify for the exemption. CREST Members are obliged:

- to notify EUI if CDIs are mistakenly marked in the CREST system as exempt to SDRT by virtue of the above exemption; and
- to reimburse EUI for any liabilities it suffers as a result of non-collection of SDRT on transfers involving CDIs.

Where the underlying security is a non-participating domestic security, the 1999 Regulations will not apply and the transfer will generally be charged in accordance with the usual charging provisions (and reliefs) in the Finance Act 1986.

(See paragraph 7 of Schedule 1 of the Terms and Conditions set out in Chapter 7).

### **Recognised stock exchanges**

HM Revenue & Customs has designated a number of stock exchanges as 'recognised stock exchanges'. A guidance list for issuers and CREST Members is set out in the Guide to SDRT Treatment of UK Depository Interests in Foreign Securities held in CREST at [www.euroclear.co.uk](http://www.euroclear.co.uk).

## **Section 2: Taxation**

Before making any payment to CREST members in respect of international securities, the CREST Depository shall make such deductions (if any) as it is required to make, or for which it may be liable to account, in respect of any income, capital gains or other taxes, whether arising in a UK jurisdiction or any other jurisdiction. In making such deductions, the CREST Depository shall have no obligation to any person to apply any provision under any treaty or other arrangement between the United Kingdom (or any other jurisdiction) and the country in which any CREST member or other beneficial owner of any CDI or underlying security is resident for taxation purposes.

The following sub-sections describe the main tax issues associated with payments in respect of international securities held within CREST.

### **Overseas Withholding Tax**

Foreign withholding tax may be deducted from foreign dividends and/or interest payments. If a Double Taxation Treaty (DTA) exists between the country of residence of the beneficial owner and the country of origin of the income, it is possible that the reduced treaty rate (generally 15% for dividends and 0% for interest) can be claimed by a tax reclaim after the event.

The usual system is for tax to be deducted at source from payments of dividends and interest and for the tax in excess of the applicable treaty rates or domestic relief rates to be reclaimed. Some countries, however, offer a system of tax relief at source (such as Canada and the US). Under this system, and provided certain conditions are satisfied, dividends and interest may be paid under deduction of tax at the applicable (reduced) treaty rates or domestic relief rates.

In general, withholding tax is imposed on all dividends paid by US corporations to foreign investors. This is known as Non Resident Alien (NRA) withholding tax and the statutory rate is 30%. From January 2001, the Internal Revenue Service introduced new regulations: US Qualified Intermediary 1441 Regulations. EUI in principle only provides US withholding tax relief services for ordinary US source dividend and interest payments. No service will be offered on other types of income payments (for example royalty payments).

### **Reporting Issues**

To facilitate its international links service, EUI has, through associated group companies, established links with or become a member of overseas CSDs. It may be the case that the CSD is required to account to an overseas revenue authority for withholding tax in respect of payments made through their system. Alternatively the CSD may be responsible for monitoring that participants comply with the conditions attaching to any exemptions from local withholding taxes. If any conditions have not been complied with the CSD may be liable to its overseas tax authority for any tax foregone. In these circumstances the CSD will usually seek to recover the shortfall from its members, which may include deducting the relevant sums, or disposing of securities to meet the relevant sums, from the accounts of the CREST Nominee with the CSD. The balances on such accounts are likely to include assets held on behalf of CREST members. EUI will attribute this liability to its members and seek to recover it from the members concerned.

It is therefore important for members to maintain records of the nationality and residence status of parties to transactions as it is possible that evidence of these details could be required in connection with a particular transaction in order to verify a claim that an exemption from overseas tax is due. The form that the evidence must take will differ between authorities (for instance, it may be necessary for an affidavit to be executed). The responsibility to obtain and hold the relevant information is that of the CREST member, which is liable for any overseas tax arising due to incorrect filings.

### **Overseas Stamp Duties**

In certain jurisdictions there are local stamp duties that apply to transactions in securities in the same way that in the United Kingdom stamp duty and SDRT apply.

The extent to which local stamp duties apply will depend on the circumstances. For instance a duty may apply to the physical delivery of securities. This type of charge is unlikely to arise in the context of CDIs as the creation, transfer and surrender of CDIs (or interests in the underlying securities) would not ordinarily be connected with a physical delivery of underlying stock.

Other stamp duties may apply to the transfer of securities, and may apply to the transfer of securities represented by CDIs. It is important to note that:

- overseas stamp duties do not necessarily apply to securities issued by entities incorporated in that jurisdiction. They may apply to all securities; and
- a charge may apply to both vendors and a purchasers (which each has to pay separately) and not simply to one party to the transaction.

Where such stamp duties arise and are charged to EUI or its associated companies in connection with transactions related to a link, these charges will be passed on to members. Some stamp duties do not apply if the relevant party to the transaction can demonstrate that it is a non-resident. Members should therefore keep records of transactions so that, if necessary, non-residence can be demonstrated. The evidence required may take different forms (for instance an affidavit).

### **Overseas Value Added Tax**

To the extent that the services supplied by EUI amount to the supply of custody services, these are regarded as subject to VAT in certain jurisdictions. This VAT liability is a liability of the recipient of the service, which will be the holder of the CDI. In certain circumstances EUI can become jointly liable for the VAT due. Members are expected to discharge this liability and are liable to indemnify EUI against any shortfall.

### **Belgian tax issues**

Certain taxes in Belgium may be relevant to securities held through EB.

Intermediaries in Belgium through whose hands pass non-Belgian source income are in principle obliged to deduct withholding tax, unless they receive evidence that the income is owned by non-resident investors. Where EB is the intermediary, the responsibility for deduction rests with EB. EB may require the CREST Nominee to execute a declaration as to residency and ownership of the investors behind relevant securities. EUI in turn may require CREST members holding CDIs to execute forms in respect of withholding tax which contain a declaration that they are the owner of the security and are not resident in Belgium or that any third party owners are not so resident.

The CREST Nominee is required to execute a declaration as to the residency and ownership of investors behind relevant securities (i.e. the final investors or owner/usufructuary) and provide EB with related certifications taking into account EB's practice, for non-Belgian participants, of restricting certain activity to non-resident investors in a manner that does not oblige EB to deduct withholding tax. Accordingly, certain Belgian tax prohibitions are applicable to the CREST Nominee and as further adapted, in the context of the CREST International Settlement Links Service, these prohibitions are applicable to CREST members and the final investor as outlined below.

In each case in accordance with relevant provisions of laws applicable in Belgium (and relevant meanings prescribed by such laws), EUI does not permit the final investor (the owner/usufructuary) of CDIs representing non-Belgian securities, be they members holding CDIs on a proprietary/own account basis and/or persons/beneficiaries on whose behalf members hold CDIs representing such non-Belgian securities, to either (a) be resident in Belgium as defined in article 227 of the Belgian Income Tax Code 1992 and/or be subject to income tax in Belgium or (b) use interests of any form in non-Belgian securities as owner/usufructuary thereof in any professional activity that it engages in in Belgium. It is the responsibility of CREST members to ensure that final investors of CDIs representing non-Belgian securities do not breach these prohibitions.

Members should keep records of transactions and corporate actions and, if necessary, be prepared to demonstrate that such transactions and corporate actions are carried out on behalf of non-Belgian resident investors. It is also required that CREST members enter details of the residence of parties to the transaction in the shared note field for the instructions to the relevant transaction.

Any tax deducted by EB from the CREST Nominee's account will be recovered from the CREST members involved in the relevant transaction.

Were any form of tax/stamp duty liability to arise, EB has the right to debit client accounts with any tax/stamp duty charge. Should any debit occur to the account of the CREST Nominee in EB this will be passed on to the CREST members concerned in the relevant transaction or corporate action.

## Chapter 6: Delivery versus Payment link with SIX SIS

This Chapter describes the arrangements with SIX SIS for cross border settlement of transactions in CREST securities and Swiss securities on a delivery versus payment basis against sterling, euro and US dollars (the DvP link).

### ***Section 1: General***

These arrangements apply where a CREST member is to be involved in the delivery, whether as a seller or a buyer, of DvP securities against payment in respect of transactions with a counterparty in SIX SIS.

Save as described in this Chapter, the provisions of Chapters 2 to 5 apply to the operation of this DvP link with SIX SIS, including as they relate to the role of the CREST Nominee in SIX SIS; the arrangements for the issuance, transfer and cancellation of CDIs; and the processing of corporate actions.

Broadly speaking all CREST securities and Swiss securities are eligible for settlement across the DvP link, these DVP securities are identified as eligible for the DvP link in the CSD links enquiries.

Transactions across the DvP link may be settled against payment in euros, sterling or US dollars only and are effected by means of the CREST payment mechanism between the CREST member concerned and SIX SIS' CREST member.

The XDL transaction is a feature of the free of payment links only and does not form part of the DvP link.

This chapter makes a number of references to actions to be taken by SIX SIS or by SIX SIS participants. EUI, the CREST Depository and the CREST Nominee accept no responsibility for such matters and they do not form a part of EUI's obligations referred to in the Terms and Conditions.

References to the 'Buyer' in this Chapter are references to the settlement party in the CREST system entitled to receive securities and/or obliged to make a corresponding payment. References to the 'Seller' in this Chapter are references to the settlement party in the CREST system obliged to deliver securities and/or entitled to receive a corresponding payment.

**Section 2: Input, matching and central deletion of settlement instructions****Input and Matching**

CREST members will input settlement instructions for the DvP link by using DEL transactions in the normal way.

In addition to including the relevant standard information in the DEL transaction (ISD, ISIN, quantity, consideration, currency and, if required, stamp duty information), CREST members will need to include the following cross border information where appropriate:

- International CSD ID – four character CSD code representing the CSD of the counterparty participant;
- International Participant ID (or International Participant BIC where appropriate) – the identifier for the relevant SIX SIS participant; and
- Beneficiary details – underlying client identifiers of the overseas member (an optional field).

The CREST member's counterparty should enter the corresponding transaction in SIX SIS.

If, on input of the transaction by the CREST member, EUI has not received notification of the transaction from SIX SIS, the CREST system will send a delivery allegation message to SIX SIS containing the relevant transaction details. On receipt of this message, SIX SIS passes the information to the settlement participant within SIX SIS and, once the corresponding instruction has been entered in SIX SIS by that participant, SIX SIS sends a pre-advice instruction to the CREST system. On receipt of the pre-advice instruction, the CREST system creates the DEL for SIX SIS's CREST member and matches the same against the DEL input by the CREST member.

If the two inputs match, the CREST system informs SIX SIS of the match by sending a match status message and the DEL transaction remains at the status of matched until settlement date. Once matched a DEL transaction may only be deleted if the deletion is instructed by both parties (the CREST member and SIX SIS).

If the SIX SIS participant inputs its side of the transaction in SIX SIS before SIX SIS has received a delivery allegation message from the CREST system, SIX SIS sends a pre-advice instruction to the CREST system. On receipt of the pre-advice instruction the CREST system creates a DEL in SIX SIS's CREST membership but it then waits to be matched by the relevant CREST counterparty.

The transaction status of this transaction (notified to the relevant CREST member by means of file changes) indicates to the CREST member that the transaction is alleged against it.

The CREST system does not undertake any checking in relation to transactions and it is the CREST member's responsibility to determine whether he may settle the transaction alleged against him. Accordingly, the CREST member may either:

- accept the DEL transaction by matching it in accordance with normal CREST matching procedures, ; or
- effectively reject the DEL transaction by not matching it.

'Rejection' of the DEL transaction by declining to match it in the CREST system does not affect any obligations which the CREST member may have to his counterparty. If the DEL transaction is not matched by the CREST member, it will remain alleged against the member for 30 days or until SIX SIS, on behalf of the SIX SIS participant, cancels the transaction, whichever happens first.

When the CREST member matches the DEL, the CREST system informs SIX SIS of the match by sending a match status message; the DEL transaction remains at the transaction status of matched until settlement date. Once matched a DEL transaction may only be deleted if the deletion is instructed by both parties (the CREST member and SIX SIS). Matching confirms that settlement of the transaction may proceed in the manner set out in Section 3 below and constitutes the member's acknowledgement that payment may be made or received in the manner described in that Section.

### **Deletion of transactions/ instructions**

Either party may delete a DEL transaction prior to matching. Once matched, a DEL transaction may only be deleted if the deletion is instructed by both parties (the CREST member and SIX SIS).

Transactions will be centrally deleted by the CREST system where either:

- the unmatched DEL has remained within the CREST system for 30 days;
- a matched but unsettled DEL has remained in the CREST system for 60 days from the ISD (as specified in the DEL); or
- a corporate event occurs in respect of the open transaction (the transactions will need to be agreed and re-input by both counterparties).

**Section 3: Settlement**

This section describes the arrangements for settling DvP securities across the DvP link between a CREST member and a SIX SIS participant.

**Purchase by a CREST member of DvP securities in euros, sterling or US dollars**

At the start of business on the ISD, SIX SIS blocks the securities the subject of the transaction in the Seller's account in its own books in order to prevent them from being used in satisfaction of any other transaction. It then sends a message to the CREST system to confirm that it has done so. The CREST system takes no steps in relation to the transaction unless such confirmation message is received from SIX SIS.

Having received such confirmation message from SIX SIS, the CREST system undertakes the normal pre-settlement checks, for example, to ensure that the Buyer has sufficient headroom within his cap and is otherwise capable of receiving the securities (e.g. that his CREST membership is enabled) and, in the case of a purchase of CREST securities, that SIX SIS has sufficient of the relevant securities standing to the credit of its stock account. On successful completion of these checks, the CREST system simultaneously:

- debits the Buyer's CMA;
- credits SIX SIS's CMA; and
- either, in the case of CREST securities, debits SIX SIS's stock account and credits the Buyer's stock account with the relevant securities (and generates an RUR);
- or, in the case of Swiss securities, issues a CDI to the Buyer in accordance with the procedures described in Chapter 3, Section 1.

The debits are not revocable by the Buyer or SIX SIS (as the case may be).

If, having received SIX SIS's confirmation of blocking, the CREST system is unable to complete the above steps, it makes repeated attempts to do so until the 60th business day from and including the ISD. If it does not succeed, the CREST system makes no further attempts to settle the transaction and sends a message to SIX SIS accordingly. The CREST system then deletes the DEL transaction as soon as reasonably practicable thereafter.

If the CREST system is able to complete the above steps and, in the case of non-UK CREST securities, has received an RUR response from the registrar confirming that the transfer of securities to the Buyer has been registered, the CREST system informs SIX SIS that settlement is complete and SIX SIS unblocks the securities in the Seller's account (by debiting the account of the Seller and, in the case of Swiss securities, crediting the account of the CREST Nominee in SIX SIS).

If, in the case of non-UK CREST securities, the relevant registrar refuses to register the transfer to the Buyer, the CREST system (using a BDR transaction) debits the relevant securities from the stock account of the Buyer, credits the securities to the available balance of SIX SIS, debits an amount in euros, sterling or US dollars (as appropriate) equivalent to the consideration from SIX SIS's CMA and credits the same amount to the Buyer's CMA. No further attempt is made to settle the transaction.

If SIX SIS is unable to block the securities in the Seller's account in its own books on the ISD it makes repeated attempts to do so until the 60th business day<sup>30</sup> from and including the ISD.

<sup>30</sup> In this Chapter, the term 'business day' means a day on which TARGET2, RTGS and Fedwire are open for business.

**Sale by a CREST member of DVP securities in euros, sterling or US dollars**

At the start of business on the ISD, SIX SIS checks the availability of funds from the Buyer and reserves the funds for the transaction. In the case of Swiss securities, it also blocks the securities that are the subject of the transaction in the account of the CREST Nominee in its own books. It then sends a message to the CREST system to confirm that it has done so. The CREST system takes no steps in relation to the transaction unless the message is received from SIX SIS.

Having received the message from SIX SIS, the CREST system undertakes its normal pre-settlement checks, for example, to ensure that the required number of CREST securities or CDIs representing the relevant Swiss securities, as the case may be, are credited to the Seller's CREST membership and that there is sufficient headroom in SIX SIS's CMA. On successful completion of these checks, the CREST system simultaneously:

- debits SIX SIS's CMA;
- credits the Seller's CMA; and
- either, in the case of CREST securities, debits the Seller's stock account and credits SIX SIS's stock account (available balance) with the relevant securities (and generates an RUR);
- or, in the case of Swiss securities, debits the Seller's stock account and credits SIX SIS's available balance with the relevant CDIs. Thereupon, the CDIs are removed from SIX SIS's available balance in accordance with the procedures described in Chapter 3, Section 1.

The debits are not revocable by the Seller or SIX SIS (as the case may be).

If, having received SIX SIS's confirmation that it has reserved funds and (if appropriate) blocked the Swiss securities, the CREST system is unable to complete the above steps, it makes repeated attempts to do so until the 60th business day from and including the ISD. If it does not succeed, the CREST system makes no further attempts to settle the transaction and sends a message to SIX SIS accordingly. The CREST system then deletes the DEL transaction as soon as reasonably practicable thereafter.

If the CREST system is able to complete the above steps and, in the case of non-UK CREST securities, has received an RUR response from the relevant registrars confirming that the transfer of securities to SIX SIS's available balance has been registered, the CREST system informs SIX SIS that settlement is complete and SIX SIS unblocks the Swiss securities in the CREST Nominee's account (by debiting the account of the CREST Nominee and crediting the account of the Buyer in SIX SIS) and takes any further steps required to complete payment in its own system.

If, in the case of non-UK CREST securities, the relevant registrar refuses to register the transfer to SIX SIS, the CREST system (using a BDR transaction) debits the relevant securities from the available balance of SIX SIS, credits the securities to the stock account of the Seller, debits an amount in euros, sterling or US dollars (as appropriate) equivalent to the consideration from the Seller's CMA and credits the same amount to SIX SIS's CMA. No further attempt is made to settle the transaction.

If SIX SIS is unable to reserve funds and, if appropriate, block the Swiss securities on the ISD it makes repeated attempts to do so until the 60th business day from and including the ISD, following which the CREST system makes no further attempts to settle the transaction.

58 CREST International Manual  
November 2020

***Section 4: Tolerance Matching***

The tolerance matching regime for domestic transactions will also apply to the transaction input for the DvP link. However, unlike the regime applying to domestic transactions, neither CREST members nor SIX SIS will have the ability to opt out of the tolerance matching regime. Both parties will be automatically included in the tolerance matching regime for DvP transactions and, unlike domestic transactions, the input from the Buyer will always be the adjusted consideration. In all other respects the tolerance matching regime is identical to the regime applying to domestic transactions as further described in the CREST Reference Manual.

***Section 5: Legal Framework***

The provisions of Chapter 3, section 3, from and including the heading titled 'When delivery to or by a participant in a CSD is legally effective' (but excluding those matters relating to New York and Belgian Law) apply to the operation of the DvP link.

## Chapter 7: Terms and conditions for international settlement links

The following is the text of Schedule 1 to the Terms and Conditions, accordingly defined terms used herein are as defined in Schedule 5 to the Terms and Conditions.

### **1 Scope of International Settlement Links Service**

1.1 The International Settlement Links Service comprises arrangements with one or more CSDs, which arrangements may differ as between CSDs, the principal details of the arrangements (insofar as they are relevant to CREST members) being as described from time to time in the CREST Manual. All the arrangements involve the holding of International Securities by the Custodian on behalf of the Depository for the account of CREST members and the issue of CDIs representing such International Securities by the Depository to CREST members; and the terms and conditions contained in this Schedule together with the provisions of the relevant Deed Poll and the CREST Manual set out, in particular, the basis on which such International Securities are so held and CDIs are so issued and may be transferred, and the basis on which CREST members may transfer CREST Securities to, or receive CREST Securities from, participants in CSDs.

1.2 Clause 8.5 of the Terms and Conditions is specifically drawn to the attention of participants using the International Settlement Links Service. In particular, participants should note that the defined term 'International Securities' includes both non-participating domestic securities and foreign securities.

1.3 To the extent that the International Settlement Links Service involves the holding in safe custody and the administration of the assets represented by CDIs, EUI accepts responsibility for the same as being a CREST service provided by it; the performance of the functions required for this purpose is carried out by the Depository and/or the Custodian under arrangements which are operated by EUI as described in this Schedule and the CREST International Manual.

1.4 The International Settlement Links Service at the date of publication of these terms and conditions comprises a link to SIX SIS AG, the Depository Trust Company and Euroclear Bank SA/NV. EUI may in the future enter into arrangements with other CSDs and accordingly provide additional services as part of the overall International Settlement Links Service. Each arrangement with a CSD comprises a separate service provided by EUI. EUI may terminate any particular service by not less than 30 days' prior written notice to the Member (or such lesser notice as is necessary to comply with the arrangements made with the relevant CSD).

### **2 Depository, Issue of CDIs and Member's obligations and the Nominee Arrangement**

2.1 EUI undertakes to the Member that it will procure that the Depository will, before issuing any CDIs in respect of any class of International Securities held within a CSD, execute a Deed Poll which by its terms will comprise International Securities of classes which include the class in question.

2.2 The Member acknowledges and agrees with EUI (for itself and as agent for and on behalf of each of the Depository and the Custodian) that, by utilising the facilities of the International Settlement Links Service, it accepts and is bound by all the provisions of the Deed Poll and by all the provisions of, or prescribed pursuant to, the CREST Manual and the CREST Rules applicable to the International Settlement Links Service and shall comply in full with all obligations imposed on it by such provisions.

2.3 Without prejudice to paragraph 2.2, the Member undertakes to and agrees with EUI (for itself and as agent for and on behalf of each of the Depository and the Custodian) that whenever it is a Taker or a Holder of a CDI, as those expressions are defined in the Deed Poll, it gives to the Depository and the Custodian the indemnities, warranties, representations and undertakings expressed in the Deed Poll to be given by a Taker or a Holder of a CDI.

2.4 The Member consents to the non-payment of interest on any moneys held for his account by the Depository or the Custodian, waives any right to interest on such moneys, and consents to the retention by the Depository for its own benefit of any interest earned by it on such moneys.

2.5 Pursuant to the terms of the Deed Poll, upon the termination or suspension of a Member (including pursuant to such Member's insolvency) and in certain other default circumstances, a Member's CDIs may be transferred to Trinity Nominees Limited or other nominee ('Trinity') which is a subsidiary of EUI and a CREST member, to be held on bare trust for the Member on such terms as

Trinity, EUI or the Depository shall determine (the 'Nominee Arrangement'). Notwithstanding this, the following general provisions shall apply to the Nominee Arrangement:

- 2.5.1 to the extent that the Nominee Arrangement involves the holding in safe custody and the administration of CDIs, EUI accepts responsibility for the same as being a CREST service provided by it (as part of the International Settlement Links Service), the performance of the functions required for this purpose being carried out by Trinity under arrangements which are operated by EUI;
- 2.5.2 EUI undertakes to the Member that it will be responsible to the Member for the acts and omissions of Trinity under the Nominee Arrangement (including any Liabilities resulting from the same for which Trinity would otherwise be liable) in place of Trinity, on the same basis as if they were the acts and omissions of EUI under these Terms and Conditions and clause 17.7 shall be read accordingly, subject always to the limitations and restrictions of EUI's liability provided for therein; and
- 2.5.3 paragraph 6.2 of Schedule 1 to these Terms and Conditions shall apply in consideration of EUI's undertaking in paragraph 2.5.2 above on the basis that references to 'the Depository' and/or 'the Custodian' are construed as references to 'Trinity' (and other necessary changes made);

in each case subject to the terms of the Nominee Arrangement which may, with the agreement of the Member where necessary, amend these Terms and Conditions.

*The Member should note that the provisions of this Schedule, the Deed Poll and the CREST Manual include material to the following effect:*

- (1) *the indemnities etc. to be given by the Member as referred to above are provisions for:-*
  - (a) *imposing on the Member liability for any defect in title to International Securities acquired for the account of the Member or for any breach of law or contractual obligations relating to the acquisition of International Securities for the account of the Member;*
  - (b) *requiring the Member to obtain all necessary consents for acquisitions of International Securities for his account, or for issues or distributions to him;*
  - (c) *permitting the Depository or EUI to recover all fees, costs, taxes, duties and charges attributable to the Member's holdings or otherwise due to the Depository or EUI from the Member, by charging them to the Member, or by making appropriate deductions from distributions to or property held for the account of the Member, or by selling all or part of the Member's International Securities or other assets and making appropriate deductions from the proceeds of sale; and*
  - (d) *indemnifying the Depository and the Custodian from all losses incurred in carrying out their obligations in relation to the Member except in the case of wilful default, negligence or fraud, and permitting the recovery of such losses in the manner described in the immediately preceding sub-paragraph; these indemnities will survive even if the Depository resigns or the depository arrangements are terminated;*
- (2) *the Member authorises EUI to create a payment instruction attributable to the Member for the creation of a CREST payment to EUI, the Depository or the Custodian to facilitate the collection of sums due to EUI, the Depository or the Custodian; examples of circumstances in which EUI may create such payment instructions might be where such payment instructions are intended to facilitate the collection of sums due or to become due which arise from benefit claims, interest claims, clawbacks or tolerance adjustments (which terms are explained in the CREST International Manual) or in relation to any SDRT (including any interest, charges or penalties in relation to late or non-payment of SDRT) in respect of which EUI, the Depository or the Custodian becomes or may become liable; the Member may receive no prior notice of the creation (or settlement) of such instructions;*
- (3) *the Member acknowledges and agrees (inter alia) that EUI and its subsidiaries have no responsibility in relation to the type or character or suitability of International Securities acquired for the account of the Member, or for the settlement, legal and regulatory requirements, and practices regarding segregation of investments, which will apply in the jurisdictions of the various CSDs or other jurisdictions in which International Securities are held or whose legal or regulatory requirements apply to the holding and transfer of International Securities;*
- (4) *EUI will take responsibility for the Depository and the Custodian (provided it is a wholly owned subsidiary of EUI), but (a) EUI's liability, including, but not limited to, its liability for loss of International Securities, will only arise in case of negligence, wilful default or fraud on the part of*

*EUI or the Depository or the Custodian and will be subject to the general limitations on EUI's liability contained in these Terms and Conditions; and (b) neither EUI, the Depository or the Custodian accept responsibility for any act or omission of the CSD;*

*(5) the Depository will (through the Custodian) hold the entitlements to the International Securities on trust for the Member and other holders of CDIs of the same series collectively in the same name or in a fungible account, but the underlying International Securities of each class will not be identifiable by separate physical documents of title or otherwise; accordingly, if there were found to be a shortfall in the Custodian's holding of a particular class of International Securities, the shortfall may be shared pro rata amongst the Member and all other CREST members holding CDIs of the corresponding series or, if the Depository considers it reasonable or appropriate, may be allocated to one or more CREST members;*

*(6) in circumstances where the Depository and or Custodian's right to particular International Securities is defective for any reason, including by reason of law or any events in the jurisdiction of the CSD or elsewhere, or by reason of the CSD's terms and conditions or where, as a result of an event beyond the Depository's reasonable control, there are in issue CDIs of a particular series representing more International Securities of the corresponding class than are held by the Custodian, the Depository may cancel CDIs without compensation to the CREST members concerned or take such other action as it, in its sole discretion, deems appropriate;*

*(7) personal (or sponsored) Members accept that EUI, the Depository and the Custodian are not obliged to communicate corporate actions details or other information relating to International Securities direct to the Member; information is disseminated by EUI by means of the CREST system to the relevant CREST sponsor.*

*The foregoing summary shall not limit the terms of the provisions it seeks to summarise. In particular it should not be regarded as a substitute for reading the terms of the relevant documents.*

### **3 Protection of transferor participants of CSDs in transactions with CREST members**

Where by utilising the International Settlement Links Service the Member is proposing to acquire CREST Securities, or CDIs representing International Securities, which securities are held by or for a CSD for the account of a participant in it (the 'transferor participant'), and the CSD records a transfer of the transferor participant's entitlement thereto to a reserve balance of the Custodian in that CSD, or takes any other step to provisionally allocate securities to the proposed acquisition by placing them under the control of the Custodian or otherwise, the Member undertakes to and agrees with EUI (for itself and as agent for and on behalf of each of the Custodian and the Depository) that (a) the Member will not assert and, so far as it is able, will procure that no person for whom (directly or indirectly) it holds or is to hold securities as nominee or agent will assert, any claim whatever against EUI or the Depository or the Custodian in respect of any securities held within such reserve balance or otherwise so provisionally allocated; and (b) EUI, the Depository and the Custodian may agree to or sanction the application of such arrangements as may be stipulated by the CSD with a view to securing that the transferor participant retains rights to the securities concerned up to the time when the securities are (if they are CREST securities) credited to the Member's stock account in CREST; or (if they are International Securities) credited to the available balance of, or otherwise credited unconditionally to the account of, the Custodian in the CSD on behalf of the Depository for the account of the Member.

### **4 Charges etc**

4.1 The Member undertakes to EUI (for itself and as agent for and on behalf of the Depository and the Custodian) to pay the fees, charges, costs and expenses in connection with its use of the International Settlement Links Service as set out in, and on the basis referred to in, the CREST Manual or the Deed Poll or as may otherwise be published by EUI from time to time.

Such fees, charges, costs and expenses may be supplemented by and shall not be abated by other remuneration received or receivable by EUI, the Depository or the Custodian in connection with the use by the Member of the International Settlement Links Service and neither EUI, the Depository nor the Custodian shall be under any obligation to account to the Member for any financial benefit so derived by any of them.

4.2 The Member agrees with EUI (for itself and as agent for and on behalf of the Depository and the Custodian):

- 4.2.1 that if any sum is or will become due or owing from it to any of EUI, the Depository or the Custodian (whether under these Terms and Conditions or the Deed Poll) (such sum for the purposes of this paragraph 4 being referred to as the 'relevant sum'), subject always to the cap in relation to a cash memorandum account, EUI, the Depository and/or the Custodian are irrevocably authorised, at any time (and without prior notice to the Member), to effect a CREST payment (denominated in the currency of the sum due) from the Member to EUI, the Depository and/or the Custodian in an amount equal to the relevant sum (or the unpaid part of it) and in discharge of the relevant sum (or the unpaid part of it) due or owing from the Member;
- 4.2.2 that where the Member does not have a cash memorandum account denominated in the currency of the relevant sum, EUI may convert such sum (or the unpaid part of it) into the currency of a cash memorandum account of the Member either:-
- (a) (where the currency of payment of the relevant sum is a designated currency) at the exchange rate held within the CREST system at that time; or
  - (b) (where the currency of payment of the relevant sum is not a designated currency) at such exchange rate and at such time as EUI may reasonably consider appropriate;
- and paragraph 4.2.1 shall apply to the resulting sum;
- 4.2.3 that clause 7 of the Terms and Conditions shall apply to any properly authenticated dematerialised instruction created under the authority contained in paragraph 4.2.1, which instruction shall be deemed to be sent by and shall be attributable to the Member; and
- 4.2.4 not to revoke any of the authorities contained in this paragraph 4.2.
- 4.3 EUI (for itself and as agent for and on behalf of the Depository and the Custodian) agrees that the CREST payment made in accordance with paragraph 4.2.1 shall discharge the Member's obligation to pay the relevant sum (or the unpaid part of it) to the extent of the amount of the CREST payment (and, if applicable, the amount converted in accordance with paragraph 4.2.2).

## **5 Further acknowledgements by the Member**

- 5.1 The Member acknowledges and agrees with EUI (for itself and as agent for and on behalf of the Depository and the Custodian) that:
- 5.1.1 the communications links (including, without limitation, communications links relating to payment mechanisms) between each CSD (or any other person) and the CREST Applications Hosts will not form part of the EUI systems, and that EUI, the Depository and the Custodian have no responsibility for the operation or non-operation of those links; accordingly, EUI, the Depository and/or the Custodian shall be entitled without further enquiry to execute or otherwise act upon instructions or information or purported instructions or information received by means of such communications links (and to authorise a CSD or other person to do so) notwithstanding that it may afterwards be discovered that any such instruction or information or purported instruction or information was not genuine or was not correct or was not initiated by the CSD or other person authorised to give it. Nothing in this paragraph shall entitle EUI or the Depository or the Custodian to execute or otherwise act upon an instruction or information or purported instruction or information if at the time it received it or at any time thereafter it had actual notice that it was not genuine, or that any information contained in it was incorrect or that it was not initiated by the CSD or other person authorised to give it and at the time that it received the actual notice it was practicable to halt the processing of the instruction or information or purported instruction or information. Neither EUI nor the Depository nor the Custodian shall be liable to the Member for any Liabilities suffered or incurred by the Member as a result of EUI, the Depository and/or the Custodian having executed or otherwise acted upon any instruction or information or purported instruction or information that it was entitled to execute or act upon pursuant to this paragraph.
- 5.1.2 EUI, the Depository and the Custodian rely on the CSD in which the relevant International Securities are held to supply information relating to cash distributions, corporate actions, forthcoming meetings of the holders of those securities and other matters having a bearing on the rights of persons holding CDIs representing such securities; accordingly the content of the information made available to CREST members and the time at which such information is available will reflect the content of and timing of the supply of information to EUI, the

- Depository or the Custodian, for which no responsibility is accepted by EUI, the Depository or the Custodian;
- 5.1.3 Neither EUI, the Depository nor the Custodian make any representation or give any assurance as to (a) the legal or regulatory implications of the operation of the International Settlement Links Service in the UK, in the respective jurisdictions of the CSDs or any relevant jurisdiction in which International Securities are constituted, held and/or transferred or any other relevant jurisdiction or (b) the legal or regulatory requirements or the arrangements relating to settlement and the holding and segregation of investments in the respective jurisdictions of the CSDs or in which International Securities are held and/or transferred. CREST members who utilise the International Settlement Links Service to acquire and hold and dispose of interests in International Securities, or to acquire from, and dispose of to, participants in CSDs CREST Securities, acknowledge and accept that these are matters as to which it is for them to satisfy themselves;
- 5.1.4 EUI, the Depository and the Custodian may participate in the CSDs subject to the normal terms and conditions of business of that CSD or such other terms and conditions as EUI, the Depository or the Custodian may consider appropriate. Where, by virtue of compliance with such terms and conditions EUI, the Depository or the Custodian may breach the provisions of these Terms and Conditions or the Deed Poll, they shall have no liability to the Member or any other person for any Liabilities suffered or incurred as a result;
- 5.1.5 the Member shall not cause or endeavour to cause EUI, the Depository or the Custodian to make or assert any right or claim whatsoever against a CSD or an issuer of International Securities or its officers or any other person;
- 5.1.6 information held by EUI, the Depository or the Custodian or within the EUI systems about the Member and its activities may (without prejudice to clause 4) be provided by any of EUI, the Depository or the Custodian from time to time to (or they may permit access to the same from time to time by) any CSD without restriction on its use of such information and the Member expressly consents to the disclosure of such information;
- 5.1.7 if the Member elects in accordance with the CREST International Manual to receive cash distributions referable to International Securities in a currency in which the Member does not have a cash memorandum account, having been notified of his entitlement to a distribution in accordance with the CREST International Manual, it is the responsibility of the Member to monitor the receipt of the correct amount and the Member agrees and undertakes to notify the Depository no later than 5.00pm on the date on which the Member should, in accordance with the notification, have received payment if no such payment, or the incorrect amount, has been received;
- 5.1.8 the responsibility under the CREST Regulations for maintaining the registers and records of CDIs rests with the Depository or EUI (as the case may be) and the provisions of paragraph 6 of this Schedule shall apply to any claim or proceedings against the Depository to recover damages, compensation or other payment or remedy arising directly or indirectly from the maintenance of such registers and records and accordingly the Member undertakes to take no action to recover damages, compensation or payment or remedy of any other nature from any person (including any agent appointed by the Depository) other than EUI or, where permitted, the Depository, in respect of the maintenance of such registers and records;
- 5.1.9 EUI, the Depository and the Custodian may hold CREST Members' money entitlements in client bank accounts outside the UK on a pooled basis pending distribution and such money may not be protected as effectively as money held in a bank account in the UK; in particular, the relevant bank may be entitled to combine funds held in a client bank account with any other account of EUI, the Depository or the Custodian or to exercise any right of set-off or counterclaim against money held in a client bank account in respect of any sum owed to it on any other account by EUI, the Depository or the Custodian;
- 5.1.10 EUI undertakes to take reasonable care in the selection and continued use of any person who provides banking and related services in connection with the provision of the International Settlement Links Service but neither EUI, the Depository nor the Custodian is responsible for the acts or omissions of any such person; and the Member further acknowledges and agrees that any such person is responsible only to any or all of EUI, the Depository and the Custodian and the Member undertakes to take no action to recover damages, compensation or payment or remedy of any other nature from any such person;
- 5.1.11 EUI is authorised to make available in the manner described in Chapters 2 to 5 of the CREST International Manual details of distributions, bonus issues, rights issues, capital

- reorganisations and other information or matters relating to International Securities and the Sponsored Member is responsible for making arrangements with its Sponsor to enable it to receive such information; EUI, the Depository and the Custodian have no obligation to make any such information or matters available in any other manner, and in particular have no obligation to make such information available or to disclose such matters directly to a Sponsored Member;
- 5.1.12 certain fractional entitlements may be retained by the Depository or EUI as an additional fee in the manner set out in the International Manual; and
- 5.1.13 neither the Depository nor the Custodian shall be liable to comply with any registration or similar requirement which is imposed in any jurisdiction.
- 5.2 The Member agrees with EUI (for itself and as agent for and on behalf of the Depository and the Custodian) that:
- 5.2.1 it shall provide all or any of EUI, the Depository and the Custodian with such security, indemnity, guarantees or other cover as EUI may from time to time require in relation to Liabilities which they or any of them may actually or prospectively or contingently suffer or incur as a result of the participation of the Member in the International Settlement Links Service and/or any particular element thereof; and
- 5.2.2 EUI, the Depository and the Custodian may, in the circumstances described in the CREST International Manual, purchase, for the account and at the expense of the Member, a sufficient amount of any class of International Securities to eliminate any shortfall or prospective shortfall in the Custodian's holding of that class of International Securities which is, in the opinion of EUI, attributable to the Member.
- 5.3 The Member and, where relevant, the Parent agree to indemnify, keep indemnified and hold harmless each of EUI, the Depository and the Custodian from and against any and all Liabilities suffered or incurred by EUI, the Depository and/or the Custodian in connection with the participation by the Member in the International Settlement Links Service except for Liabilities caused by or resulting from any wilful default, negligence or fraud of EUI, the Depository or the Custodian. This indemnity is given without prejudice to the indemnity given for the benefit of the Depository and the Custodian in the Deed Poll. The Member acknowledges and agrees that EUI may undertake obligations to CSDs and other persons providing services in connection with the International Settlement Links Service to enable the Depository and the Custodian to carry out their duties under the Deed Poll and that EUI may have recourse to the Depository and the Custodian in respect of any Liabilities suffered by it under such arrangements, and that where such Liabilities relate to property held for the account of the Member or CDIs held by the Member then the Depository and the Custodian may have recourse to their rights in relation to the Member contained in the Deed Poll.

## **6 *EUI to assume liability in damages etc in place of Depository and Custodian***

6.1 EUI undertakes to the Member that it will be responsible to the Member for the acts and omissions of the Depository and any Custodian which is a wholly-owned subsidiary of EUI on the same basis as if they were the acts and omissions of EUI and clause 17.7 shall be read accordingly.

If by reason of the failure to comply with, or breach of, any duty or obligation binding on it pursuant to the Deed Poll or otherwise by, or otherwise as a result of the negligence, fraud or wilful default of, the Depository and/or such Custodian in connection with the International Settlement Links Service, the Member suffers or incurs any Liabilities in respect of which the Depository or such Custodian would otherwise, in the absence of this provision, be liable to make any payment to the Member or incur any other financial cost or obligation to deliver property by way of damages, compensation, restitution or otherwise (whether such liability arises in respect of breach of contract, in tort, for misrepresentation, for breach of trust or any other duty imposed by law or in any other way), then EUI undertakes to the Member and the Member undertakes to EUI (for itself and as agent for and on behalf of each of the Depository and such Custodian) that any such payment shall be made or cost or obligation shall be incurred, and the liability to make any such payment or incur any such cost or obligation shall be borne, exclusively by EUI (subject to the limitations on and restrictions of EUI's liability provided for in the Terms and Conditions but so that nothing in the Terms and Conditions shall operate so as to (i) exclude or limit any liability for death or personal injury resulting from negligence; or (ii) exclude liability for fraud of the Depository or the Custodian; or (iii) limit any liability below the amount of any benefit the Depository or the Custodian has received by reason of the act, omission or event giving rise to such liability); or (iv) exclude or limit any liability to the extent that such liability may not be lawfully so excluded or limited.

6.2 In consideration of the undertaking of EUI in paragraph 6.1, the Member further undertakes to EUI for itself and as agent for the Depository and the Custodian that it shall not make, permit, cause or assist any other person to make, any claim against, or take any proceedings against, the Depository or the Custodian to recover such damages or compensation or other payment, even if the same is not recoverable from EUI by reason of limitations of or restrictions on EUI's liability contained in the Terms and Conditions or otherwise; but this provision shall not prevent the Member from obtaining injunctive or declaratory relief, or an order for specific performance, or any other relief provided that in any case such relief does not involve (actually, contingently or prospectively) the payment of money or the incurring of any other financial cost or obligation or the delivery of property, against the Depository or the Custodian.

## **7 Liability to pay Stamp Duty Reserve Tax**

7.1 The Member agrees and acknowledges that:

7.1.1 agreements to transfer certain International Securities represented or to be represented by CDIs, CDIs or other interests in International Securities ('relevant interests') may not be subject to stamp duty reserve tax (SDRT) by virtue of the Finance Act 1986 (as amended) and/or the Stamp Duty Reserve Tax (UK Depository Interests in Foreign Securities) Regulations 1999 (as amended); and

7.1.2 it is the responsibility of the Member, and not EUI, to ensure that any relevant interests which the Member is proposing to acquire or dispose of by means of the CREST system and which are identified by the CREST system as being exempt from the charge to SDRT on their transfer are so exempt.

7.2 The Member undertakes to EUI

7.2.1 to notify EUI forthwith if relevant interests which the Member is proposing to acquire or dispose of by means of the CREST system and which are identified by the CREST system as being exempt from the charge to SDRT on their transfer are not so exempt; and

7.2.2 to pay to EUI any SDRT and any interest, charges or penalties in relation to late or non-payment of SDRT arising directly or indirectly from any agreement of the Member to acquire or dispose of relevant interests which are not exempt for whatever reason from the charge to SDRT on their transfer and to hold EUI harmless from any and all Liabilities arising from or incurred in connection therewith.

7.3 For the purposes of this paragraph 7, a Member will be taken to be proposing to acquire relevant interests or to have entered into an agreement to acquire relevant interests if he acquires CDIs from another Member or if the CDIs are to be issued to him and to be proposing to dispose of relevant interests or to have entered into an agreement to dispose of CDIs if he disposes of CDIs to another Member or if the CDIs would, as a result, be cancelled.

## **8 Further services where CSD is not a CREST member**

8.1 EUI has made arrangements for CDIs to be transferred to and held by the Custodian, pending confirmation or re-transfer to the transferring CREST member, in the circumstances set out under the heading 'When the relevant CSD is not a CREST member' in Section 3 of Chapter 3 of the CREST International Manual or in similar circumstances described elsewhere in the CREST International Manual (referred to in this paragraph 8 as 'the relevant circumstances').

8.2 If, during the period when the Custodian is registered as the holder of CDIs in the relevant circumstances, it becomes entitled to any right or benefit attributable to the CDIs, EUI undertakes that it shall take reasonable care to take such action (if any) in connection with the delivery of that right or benefit to the transferring CREST member as is set out in the CREST International Manual. The Member agrees and acknowledges that the Custodian shall have no obligation to take any action in connection with the administration of such rights or benefits.

8.3 EUI (in its capacity as agent for and on behalf of the Custodian and not for itself) hereby declares and confirms that the Custodian will hold CDIs transferred to it in the relevant circumstances as bare trustee and on the terms recorded in the CREST International Manual.

## **9 General**

Save as may be described in the CREST Manual in relation to any particular link, EUI shall not nor shall the Depository or the Custodian (a) arrange for any International Securities or other Deposited

Property (as defined in the Deed Poll) to be lent to any other person, or (b) charge in favour of any other person any such property as security.

*The Member should note that, in accordance with the provisions of these Terms and Conditions, the Deed Poll and the CREST Manual, participation in the International Settlement Links Service can be terminated by:*

- (a) the transfer or cancellation of any CDIs held by him and, in the case of cancellation, withdrawal of the International Securities represented by such CDIs; and*
- (b) opting-out of the international settlement links functionality (thereby preventing delivery of CDIs to him across the international settlement links).*

*A Member wishing not to receive a transfer of CDIs from a CREST Member should not match the delivery instruction relating to the CDIs which cites him as the transferee.*

*The normal CREST tariffs will apply to the above transactions. No special charges will be made on the Member ceasing to participate in the International Settlement Links Service.*

## Chapter 8: Global deed poll

*Note: The following is the text of the Global Deed Poll dated 25 June 2001 as modified by a First Supplemental Deed Poll dated 23 November 2001 and in force from 26 November 2001, a Second Supplemental Deed Poll in force from 15 April 2002, a Third Supplemental Deed Poll in force from 14 November 2014, and a Fourth Supplemental Deed Poll in force from 23 November 2020.*

THIS DEED POLL is made on 25 June 2001

**BY CREST DEPOSITORY LIMITED** whose registered office is at 33 Cannon Street, London EC4M 5SB (the 'Depository', which expression shall, unless the context otherwise requires, include any successor depository appointed in accordance with clause 13.2 of this Deed) in favour of the holders of Depository Interests as hereinafter defined.

### WHEREAS:

(A) For the purpose of assisting EUI to give effect to the International Settlement Links Service operated by it, the Depository has determined to constitute and issue from time to time, upon the terms of this Deed, series of Depository Interests, each such series representing a particular class of International Securities eligible to be held in or through a CSD, with a view to facilitating the indirect holding of, and settlement of transactions in, International Securities of each class concerned by participants in CREST in accordance with the arrangements for the International Settlement Links Service described in the CREST International Manual;

(B) the Depository has arranged with EUI for all series of Depository Interests from time to time constituted and issued in accordance with this Deed to be admitted to CREST as participating securities;

(C) the Depository Interests will be issued in uncertificated form and credited to the CREST stock account of the relevant Holder;

(D) to facilitate the operation of the arrangements contemplated by this Deed, a Custodian has or will become a participant in one or more CSDs or has arranged or will arrange participation in one or more CSDs on its behalf.

**NOW IT IS WITNESSED AND DECLARED** as follows:-

### 1 Interpretation

1.1 In this Deed the following expressions shall have the following meanings:

Agent	any agent appointed by the Depository pursuant to this Deed;
Certificated Depository Interests	Depository Interests of a particular series which, in accordance with the provisions of the Schedule, have been converted into and are for the time being held in certificated form, and when so converted are subject to the special rights and limitations provided for in the Schedule;
class	a particular class of International Securities, units of which are for the time being in issue, where all the individual units of the class concerned are identical in all respects and cannot be separately distinguished;
CREST International Manual	the document entitled the 'CREST International Manual' issued by EUI, forming a part of the CREST Manual, as from time to time amended or replaced;
CREST Manual	the documents constituting the 'CREST Manual' issued by EUI as from time to time amended or replaced;
CREST member	a person who has been admitted by EUI as a system member;
CREST messages	properly authenticated dematerialised instructions sent or received by means of the CREST system;
CREST personal member	a CREST member who is an individual and has appointed a Sponsor to send CREST messages attributable to him and to receive CREST messages on his behalf;

CREST Rules	rules within the meaning of the USRs and/or the Financial Services and Markets Act 2000 (or, prior to that Act coming into force, the Financial Services Act 1986) and any rules made by EUI as operator of a designated system under or pursuant to Directive 98/26/EC on settlement finality in payment and securities settlement systems;
CREST Stock Account	an account maintained within the CREST system in relation to each class of security held by a CREST member as described in the CREST Manual;
CREST system	has the meaning ascribed thereto in the Glossary of the CREST Manual, as from time to time amended or replaced;
CSD	<p>the following national or international central securities depositories:</p> <p>SIS SegmaInterSettle AG, as operator of the central securities depository of Switzerland;</p> <p>Euroclear Bank SA/NV as operator of the international central securities depository based in Belgium and known as Euroclear;</p> <p>the Depository Trust Company, as operator of the central securities depository based in New York</p> <p>and such other national or international central securities depositories which are from time to time specified for the purposes of this Deed in the CREST International Manual;</p>
CSD Participant	any person, not being a CSD, which may from time to time have been appointed to participate in a CSD on behalf of a Custodian;
Custodian	subject to clause 3.3, any custodian or custodians of any Deposited Property as may from time to time be appointed by the Depository for the purposes of this Deed, but excluding any CSD Participant;
Depository Interests	depository interests of a particular series issued from time to time by the Depository on the terms and conditions of this Deed and in accordance with the Regulations, title to which is evidenced, (i) where they are not Certificated Depository Interests, by entry on an Operator register of securities or (ii) where they are Certificated Depository Interests, by entry on the Register and/or, in accordance with the Schedule, by certificate and which, in each case, represent a particular class of International Securities;
Deposited Property	in relation to a particular class of International Securities, the Deposited International Securities concerned and all and any rights and other securities, property and cash for the time being held by or for a Custodian or the Depository and attributable to those Deposited International Securities;
Deposited International Securities	International Securities of a particular class or entitlements thereto from time to time credited to an account of a Custodian or of a CSD Participant for a Custodian, as the case may be, in a CSD which are to be held under the terms of this Deed and in respect of which Depository Interests of a series representing that class of International Securities shall be issued pursuant to the terms of this Deed;
EUI	Euroclear UK & Ireland Limited;
Holder	in relation to a particular class of International Securities, the person recorded in the relevant Operator register of securities or (as the case may be) the Register for the time being as the holder of a Depository Interest of the series which represents

70 CREST International Manual  
November 2020

	International Securities of that class; and, where the context admits, shall include a former Holder and the personal representatives or successors in title of a Holder or former Holder;
International Securities	securities, whether represented by bearer certificates or instruments or by being recorded on a register or otherwise howsoever, and which are eligible to be held within or through a CSD and which are not participating securities (as defined in the USRs); but excluding such securities or classes of securities as the Depository may from time to time determine;
Issuer	an issuer (being a person) of International Securities;
Liabilities	any liability, damage, loss, cost, claim or expense of any kind or nature whether direct, indirect, special, consequential or otherwise;
Membership Agreement	the agreement incorporating the Terms and Conditions entered into by a Holder with EUI relating to the Holder's participation in the CREST system as a system-member;
Proceedings	any proceeding, suit or action of any kind and in any jurisdiction arising out of or in connection with this Deed or its subject matter;
Register	in relation to a particular series of Certificated Depository Interests, the Register of Holders referred to in Clause 2.5;
Regulations	the USRs and such other regulations made or treated as made under s785 of the Companies Act 2006 as are applicable to EUI and/or the CREST relevant system and are from time to time in force;
Service	an international settlement links service described in the CREST International Manual;
Sponsor	in relation to a CREST personal member, the system-participant permitted by EUI to send properly authenticated dematerialised instructions attributable to him and to receive properly authenticated dematerialised instructions on his behalf, and references to sponsorship shall be construed accordingly;
Sponsors Agreement	the agreement entered into by a Sponsor with EUI relating to the Sponsor's participation in the CREST system as a Sponsor;
Taker	has the meaning given to that term in clause 4.1;
Third Party Depository	a person who issues, or intends to issue, Third Party Depository Interests;
Third Party Depository Interests	depository interests of a particular series issued by a third party from time to time, and which represent a particular class of securities, which are not participating securities;
Terms and Conditions	the Terms and Conditions (including any Schedules) concerning CREST membership issued by EUI as the same may from time to time be amended, varied, supplemented, novated or replaced; and
USRs	the Uncertificated Securities Regulations 2001.
1.2	In this Deed, unless otherwise specified:
1.2.1	references to clauses, sub-clauses, schedules and paragraphs are to clauses, sub-clauses, schedules and paragraphs of this Deed;
1.2.2	headings to clauses and paragraphs are for convenience only and do not affect the interpretation of this Deed;

- 1.2.3 references to a 'person' shall be construed so as to include any individual, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having a separate legal personality) of two or more of the foregoing;
- 1.2.4 references to any statute or statutory instrument or any provision thereof shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted;
- 1.2.5 words importing the singular shall include the plural and vice versa unless the context otherwise requires;
- 1.2.6 references to fees, costs, charges, expenses or other payments, shall be exclusive of any value added tax or similar tax charged or chargeable in respect thereof; and when any value added tax is chargeable, the Depository shall be entitled to recover that tax in addition to the stated fees, costs, charges, expenses or other payments;
- 1.2.7 words and phrases defined in the USRs which are not defined in this Deed shall have the same meanings where used herein unless the context otherwise requires;
- 1.2.8 in construing this Deed, general words shall not be given a restrictive meaning by reason of the fact that they are preceded or followed by words indicating a particular class of acts, matters or things or by particular examples intended to be embraced by the general words;
- 1.2.9 any provision to the effect that the Depository shall not be liable in respect of a particular matter shall be construed to mean that the Depository shall not have any liability which the Depository might, in the absence of such a provision, incur, whether the Depository could incur such a liability:
- (a) under the terms of this Deed or any other agreement or instrument relating to the Service (whether such terms are express or implied by statute, law or otherwise);
  - (b) in tort;
  - (c) for misrepresentation;
  - (d) for breach of trust or of any other duty imposed by law; or
  - (e) in any other way

Provided that nothing in this Deed shall be construed as (i) excluding or limiting liability on the part of the Depository for death or personal injury resulting from negligence; or (ii) excluding liability for its fraud; or (iii) limiting any liability of the Depository below the amount of any benefit the Depository has itself received by reason of the act, omission or event giving rise to such liability; or (iv) excluding or limiting any rights under the Human Rights Act 1998 or (v) excluding or limiting any liability to the extent that such liability may not be lawfully so excluded or limited;

- 1.2.10 unless otherwise stated, nothing in this Deed is intended to confer a benefit on any third party. For these purposes, a term shall only be 'otherwise stated' where it incorporates an express reference to EUI or a Custodian. No term in this Deed will, therefore, be enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any party other than the Depository and any Holder or, where 'otherwise stated', EUI or a Custodian;
- 1.2.11 if a benefit is conferred on any third party in accordance with clause 1.2.10, the Depository may rescind or vary any term of this Deed without the consent of the third party at all times;
- 1.2.12 references in this Deed to clauses, schedules or paragraphs of the Terms and Conditions shall, where the relevant Holder is a CREST personal member, be interpreted as a reference to the corresponding provision of the CREST terms and conditions for personal members, as the same may from time to time be amended, varied, supplemented, novated or replaced;
- 1.2.13 references to '**the CREST Manual**' or '**the CREST Rules**' or any other agreement or document shall be construed as a reference to the CREST Manual or the CREST Rules or such other agreement or document as the same may from time to time be amended, varied, supplemented, novated or replaced and shall include any document which is supplemental to, or is expressed to be collateral to, or is entered into pursuant to or in accordance with the CREST Manual or the CREST Rules or, as the case may be, such other agreement or document;
- 1.2.14 references to '**maintenance of a register**' (or a similar reference) shall be construed as including (but not being limited to) a reference to the maintenance, keeping and entering up

of a register and any other act in connection with the making, alteration of and deletion of entries on a register; and

- 1.2.14 any reference to a person's negligence, wilful default or fraud shall be construed to include the negligence, wilful default or fraud of any person for which that person is vicariously liable.
- 1.3 Deposited Property held by or transferred or issued to a CSD Participant for a Custodian shall be treated as held by or transferred or issued to a Custodian for all the purposes of this Deed, unless the context otherwise requires.

## **2 Form and issue of Depository Interests**

2.1 Subject to the provisions of this Deed, the Depository shall issue to a CREST member such number or amount of Depository Interests of a particular series as is equal to the number or amount (as the case may be) of International Securities of the relevant class issued or transferred to a Custodian on behalf of the Depository, for the account of that CREST member, in the manner permitted by this Deed and the terms of the relevant Service. The Depository shall only issue Depository Interests upon:

- 2.1.1 the sending by or on behalf of a CSD or a CSD Participant, as the case may be, to EUI as agent of the Depository of an instruction which, in accordance with the CREST Manual, contains such information as is necessary to enable EUI on behalf of the Depository to arrange for the CREST Stock Account of the relevant CREST member to be credited with the Depository Interests concerned and which is taken to constitute confirmation that there have been or will be delivered to a Custodian on behalf of the Depository, by credit to the account in the CSD of a Custodian, or of the CSD Participant for a Custodian, as the case may be, a number or amount of International Securities of the class concerned equal to the number or amount of Depository Interests to be issued; or
- 2.1.2. otherwise in accordance with the provisions prescribed in or pursuant to the CREST International Manual.

2.2 Depository Interests shall be issued in series, each series representing interests in a separate class of International Securities and for the purposes of this Deed Depository Interests representing interests in one class of International Securities shall be treated as part of the same series and identical in all respects notwithstanding that all or some of such International Securities may be credited to an account of a Custodian in one or more CSDs and/or credited to an account of one or more CSD Participants in one or more CSDs to be held for a Custodian on behalf of the Depository. Notwithstanding the foregoing, Certificated Depository Interests which represent a particular class of International Securities, being subject to the special rights and limitations provided for in the Schedule, form a series of securities separate from Depository Interests which represent the same class of International Securities, but which are in uncertificated form.

2.3 Depository Interests shall be issued on the terms and conditions set forth or referred to in or prescribed pursuant to this Deed, the terms and conditions issued by EUI in connection with the provision of the relevant Service as from time to time amended, varied, supplemented, novated or replaced, and the CREST Manual.

2.4 The Depository shall not be required to maintain in respect of any series of Depository Interests which are not Certificated Depository Interests any register of persons holding any such Depository Interests, and accordingly the Operator will be required under Regulation 22(3) to maintain in the United Kingdom an Operator register of securities in respect of each such series of Depository Interests (not being Certificated Depository Interests) and to record in each such register the particulars of the persons holding such Depository Interests and the number of Depository Interests respectively held by them as required by that Regulation. Title to a Depository Interest which is not a Certificated Depository Interest shall be evidenced only by such entries in the relevant Operator register of securities. Nothing in this Deed shall be taken to impose any obligation on the Operator or to confer any right against the Operator with respect to any register.

2.5 The Depository shall maintain in England separate registers in respect of each series of Certificated Depository Interests. Each such register shall record:

- 2.5.1 the name and address of each person holding the Certificated Depository Interests;
- 2.5.2 how many Certificated Depository Interests each such person holds; and
- 2.5.3 all issues and cancellations of Certificated Depository Interests;

and subject to the provisions of the Schedule, title to a Certificated Depository Interest shall be evidenced only by entry on the Register.

2.6 A Depository Interest may be issued only in uncertificated form. Subject to the provisions of the Schedule, the Depository shall not issue, and a Holder shall not be entitled to require the issue of, a certificate or receipt or similar document in respect of a Depository Interest.

2.7 Depository Interests shall be transferable free from any equity, set-off or counterclaim between the Depository and the original or any intermediate Holder.

2.8 The Depository shall have no obligation to arrange for the Depository Interests to be listed on any stock exchange or quoted or permitted to be dealt in on any other market.

2.9 The Depository Interests have not been and will not be registered under the securities legislation of any territory.

2.10 Save for the trusts declared by clause 5.1, the Depository shall not be bound by or compelled to recognise any express, implied or constructive trust or other interest in respect of Deposited Property, even if it has actual or constructive notice of the said trust or interest. The Depository does not undertake any duty or obligation to any person (other than a Holder) and accepts no liability to any such person.

2.11 Depository Interests may be cancelled by the Depository pursuant to clauses 6, 7 and 9.4 and, so far as the Depository considers appropriate, in the circumstances contemplated in clauses 9.11, 9.14, 10.2, 11.1 and 16 or otherwise in accordance with the provisions prescribed in or pursuant to the CREST International Manual.

### **3 Appointment of Custodian**

3.1 The Depository shall from time to time appoint one or more persons to act for it as Custodian. The function of a Custodian shall be to hold such of the Deposited Property as may be designated from time to time by the Depository, and any cash or other property derived from such Deposited Property, on behalf of the Depository. Such Deposited Property (and any cash or other property derived from it) or any part of it may be held for a Custodian by one or more CSDs, by one or more CSD Participants or by such sub-custodian or other person as the Depository may from time to time direct. A Custodian shall be subject at all times and in all respects to the direction of the Depository and shall be responsible solely to it. The Depository may at any time terminate the appointment of any Custodian and appoint a successor Custodian. A Custodian may be a member of the same group of companies as the Depository.

3.2 The Depository shall require each Custodian to identify in its own records that all Deposited Property held by a Custodian is held on behalf of the Depository for the account of CREST members. The Depository shall not be required to earn any interest on or to account to the Issuer or any Holder or any other person for any interest earned on moneys held either by it or by a Custodian or by any Agent which shall have been paid by or on behalf of the Issuer or any Holder under this Deed or shall otherwise have been received in respect of Deposited Property.

3.3 Notwithstanding the provisions of clause 3.1, the Depository may, to the extent permitted by applicable laws and regulations to which it is subject, itself perform the functions of a Custodian, in which case references in this Deed to a Custodian shall be deemed to be, or to include, as the case may be, references to the Depository.

### **4 Deposit of Deposited Property: further provisions**

4.1 Each person to whom Depository Interests are to be issued pursuant to this Deed (the 'Taker') shall be bound to give such warranties and certifications to the Depository as the Depository may reasonably require. Each Taker shall in any event be taken to warrant to the Depository and the Custodian that International Securities which are transferred or issued to a Custodian on behalf of the Depository for the account of the Taker are transferred or, as the case may be, issued free and clear of all liens, charges, encumbrances or third party interests (other than in favour of the relevant CSD and other than the interests therein arising pursuant to clause 5) and that such transfers or, as the case may be, such issues of International Securities to a Custodian are not in contravention of the Memorandum or Articles of Association or other constitutive documents of the Issuer concerned or of any contractual obligation binding on the Taker or the person making the transfer or of any applicable law or regulation or order of the jurisdiction of the Issuer or CSD concerned or otherwise binding on or affecting the Taker or the person making the transfer, and the Taker shall indemnify

and keep indemnified the Depository and the Custodian, and hold each of them harmless from and against any and all liability which they may suffer by reason of any breach of any such warranty.

4.2 The Depository shall be entitled to refuse to accept International Securities and/or other securities:

4.2.1 whenever it is notified in writing that the Issuer has restricted the transfer thereof to comply with ownership restrictions under applicable law or under any contractual provision binding the Issuer; or

4.2.2 if the Depository is notified by the Issuer or a CSD that such deposit or the issue of Depository Interests pursuant to this Deed would or might result in the contravention of any applicable law; or

4.2.3 if such action is deemed necessary or advisable by the Depository at any time or from time to time because of any requirement of any applicable law or of any government or governmental authority, body or agency or any regulatory authority or EUI, or under any provision of this Deed or for any other reason; or

4.2.4 which may require the Depository or the Custodian to comply with any registration or similar requirement.

## **5 Declaration of trust; no security interest; duties with respect to Deposited Property**

5.1 The Depository hereby declares and confirms that it holds (itself or through one or more Custodians) as bare trustee and will so hold, subject to the terms of this Deed, all the Deposited Property pertaining to each series of Depository Interests for the benefit of the Holders of that series as tenants in common and that each of the Holders is entitled to rights in relation to the relevant Deposited Property accordingly. For the avoidance of doubt, in acting hereunder the Depository shall have only those duties, obligations and responsibilities expressly undertaken by it in this Deed and, except to the extent expressly provided by this Deed, does not assume any relationship of trust for or with the Holders or any other person.

5.2 Nothing in this Deed is intended to nor shall create a charge or other security interest in favour of the Depository. Any right or power of the Depository in respect of the Deposited Property is reserved by the Depository under its declaration of trust contained in clause 5.1 and is not given by way of grant by any Holder.

5.3 The Depository shall take all reasonable steps to enable EUI to give effect to the provisions of the CREST International Manual in respect of distributions, bonus issues, rights issues, capital reorganisations, voting, payments to Holders, withholding taxes and other matters which pertain to any Deposited Property.

5.4 The Depository may in such circumstances as it considers appropriate, including without limitation in connection with the operation of arrangements for enabling Holders of any one or more series of Depository Interests to exercise or direct the exercise of voting rights attaching to any International Securities represented by such Depository Interests, and/or to receive information from or relating to an Issuer of such International Securities, provide to any Issuer or any agent of an Issuer or a CSD details of the identity of the Holder and the number or amount of Depository Interests held by such Holder on any relevant date.

## **6 Withdrawal of Deposited Property on transfer and related matters**

6.1 A Holder who wishes either (a) to cancel a Depository Interest and withdraw the Deposited International Securities represented thereby; or (b) to transfer his interest in Deposited International Securities other than by means of a transfer of his Depository Interest representing the same to a CREST member through the CREST system; may, subject to the provisions of this clause 6, do so only by transferring, by means of the CREST system and in the manner described in the CREST Manual, the Depository Interest concerned to the Holder's escrow balance for which the designated Escrow Agent is the cross border CSD. Upon the transfer of a Depository Interest being accepted by the CSD in the manner described in the CREST International Manual (or, as the case may be, upon the CSD notifying CREST in the manner described in the CREST International Manual that it has or will effect the transfer to the account of the transferee participant in the CSD), the Depository Interest concerned shall be cancelled and such cancellation shall be recorded in the Register.

The transfer shall be effected by the inputting and settlement of CREST messages in the manner prescribed in the CREST Manual, which instructions shall also specify (or be taken in accordance with

the CREST Manual to specify) the account of a participant in a CSD to which the Deposited International Securities so withdrawn should be credited.

6.2 If, following the cancellation of Depository Interests in accordance with clause 6.1, the Depository retains Deposited Property attributable to the relevant Deposited International Securities, the Depository shall account to the former Holder in respect of such Deposited Property in accordance with the provisions of the CREST International Manual or in such other manner as the Depository shall think fit (which shall include the means and on the terms set out in clause 7.2).

6.3 Notwithstanding the provisions of clause 6.1, the Depository shall not be required to make arrangements for the transfer of International Securities of a particular class of an Issuer or other securities of an Issuer during any period when any register of holders maintained by or for the Issuer is closed or the relevant CSD, or CSD Participant if any, is closed.

6.4 The Depository shall not be liable to a Holder if any Deposited Property cannot be delivered to or to the order of a Holder by reason of any prohibition imposed upon the Depository or the Holder by applicable law or any other matter beyond the Depository's reasonable control.

## **7 Compulsory withdrawal**

7.1 If it shall come to the notice of the Depository, or if the Depository shall have reason to believe, that any Depository Interests:

7.1.1 are owned directly or beneficially by any person in circumstances which, in the opinion of the Depository, might result in the Depository, a Custodian or EUI suffering any liability to taxation or pecuniary, fiscal or material regulatory disadvantage or any other material burden or disadvantage which it might not otherwise have suffered; or

7.1.2 are owned directly or beneficially by, or otherwise for the benefit of, any person in breach of any law or requirement of any jurisdiction or governmental authority or so as to result in ownership of any International Securities exceeding any limit under, or otherwise infringing, the constitution of or any law applicable to a CSD, the relevant Issuer or the terms of issue of the International Securities; or

7.1.3 are owned directly or beneficially by, or otherwise for the benefit of, any person who fails to furnish to the Depository such proof, certificates and representations and warranties as to matters of fact, including, without limitation, as to his identity, as the Depository may deem necessary or appropriate for the administration or implementation of this Deed in accordance with applicable laws and regulations, including (without limitation) information specified in the CREST International Manual; or

7.1.4 are owned by a Holder who ceases at any time to be, or is suspended in whole or in part as, a CREST member for any reason; or

7.1.5 cease to be capable of being held in the CREST system; or

7.1.6 are held by a Holder who has failed to duly and punctually perform any obligation to the Depository or a Custodian or EUI imposed upon him by virtue of this Deed or any other agreement or instrument to which he is a party or by which he is bound with respect to those or any other depository interests, and in relation to whom the Depository determines that it is appropriate that the provisions of this clause 7 should apply;

then the Holder shall be deemed to have requested either (i) the cancellation of his Depository Interest(s) and the withdrawal of the Deposited International Securities represented by his Depository Interest(s); or (ii) the conversion of his Depository Interests into certificated form in accordance with the provisions of the Schedule; as the Depository shall elect. If the Depository elects for (ii), it may subsequently determine to implement clause 7.2.

7.2 On the Holder being deemed, at the election of the Depository, to have requested the withdrawal of the Deposited International Securities represented by his Depository Interests pursuant to clause 7.1, the Depository shall make such arrangements to the extent practicable and permitted by applicable law and regulation for the delivery of the Deposited Property represented by the Holder's Depository Interests to the Holder as the Depository shall think fit. Without limitation, the Depository may:

7.2.1 arrange for the Depository Interests of such Holder to be transferred (or cancelled and re-issued) to a CREST member selected by the Depository who shall hold the same as nominee for such Holder on such terms as the Depository or that CREST member shall think fit; or

- 7.2.2 arrange for such Depository Interests to be cancelled and for the Deposited Property represented thereby to be transferred to such Holder, or to a participant in a CSD to be held for the benefit of such Holder, on such terms as such participant or the relevant CSD shall think fit; or
- 7.2.3 in its absolute discretion, liquidate all or part of the Deposited Property and deliver the net proceeds in respect thereof to the Holder.

The Depository shall be entitled to deduct such fees, costs, duties, taxes and charges as may be applicable and any other sums owing to the Depository in accordance with the provisions of this Deed from the Deposited Property or from the net proceeds thereof before delivering the same to the Holder. If any official consents need to be obtained prior to the delivery of the Deposited Property or the net proceeds thereof to the Holder, the Depository shall make such arrangements with respect to the Deposited Property or the net proceeds thereof as it shall see fit.

## **8 Authorisations, consents, etc**

If any governmental or administrative authorisation, consent, registration or permit or any report to any governmental or administrative authority is required in order for the Depository (or a Custodian) to receive International Securities (or other securities) to be deposited hereunder and/or for Depository Interests representing the same to be issued pursuant to this Deed, or in order for International Securities or other securities or property to be distributed or to be subscribed or acquired in accordance with the provisions prescribed in or pursuant to the CREST Manual, the prospective Holder shall apply for such authorisation, consent, registration, or permit or file such report within the time required. The Depository shall not be bound to issue Depository Interests or distribute, subscribe or acquire International Securities or other property with respect to which such authorisation, consent, registration, permit or such report shall not have been obtained or filed, as the case may be, and shall have no duties to obtain any such authorisation, consent, registration or permit or to file any such report except in circumstances where the same may only be obtained or filed by the Depository and only without unreasonable burden or expense.

## **9 Liability**

9.1 Any liability of the Depository to make any payment, restitution or incur any other financial cost or obligation to deliver property by way of damages or compensation to a Holder or any other person or otherwise (whether such liability arises in respect of breach of contract, in tort, for misrepresentation, for breach of any other duty imposed by law or in any other way) by reason of the failure to comply with, or breach of, any duty or obligation binding on it pursuant to this Deed, at law or otherwise in connection with the Service shall be met by EUI in accordance with the provisions of paragraph 6 of Schedule 1 of the Terms and Conditions, subject to the limitations referred to in that paragraph.

9.2 The Depository shall not incur any liability to any Holder or to any other person for any Liabilities suffered or incurred arising out of or in connection with the performance or non-performance of its obligations or duties whether arising under this Deed (other than those specified in clauses 2.1 (first sentence) and 3.2) or otherwise save to the extent that such Liabilities result from its negligence or wilful default or fraud or that of any person for whom the Depository is vicariously liable provided that the Depository shall not incur any such liability as a result of the negligence or wilful default or fraud of any Custodian or Agent which is not a member of the same group of companies as the Depository unless the Depository shall have failed to exercise reasonable care in the appointment and continued use of such Custodian or Agent. Nor shall the Depository incur any such liability if any Liability suffered or incurred by the Holder is attributable to or results from the negligence or wilful default or fraud of EUI or a CSD or any CSD Participant or the acts or omissions of any person who provides banking services in connection with the Service.

9.3 The Depository shall not incur any liability to any Holder or to any other person if by reason of:

- 9.3.1 any provision of any present or future law or regulation of any jurisdiction or of any governmental authority, or by reason of the interpretation thereof; or
- 9.3.2 the Articles of Association or other constitutive document of any Issuer; or
- 9.3.3 the provisions of the CREST Manual or CREST Rules or the application thereof; or
- 9.3.4 any refusal or failure of EUI or of any other person to provide any service in relation to the CREST system or any operational failure of the CREST system; or

- 9.3.5 any refusal or failure of a CSD or any CSD Participant to provide any service in relation to its system or any operational failure of its system or any other act or omission of a CSD or any CSD Participant; or
- 9.3.6 any computer failure; or
- 9.3.7 any circumstance beyond the reasonable control of the Depository

the performance by it or any other person of any act or thing which is required or permitted or contemplated to be done or performed by or pursuant to this Deed or the CREST Rules or the CREST Manual shall be prevented or delayed or required to be effected in some manner or to an extent which is different in any respect from that provided for or contemplated by this Deed or the CREST Rules or the CREST Manual.

9.4 If and to the extent that by virtue of the laws of any jurisdiction or the application or operation of those laws in any particular event or circumstance, or by virtue of the terms and conditions of participation in a CSD, the terms and conditions on which any CSD Participant participates in a CSD, or the terms and conditions on which any CSD Participant has agreed to act on behalf of the Depository or a Custodian, or the application or operation of those terms and conditions in any particular event or circumstance, the Depository or a Custodian does not acquire unconditional and absolute title or right to or in relation to any Deposited Property, or acquires a title or right to or in relation to any Deposited Property which is in any manner encumbered or defective or liable to be displaced or avoided, or where as a result of an event or circumstance beyond the Depository's reasonable control the Deposited Property is reduced or depleted or the Depository does not directly or indirectly hold sufficient International Securities to cover the Depository Interests in issue, neither the Depository nor a Custodian shall be in any way liable to any Holder or any other person by reason thereof; but in any such case the Depository shall be entitled to take or cause to be taken such action as shall in its opinion be reasonable or appropriate, including without limitation the cancellation without compensation of the Depository Interests of any Holder(s) determined by the Depository whether or not such Holder(s) are in any way responsible for the relevant event or circumstance; and each Holder agrees that, by acquiring and holding Depository Interests representing International Securities by means of the arrangements contemplated by this Deed, he accepts the risk that, by virtue of such laws or terms and conditions, or the application or operation thereof, or any such event or circumstance, his interest in any relevant Deposited Property may not be entire, complete and unimpeachable. The reference to 'by virtue of such laws' in the preceding sentence shall not include the laws of England and Wales in so far as they relate directly to the constitution and issue of Depository Interests to that Holder but shall include the laws of England and Wales in so far as they relate to any other matter including, but not limited to, title to the International Securities or Deposited Property which the relevant Depository Interest purports to represent. If the Depository becomes entitled to take or cause to be taken action as aforesaid, it will in its sole discretion consider whether it may directly or indirectly transfer or make available to any Holder adversely affected, in whole or in part, the benefit of any rights, claims or other assets which may be available to the Depository and which pertain to the matter(s) giving rise to the relevant event or circumstance.

9.5 The Depository (and/or a Custodian) may authorise a CSD or any CSD Participant to act in reliance on instructions, information or purported instructions or information received by the CSD or CSD Participant through the communication links referred to in paragraph 5.1.1 of Schedule 1 of the Terms and Conditions notwithstanding that it may afterwards be discovered that such information or instruction or purported instruction or information was not genuine or was not correct or was unauthorised. The Depository may rely on, and shall not be liable for any loss suffered by any Holder or any other person by reason of its having accepted (or a Custodian or any other Agent or any CSD or CSD Participant having accepted) as valid and having relied upon, any written notice, request, direction, transfer, certificate for International Securities (or other securities) electronic communication or any other document or any translation thereof or communication reasonably believed by it in good faith to be genuine notwithstanding that the same shall have been forged or shall not be genuine or accurate or shall not have been duly authorised or delivered.

9.6 The Depository may act, or take no action, on the advice or opinion of, or in reliance upon, any certificate or information obtained from, any reputable lawyer, valuer, accountant, banker, broker, Issuer, information provider, registrar or issuer agent, settlement system operator or other expert whether obtained by the Issuer, the Depository or otherwise (including without limitation a CSD or any CSD Participant) and shall not be responsible or liable to any Holder or any other person for any loss or liability occasioned by so acting or refraining from acting or relying on information from persons depositing International Securities or otherwise entitled to the issue of Depository Interests. Any such advice, opinion, certificate or information may be sent or obtained by letter,

telex, facsimile transmission, e-mail, telegram, cable or other electronic communication and the Depository shall not be liable for acting on any such advice, opinion, certificate or information notwithstanding that the same shall have been forged or shall not be genuine or accurate.

9.7 The Depository may call for and shall be at liberty to accept as sufficient evidence of any fact or matter or the expediency of any transaction or thing a certificate, letter or other written communication, purporting to be signed on behalf of an Issuer by a director of an Issuer or by a person duly authorised in writing by a director of that Issuer or such other certificate from any such person as is specified in clause 9.6 which the Depository considers appropriate and the Depository shall not be bound in any such case to call for further evidence or be responsible to any Holder or any other person for any loss or liability that may be occasioned by the Depository acting on such certificate.

9.8 The Depository shall not be required or obliged to monitor, supervise or enforce the observance and performance by any Issuer of any of its obligations, including, without limitation, those arising under or in connection with applicable law, or any contract or instrument to which any Issuer is a party or by which it or any of its assets is bound. The Depository makes no representation or recommendation to any person regarding the financial condition of any Issuer or the advisability of acquiring Depository Interests or International Securities or other property or as to the type or character or suitability thereof and takes no responsibility for the operations of any Issuer or the effect thereof on the value of the relevant International Securities or Depository Interests or any rights derived therefrom.

9.9 The Depository, each Custodian and any Agent may engage or be interested in any financial or other business transactions with an Issuer or any other member of any group of which an Issuer is a member, or in relation to the Deposited Property (including, without prejudice to the generality of the foregoing, the conversion of any part of the Deposited Property from one currency to another), may at any time hold or be interested in Depository Interests for their own account, and shall be entitled to charge and be paid all usual fees, commissions and other charges for business transacted and acts done by them otherwise than in the capacity of Depository or Custodian or Agent (as the case may be) in relation to matters arising under this Deed (including, without prejudice to the generality of the foregoing, charges on the conversion of any part of the Deposited Property from one currency to another and on any sales of property) without accounting to the Holders or any other person for any profit arising therefrom.

9.10 The Depository shall endeavour to effect any sale of securities or other property or transferable right and any conversion of currency as is referred to or contemplated by the CREST Manual in accordance with its normal practices and procedures but shall have no liability with respect to the terms of such sale or conversion or if the effecting of such sale or conversion shall not be reasonably practicable.

9.11 The Depository shall have no responsibility whatsoever to any Holder or any other person as regards any deficiency which might arise because the Depository is subject to or accountable for any tax in respect of any or any part of the Deposited Property or any income or capital distribution or other payment arising therefrom or any proceeds of sale thereof. The Depository shall be entitled to make such deductions from the Deposited Property or any income or capital arising therefrom or to sell all or any of the Deposited Property and make such deductions from the proceeds of sale thereof as may be required by applicable law in order to comply with its obligations to account for any tax liability in respect thereof.

9.12 Without prejudice to any other powers which the Depository may have hereunder, the Depository shall be entitled to enter into any agreement with or give any undertakings to any relevant taxation authority concerning the taxation status of the transactions effected pursuant to this Deed and to do all such things as may be required under the terms of any such agreement or undertakings.

9.13 Notwithstanding anything else contained in this Deed but subject always to the rights of a Holder under clause 5, the Depository may refrain from doing anything which could or might, in its opinion, be contrary to any law of any jurisdiction or any of the Rules or any regulation or requirement of any regulatory authority or other body which is binding upon it, or which would or might otherwise in its reasonable opinion render it liable to any person and the Depository may do anything which is, in its opinion, necessary to comply with any such law, regulation or requirement or which is in its opinion necessary to avoid any such liability.

9.14 No provision of this Deed shall require the Depository to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder. If, notwithstanding this provision, the Depository does so, it shall be entitled to make such deductions from the Deposited Property or any income or capital arising

therefrom or to sell all or any of the Deposited Property and make such deductions from the proceeds of sale thereof as may be required to account for any loss or liability suffered by the Depository in respect thereof.

9.15 All communications, notices, certificates, documents of title and remittances to be delivered by or sent to or from Holders or their agents will be delivered to or sent to or from them at their own risk.

9.16 Subject to clause 9.17 of this Deed, the Depository shall have complete and sole discretion to make any claim or take or bring or pursue any proceedings against any CSD or CSD Participant in respect of any act or omission of the CSD or CSD Participant or to omit to do so.

9.17 Any and all sums the Depository recovers from a CSD or CSD Participant pursuant to clause 9.16 of this Deed shall, net of the Depository's actual expenses, and where appropriate, be distributed to the Holders of the related securities, as determined by and in the sole discretion of the Depository.

9.18 For the purposes of clause 9.16 of this Deed the Depository may act directly or through the Custodian as it, in its sole discretion, may choose.

## **10 Depository's fees and expenses**

10.1 The Depository shall be entitled to charge Holders in respect of the provision of its services under this Deed the fees and expenses notified from time to time.

10.2 The Depository shall not be liable for any taxes, duties, charges, costs or expenses which may become payable in respect of the Deposited International Securities or other Deposited Property or the Depository Interests, whether under any present or future fiscal or other laws or regulations or otherwise howsoever, and such part thereof as is proportionate or in the opinion of the Depository referable to a Depository Interest shall be payable by the Holder thereof to the Depository at any time on request; or may be deducted from Deposited Property held for the account of the Holder and/or from any amount due or becoming due on such Deposited Property in respect of any dividend or other distribution. In default thereof, the Depository may in its sole discretion sell, and for the account of the Holder discharge the same out of the proceeds of sale of, any appropriate number of Deposited International Securities or other Deposited Property, and subsequently pay any surplus to the Holder.

## **11 Indemnities**

11.1 A Holder shall be liable for and shall indemnify and keep indemnified the Depository and each Custodian and their respective agents, officers and employees, and hold each of them harmless from and against, and shall reimburse each of them for, any and all Liabilities, arising from or incurred in connection with, or arising from any act, omission, fact or circumstances occurring in connection with, in accordance with or for the purposes of, or otherwise related to, this Deed and/or a Service insofar as they relate to Deposited Property held for the account of, or Depository Interests held by, that Holder, except for Liabilities caused by or resulting from any wilful default or negligence or fraud of (i) the Depository or (ii) a Custodian or any Agent if such Custodian or Agent is a member of the same group of companies as the Depository or if, not being a member of the same group of companies, the Depository shall have failed to exercise reasonable care in the appointment and continued use of such Custodian or Agent. The Depository shall be entitled to make such deductions from the Deposited Property or any income or capital arising therefrom or to sell all or any of the Deposited Property and make such deductions from the proceeds of sale thereof as may be required to discharge the obligations of the Holder(s) under this clause.

11.2 The obligations of each Holder under clause 11.1 shall survive any termination of this Deed in whole or in part and any resignation or replacement of the Depository and any Custodian.

11.3 Should any amount paid or payable under this Deed by a Holder be itself subject to tax in the hands of the recipient or be required by law to be paid under any deduction or withholding, the relevant Holder(s) will pay such sums as will after any such tax, deduction or withholding leave the recipient with the same amount as he would have had if no such tax had been payable and no deduction or withholding had been made and such payments and adjustments shall be made as may be necessary to give effect to this clause 11.3.

## **12 Agents**

12.1 The Depository may from time to time appoint one or more Agents on such terms as the Depository may think fit to perform any obligations of the Depository under this Deed and the Depository may remove any such Agent.

12.2 In particular but without prejudice to the generality of clause 12.1, the Depository shall be entitled to delegate by power of attorney or otherwise to any Agent, all or any of the powers, authorities and discretions vested in the Depository by this Deed and such delegation may be made upon such terms and subject to such conditions, including the power to sub-delegate, as the Depository may think fit.

12.3 Notice of any appointment or removal pursuant to clause 12.1 or any delegation pursuant to clause 12.2 shall, where such matter is in the opinion of the Depository material to the Holders of any series of Depository Interests, be given by or for the Depository to the Holders of that or those series.

### **13 Resignation of the Depository**

13.1 The Depository may resign as Depository by giving at least 30 days' prior notice in writing to that effect to EUI. Within 7 days after the giving of such notice, notice thereof shall be duly given by or for the Depository to the Holders.

13.2 The resignation of the Depository shall take effect on the date specified in such notice provided that no such resignation shall take effect until the appointment by the Depository of a successor Depository. The Depository undertakes to use its reasonable endeavours to procure the appointment of a successor Depository with effect from the date specified in such notice as soon as reasonably practicable following the giving of notice of resignation. Upon any such appointment and acceptance, notice thereof shall be given by or for the Depository to the Holders and EUI as soon as reasonably practicable.

13.3 Upon the resignation of the Depository (referred to in this clause 13.3 as the 'Retiring Depository') and against payment of all sums due to the Retiring Depository under this Deed, the Depository shall deliver to its successor as depository (the 'Successor') sufficient information and records to enable the Successor efficiently to perform its obligations under this Deed and shall transfer to the Successor or to a Custodian or other Agent appointed by the Successor all Deposited Property held by the Retiring Depository as trustee under this Deed. Upon the date when such resignation takes effect, any Custodian appointed by the Retiring Depository shall be instructed by the Retiring Depository to transfer to the Successor or to a Custodian or other Agent appointed by the Successor the Deposited Property held by it pursuant to this Deed.

### **14 Termination of Deed**

14.1 The Depository may terminate this Deed either in its entirety or in respect of one or more series of Depository Interests by giving 30 days' prior notice to that effect to EUI. Within 7 days after the giving of such notice, notice of such termination shall be duly given by the Depository to the Holders of the Depository Interests concerned.

14.2 If any Depository Interests in respect of which this Deed is terminated remain outstanding after the date of termination, the Depository shall as soon as reasonably practicable (i) sell the Deposited Property represented by such Depository Interests then held by it under this Deed (ii) request EUI to remove the relevant Depository Interests from the CREST system and (iii) following such removal shall not register transfers of the relevant Depository Interests, pass on dividends or distributions or take any other action in respect of such Deposited Property, except that it shall, as soon as reasonably practicable, deliver the net proceeds of any such sale, after deducting any sums then due to the Depository, together with any other cash then held by it under this Deed, pro rata to Holders in respect of their Depository Interests. After making such sale, the Depository shall be discharged from all obligations under this Deed, except its obligation to account to Holders for such net proceeds and other cash comprising the Deposited Property without interest.

14.3 For the avoidance of doubt, any obligations of a Taker or a Holder herein to make payments to the Depository and indemnify, keep indemnified and hold harmless the Depository, the Custodian and their respective agents, officers and employees shall survive any such termination.

### **15 Substitution of replacement Depository Interests**

15.1 The Depository may at any time and from time to time, whether in connection with the exercise of its powers under clause 14 or otherwise, by deed executed by it declare that, with effect

from such time or times as may be specified therein, all or one or more specified series of Depository Interests constituted by virtue of this Deed shall, without the need for any consent or concurrence by the Holders thereof, be cancelled and extinguished upon the basis that the Depository shall procure that each Holder concerned shall receive, in substitution therefor, depository interests ('Replacement Depository Interests') representing the Deposited Property to which his Depository Interests so cancelled and extinguished related. Such Replacement Depository Interests shall be constituted under a deed poll or other instrument executed by the Depository (a 'Replacement Deed') which confers upon each such Holder rights and entitlements in relation to the relevant Deposited Property as, in the reasonable opinion of the Depository, are substantially commensurate with the rights and entitlements of Holders under this Deed.

15.2 A declaration made by the Depository in conformity with the provisions of this clause 15 shall have effect accordingly, and upon it so taking effect the Depository shall hold the Deposited Property upon the trusts contained in the deed poll or other instrument under which the Replacement Depository Interests are constituted. Such declaration may also make such provision as the Depository considers reasonable with respect to (i) accrued rights and liabilities of the Depository and the Holders under this Deed; (ii) notification of the operation of the power conferred by this clause 15 to Holders; (iii) the procedures to be followed with respect to entries in the CREST system; and (iv) such other acts or matters as may in the reasonable opinion of the Depository be requisite or desirable in connection with the operation of the power conferred by this clause 15.

15.3 Insofar as the provisions of a Replacement Deed would, if compared with the provisions of this Deed, represent amendments or supplements, the Depository will observe the requirements of clause 17, *mutatis mutandis*, in relation to any exercise of its powers under this clause 15.

## **16 Cancellation of Depository Interests and issue of Third Party Depository Interests**

16.1 If the Depository receives notice that a Third Party Depository intends, at the request of the relevant Issuer, to issue Third Party Depository Interests in respect of a class of International Securities in respect of which Depository Interests have been issued, then the Depository may, in its sole discretion and without the need for any consent or concurrence by the Holders: (i) cancel such Depository Interests; and (ii) procure that on such terms as the Depository shall consider appropriate, the Deposited Property relating to such International Securities is transferred to such person(s) as the Third Party Depository shall nominate for that purpose. For the avoidance of doubt, neither EUI, the Depository nor the Custodian shall be required to make any inquiry as to the identity or appropriateness of such nominated person(s), the Third Party Depository or the terms or conditions relating to Third Party Depository Interests and each Holder acknowledges and agrees that neither EUI, the Depository nor the Custodian shall owe any duty of care or have any liability whatsoever to the Holder in respect thereof.

16.2 The Depository or EUI shall be entitled to deduct such fees, costs, duties, taxes and charges as may be applicable and any other sums owing to the Depository in accordance with the provisions of this Deed from the Deposited Property. If any official consent or other action is required prior to the delivery of the Deposited Property to the person(s) nominated by the Third Party Depository, the Depository shall make such arrangements with respect to the Deposited Property as it sees fit.

16.3 The Depository's obligations pursuant to this Deed and in relation to the Deposited Property shall terminate immediately upon the later to occur of the cancellation and transfer referred to in clause 16.1.

16.4 For the avoidance of doubt, any obligations of a Taker or a Holder pursuant to this Deed to make payments to the Depository or indemnify, keep indemnified and hold harmless the Depository, the Custodian and their respective agents, officers and employees shall survive any cancellation and transfer referred to in clause 16.1.

## **17 Amendment of Deed**

17.1 All and any of the provisions of this Deed (other than this clause) may at any time and from time to time be amended or supplemented by the Depository in any respect which it may deem necessary or desirable by a deed supplemental to this Deed.

17.2 Notice of any amendment or supplement, other than an amendment or supplement of a minor or technical nature which does not in the reasonable opinion of the Depository materially affect the interests of the Holders of the series of Depository Interests concerned, shall be given by or for the Depository to the Holders of such series within 30 days of the amendment or supplement taking effect.

17.3 Any amendment or supplement which shall, in the reasonable opinion of the Depository, be materially prejudicial to the interests of the Holders as a whole or to the Holders of one or more series of Depository Interests shall only be made following consultation in accordance with the CREST Manual and shall not take effect until 40 days after service of notice on the CREST members at which time the CREST members shall be deemed to have accepted the amendment or supplement.

17.4 The Depository shall not be obliged to have regard to the consequences for the Holders of any proposed amendment or supplement to this Deed or the exercise of any power conferred on the Depository by this Deed except to the extent expressly provided in this Deed.

## **18 Disclosure of ownership, etc**

18.1 The Depository may from time to time require from any Holder or former or prospective Holder:

18.1.1 information as to the capacity in which such Holder owns or owned Depository Interests and regarding the identity of any other persons then or previously interested in such Depository Interests and the nature of such interests; and

18.1.2 evidence or declaration of nationality or residence of the legal or beneficial owner(s) of Depository Interests registered or to be registered in his name and such information as is required for the transfer of the relevant International Securities to the Holder;

and such other information as may be necessary or desirable for the purposes of this Deed or any other agreement or arrangement relating to each relevant Service. Each Holder agrees to provide any such information requested by the Issuer or the Depository and consents to the disclosure of such information by the Depository or Custodian to the extent necessary or desirable to comply with their respective legal or regulatory obligations.

18.2 To the extent that provisions of or governing any International Securities, the constitution of an Issuer or applicable law may require the disclosure to the Issuer of, or limitations in relation to, beneficial or other ownership of International Securities or other securities, the Holders of Depository Interests shall comply with the Issuer's instructions in respect of such disclosure or limitation, as may be forwarded to them from time to time by the Depository. Holders shall comply with all such disclosure requirements of the relevant Issuer from time to time.

## **19 Notices**

Any notice shall be in writing and signed by or on behalf of the person giving it. Except in the case of personal service, any such notice (including, unless an agent is appointed under the Membership Agreement of a Holder to be served with notice, service of any process) shall be sent or delivered to the party to be served, in the case of the Depository, at the address set out above and marked for the attention of the Company Secretary and, in the case of a Holder, at the address set out in the relevant Membership Agreement as the address to which all written communications and notices will be sent to the CREST member. Provided that in the case of a Holder who is a CREST Personal Member it shall be sufficient for any notice or other notification (including, without limitation, any matter notified for purposes of consultation) to be given to the Sponsor acting for such member at the address held by EUI for such Sponsor in accordance with the relevant Sponsors Agreement, except where, under the contractual arrangements between EUI and the Personal Members for the time being in force, notices in relation to his Membership Agreement are required to be sent to him personally. Any alteration in the details of the party to be served shall, to have effect, be notified to the other party in accordance with this clause. Service of a notice must be effected by one of the following methods:

19.1 personally on a director or the secretary of any party and shall be treated as served at the time of such service;

19.2 by prepaid first class post (or by airmail if from one country to another) and shall be treated as served on the second (or if by airmail the fourth) business day after the date of posting. In proving service it shall be sufficient to prove that the envelope containing the notice was correctly addressed, postage paid and posted; or

19.3 by delivery of the notice through the letterbox of the party to be served and shall be treated as served on the first business day after the date of such delivery.

## **20 Severability**

If at any time any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that shall not affect or impair the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Deed.

## **21 Copies of Deed**

A Holder shall be entitled to one copy of this Deed free of charge upon written request made to the Depository.

## **22 Governing law and jurisdiction**

22.1 This Deed and the Depository Interests shall be governed by and construed in accordance with English law.

22.2 For the benefit of the Depository, the Holder irrevocably agrees that the courts of England shall have jurisdiction to hear and determine any suit, action or proceeding, and to settle any disputes, which may arise out of or in connection with this Deed. For such purposes, the Holder irrevocably submits to the jurisdiction of the courts of England.

22.3 The Holder irrevocably waives any objection which it might now or hereafter have to the courts referred to in clause 22.2 being nominated as the forum to hear and determine any suit, action or proceeding, and to settle any disputes, which may arise out of or in connection with this Deed and agrees not to claim any such court is not a convenient or appropriate forum.

22.4 The submission to the jurisdiction of the courts referred to in clause 22.2 shall not (and shall not be construed so as to) limit the right of the Depository to take proceedings against the Holder 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.

22.5 Each Holder required by the CREST Rules as a member or sponsored member to appoint an agent for service of process, irrevocably appoints the same person as its agent for service of any process in England provided that such person may be replaced from time to time with the consent of EUI.

## **23 Overriding provisions**

23.1 For so long as the Depository Interests of any series remain a participating security in the CREST system, no provision of this Deed or of any other instrument relating to the Depository Interests of that series shall apply or have effect to the extent that it is in any respect inconsistent with:

23.1.1 the holding of the Depository Interests in uncertificated form; or

23.1.2 the transfer of title to the Depository Interests by means of a relevant system; or

23.1.3 the Regulations.

23.2 Without prejudice to the generality of clause 23.1 and notwithstanding anything contained in this Deed or any such instrument:

23.2.1 Depository Interests may be issued in uncertificated form in accordance with and subject as provided in the Regulations;

23.2.2 title to the Depository Interests which are recorded in an Operator register of securities as being held in uncertificated form may be transferred by means of the relevant system concerned;

23.2.3 the Depository shall comply with the provisions of Regulations 25 and 26 of the USRs in relation to the Depository Interests;

23.2.4 Regulation 41 of the USRs may be applied by the Depository where relevant; and

23.2.5 a number of persons up to but not exceeding four may be registered as joint holders of a Depository Interest.

IN WITNESS whereof this document has been duly executed as a deed but not delivered until the day and year first above written.

**SCHEDULE: CONVERSION OF DEPOSITORY INTERESTS INTO CERTIFICATED FORM**

A Depository Interest shall not be converted into certificated form unless (a) the Depository elects that it shall be so converted in accordance with clause 7.1 of this Deed or (b) the Depository from time to time determines that a Holder of a Depository Interest shall be entitled to take action which would cause that Depository Interest to be converted into certificated form. The Depository may effect such conversion by means of a cancellation of the Depository Interest and the issue of a like Certificated Depository Interest in its place; and may effect conversion of a Certificated Depository Interest into a Depository Interest in uncertificated form, where permitted by the following provisions of this Schedule, by means of a cancellation of the Certificated Depository Interest and the issue of a like Depository Interest in uncertificated form in its place. Subject thereto, upon a Depository Interest being recorded on the Register as being held in certificated form, the following provisions shall apply:

- (1)
  - (A) The Holder shall be entitled without payment to receive within two months thereafter one certificate in respect of each series of Certificated Depository Interests held by him. Such certificate shall be prima facie evidence of the Holder's title to such Certificated Depository Interests as are specified therein.
  - (B) Where a Holder has transferred a part of the Certificated Depository Interests comprised in his holding as permitted in paragraph (2) below, he shall be entitled to receive a certificate for the balance without charge within two months of the transfer.
  - (C) The Depository shall not be bound to issue more than one certificate for Certificated Depository Interests held jointly by several persons and delivery of a certificate to the joint Holder who is first named in the register shall be a sufficient delivery to all of them.
  - (D) Every certificate shall be executed by the Depository in such manner as the Depository may determine. The Depository may decide, either generally or in any particular case or cases, that any signatures on any certificates need not be autographic but may be applied to the certificate by some mechanical means or may be printed on them or that the certificates need not be signed by any person.
  - (E) If a certificate is worn out, defaced, lost or destroyed, it may be renewed on such terms (if any) as to evidence and indemnity (with or without security) as the Depository may require. In the case of loss or destruction the person to whom the new certificate is issued shall pay to the Depository any exceptional out-of-pocket expenses incidental to the investigation of evidence of loss or destruction and the preparation of the requisite form of indemnity. In the case where the certificate is worn out or defaced, it may be renewed only upon delivery of the certificate to the Depository.
- (2) The Certificated Depository Interest shall not be transferable by instrument in writing or otherwise howsoever save by a transfer to a system-member with a view to the system-member thereupon holding the Depository Interest in uncertificated form made in conformity with the provisions of the Regulations permitting the Depository thereupon to change the Certificated Depository Interest into uncertificated form.
- (3) Where the Holder is a system-member, he may, in the circumstances permitted in the Regulations, at his request be registered as the Holder of the Certificated Depository Interest in uncertificated form.
- (4) The executors or administrators of a deceased Holder of a Certificated Depository Interest (not being one of several joint Holders) and in the case of the death of one or more of several joint Holders the survivor or survivors of such joint Holders shall be the only persons recognised by the Depository as having any title to such Certificated Depository Interest.
- (5) Any person becoming entitled to a Certificated Depository Interest in consequence of the death or bankruptcy of the Holder of such Certificated Depository Interest may, upon producing such evidence that he sustains the character in respect of which he proposes to act under this paragraph or of his title as the Depository shall think sufficient, be registered himself as the Holder of such Certificated Depository Interest or effect a transfer thereof to a system-member permitted by paragraph (2) above or, subject to the provisions of this Deed, may require the Depository to implement the provisions of clause 7.2. The Depository shall be at liberty to retain the moneys payable upon or in respect of any Certificated Depository Interest to which any person under this paragraph is entitled until such person shall be registered as aforesaid or shall have effected such a transfer thereof or shall have required the Depository to implement clause 7.2 in respect thereof. The Depository shall also have power by notice in writing to require any such person as aforesaid to elect either to be registered as the holder of the Certificated Depository Interest or to effect such a

transfer thereof or to require the Depository to implement clause 7.2 in respect thereof and, in the event of his failing so to elect within sixty days of being required so to do, he shall be deemed to have elected to be registered as the Holder of the Certificated Depository Interest and shall be registered accordingly.

EXECUTED as a DEED by )  
CREST DEPOSITORY LIMITED )  
acting by a director and its )  
secretary or two directors )  
Director .....  
Director/Secretary .....





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