

This appendix sets out summaries of certain aspects of the PRC legal and judicial system, its arbitration system and its company and securities regulations. It also contains a summary of certain Hong Kong legal and regulatory provisions, including summaries of certain of the material differences between PRC and Hong Kong company law, certain requirements of the Listing Rules and the additional provisions required by the Hong Kong Stock Exchange for inclusion in the articles of association of PRC issuers.

## 1. PRC LAWS AND REGULATIONS

### (a) PRC Legal System

The PRC legal system is based on the PRC Constitution and is made up of written laws, regulations, directives and local laws, regulations, laws of the Special Administrative Region and international treaties entered into by China. Decided court cases do not constitute binding precedents, although they are used for the purposes of judicial reference and guidance.

The National People's Congress of the PRC (the "NPC") and the Standing Committee of the NPC are empowered by the PRC Constitution to exercise the legislative power of the State. The NPC has the power to amend the PRC Constitution and enact and amend basic laws governing the State organs, civil and criminal matters. The Standing Committee of the NPC is empowered to interpret, enact and amend laws other than those required to be enacted by the NPC.

The State Council is the highest organ of State administration and has the power to enact administrative rules and regulations. The ministries and commissions under the State Council are also vested with the power to issue orders, directives and regulations within the jurisdiction of their respective departments. All administrative rules, regulations, directives and orders promulgated by the State Council and its ministries and commissions must not conflict with the PRC Constitution and the national laws enacted by the NPC. In the event that any such conflict arises, the Standing Committee of the NPC has the power to annul such administrative rules, regulations, directives and orders.

At the regional level, the people's congresses of provinces and municipalities and their respective standing committees may enact local rules and regulations and the people's governments may promulgate administrative rules and directives applicable to their own administrative areas. These local laws and regulations cannot be in conflict with the PRC Constitution, the national laws and the administrative rules and regulations promulgated by the State Council.

Rules, regulations or directives may be enacted or issued at the provincial or municipal level or by the State Council or its ministries and commissions in the first instance for experimental purposes. After sufficient experience has been gained, the

State Council may submit legislative proposals to be considered by the NPC or the Standing Committee of the NPC for enactment at national level.

The power to interpret laws is vested by the PRC Constitution in the Standing Committee of the NPC. According to the Decision of the Standing Committee of the NPC Regarding the Strengthening of Interpretation of Laws (全國人民代表大會常務委員會關於加強法律解釋工作的決議) passed on 10th June, 1981, the Supreme People's Court has the power to give general interpretation on the application of laws in judicial proceedings in addition to its power to issue specific interpretation for specific cases. The State Council and its ministries and commissions are also vested with the power to give interpretation of the rules and regulations which they have promulgated. At the regional level, the power to give interpretations of the regional laws is vested in the regional legislative and administration organs which promulgate such laws.

All such interpretations carry legal effect.

#### **(b) Judicial System**

The people's courts are the judicial organs of the PRC. Under the PRC Constitution and the Law of Organisation of the People's Courts of the PRC (中華人民共和國法院組織法), the people's courts are made up of the Supreme People's Court, the local people's courts, military courts and other special people's courts. The local people's courts are divided into three levels, namely, the basic people's courts, the intermediate people's courts and the higher people's courts. The basic people's courts are divided into civil, criminal, economic and administrative divisions. The intermediate people's courts have divisions similar to those of the basic people's courts and other special divisions (such as the intellectual property division), in accordance with needs. The judicial work of people's courts at lower levels is subject to the supervision of people's courts at higher levels. The people's procuratorates also have the right to exercise legal supervision over the civil proceedings of people's courts of the same level and the lower level. The Supreme People's Court is the highest judicial organ of the PRC. It supervises the administration of justice by the people's courts at all levels.

The people's courts adopt a two-tier final appeal system. A party may, before the taking effect of a judgment or order, appeal against the judgment or order of the first instance of a local people's court to the people's court at the next higher level. Judgments or orders of the second instance of the same level and at the next higher level are final and binding. Judgments or orders of the first instance of the Supreme People's Court are also final and binding. If, however, the Supreme People's Court or a people's court at a higher level finds an error in a final and binding judgment which has taken effect in any people's court at a lower level, or the presiding judge of a people's court finds an error in a final and binding judgment which has taken effect in the court over which he presides, a retrial of the case may be conducted according to the judicial supervision procedures.

The PRC civil procedures are governed by the Civil Procedure Law of the PRC (中華人民共和國民事訴訟法) (the “Civil Procedure Law”) adopted on 9th April, 1991 prescribes the criteria for instituting a civil action, the jurisdiction of the people’s courts, the procedures to be followed for conducting a civil action, the court procedures, and the procedures for enforcement of a civil judgment or order. All parties to a civil action conducted within the PRC must comply with the Civil Procedure Law. A civil case is generally heard by a court located in the defendant’s place of domicile. The jurisdiction may also be selected by express agreement by the parties to a contract provided that the people’s court having the jurisdiction is located at the plaintiff’s or the defendant’s place of domicile, the place of execution or implementation of the contract or the object of the action but it must not violate the regulations in respect of hierarchy and jurisdiction of the courts as stated in the Civil Procedure Law. A foreign national or foreign enterprise is given the same litigation rights and obligations as a citizen or legal person of the PRC. Should a court of a foreign country limit the litigation rights of PRC citizens and enterprises, the PRC courts shall apply the same limitations to the citizens and enterprises of that foreign country. If any party to a civil action refuses to comply with a judgment or order made by a people’s court or an award made by an arbitration organ in the PRC, the aggrieved party may apply to the people’s court to enforce the judgment, order or award. There are time limits imposed on the right to apply for such enforcement. If at least one of the parties to the dispute is an individual, the time limit is one year. If both parties to the dispute are legal persons or other institutions, the time limit is six months. If a person fails to satisfy a judgment which the court has granted approval to enforce within the stipulated time, the court will, upon application of either party, mandatorily enforce the judgment.

A party seeking to enforce a judgment or order of a people’s court against a party who or whose property is not within the PRC may apply to a foreign court with jurisdiction over the case for recognition and enforcement of such judgment or order. A foreign judgment or ruling may also be recognised and enforced according to PRC enforcement procedures by the people’s court in accordance with the principle of reciprocity or if the PRC has entered into an international treaty with the relevant foreign country or which is acceded to by the PRC which provides for such recognition and enforcement unless the people’s court considers that the recognition or enforcement of a judgment or ruling will violate the basic legal principles of the PRC or its sovereignty or security, or for reasons of social and public interest.

**(c) Arbitration and Enforcement of Arbitral Awards**

The Arbitration Law of the People's Republic of China (中華人民共和國仲裁法) (the "Arbitration Law") was passed by the Standing Committee of the NPC on 31st August, 1994 and came into effect on 1st September, 1995. It is applicable to, among other matters, trade disputes involving foreign parties where the parties have entered into a written agreement to refer the matter to arbitration before an arbitration committee constituted in accordance with the Arbitration Law. Under the Arbitration Law, an arbitration committee may, before the promulgation by the PRC Arbitration Association of arbitration regulations, formulate interim arbitration rules in accordance with the Arbitration Law and the PRC Civil Procedure Law. Where the parties have by agreement provided arbitration as the method for dispute resolution, the people's court will refuse to handle the case if one party institutes legal proceedings in a people's court.

The Listing Rules and the Mandatory Provisions require an arbitration clause to be included in the articles of association of a company listed in Hong Kong and, in the case of the Listing Rules, also in a contract between the company and each director and supervisor, to the effect that whenever any dispute or claim arises from the articles of association, or from any rights or obligations conferred or imposed by the PRC Company Law or other relevant laws and administrative regulations concerning the affairs of a company between (i) a holder of overseas listed foreign shares and the company and its directors or supervisors; or (ii) a holder of overseas listed foreign shares and the directors, supervisors, manager or other officers of the company, such parties shall submit that dispute or claim for arbitration before either the China International Economic and Trade Arbitration Commission ("CIETAC") or the Hong Kong International Arbitration Centre ("HKIAC"). If the party seeking arbitration elects to arbitrate the dispute or claim at the HKIAC, then either party may apply to have such arbitration conducted in Shenzhen according to the securities arbitration rules of the HKIAC. CIETAC is a foreign affairs arbitration organ in the PRC. CIETAC is located in Beijing with branch offices in Shenzhen and Shanghai.

Under the Arbitration Law and PRC Civil Procedure Law, an arbitral award is final and binding on the parties. If a party fails to comply with an award, the other party to the award may apply to the people's court for enforcement. A people's court may refuse to enforce an arbitral award made by an arbitration commission if there is any procedural or membership irregularity specified by law or the award exceeds the scope of the arbitration agreement or is outside the jurisdiction of the arbitration commission.

A party seeking to enforce an arbitral award of a foreign affairs arbitration organ of the PRC against a party who or whose property, is not within the PRC, may apply to a foreign court with jurisdiction over the case for enforcement. Similarly, an arbitral award made by a foreign arbitration body may be recognised and enforced by the PRC courts in accordance with the principles of reciprocity or any international treaty

concluded or acceded to by the PRC. The PRC acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “New York Convention”) adopted on 10th June, 1958 pursuant to a resolution of the Standing Committee of the NPC passed on 2nd December, 1986. The New York Convention provides that all arbitral awards made in a state which is a party to the New York Convention shall be recognised and enforced by other parties to the New York Convention, subject to their right to refuse enforcement under certain circumstances, including where the enforcement of the arbitral award is against the public policy of the state to which the application for enforcement is made. It was declared by the Standing Committee of the NPC simultaneously with the accession of the PRC that (i) the PRC will only recognise and enforce foreign arbitral awards on the principle of reciprocity; and (ii) the PRC will only apply the New York Convention in disputes considered under PRC laws to arise from contractual and non-contractual mercantile legal relations.

**(d) Taxation**

*(a) Taxes Applicable to Joint Stock Limited Companies*

1. Taxation of joint stock companies

(1) Income tax

According to the Provisional Regulations of Income Tax for Domestic Companies (中華人民共和國企業所得稅暫行條例) effective on January 1994 and stipulated by the State Council, all the Chinese companies, including State-owned companies, collective enterprises, private enterprises, joint stock companies and other companies (excluding joint ventures and foreign companies) are required to pay income tax at a rate of 33 per cent. on taxable income derived from their production of goods and business activities. However, income taxes could be reduced pursuant to any promulgations of new regulations by the State Council.

(2) Value Added Tax (“VAT”)

Both the Provisional Rules of the People’s Republic of China on VAT (中華人民共和國增值稅暫行條例) and the Details Rules for the Implementation of the Provisional Rules of the People’s Republic of China on VAT (中華人民共和國增值稅暫行條例實施細則) (effective from 1st January, 1994) stipulate that all units or individuals who are engaged in the sale of goods, the provision of processing, repairs and replacement services, and the importation of

goods within the territory of the People's Republic of China are required to pay VAT. "General tax payers", as certified by local tax bureaus, are generally required to pay the basic rate of VAT at 17 per cent. "Small scale tax payers", as certified by local tax bureaus, are required to pay 6 per cent. VAT.

(3) Business Tax

Both the Provisional Rules of the People's Republic of China on Business Tax (中華人民共和國營業稅暫行條例) effective on 1st January, 1994 and the Details Rules for the Implementation of the Provisional Rules of the People's Republic of China on Business Tax (中華人民共和國營業稅暫行條例實施細則) effective on 25th January, 1993, stipulate that all units and individuals engaged in the provision of taxable labour services, the assignment of intangible assets or sale of immovable properties, within the territory of the People's Republic of China, are required to pay 3 per cent. to 20 per cent. business tax on their gross business turnover.

(b) *Taxation of shareholders*

(i) Tax on Dividends

On 21st July, 1993 the State Tax Bureau, by a notice (the "Notice Relating to Taxes Applicable to Foreign Enterprises and Foreign Nationals in Relation to Dividends and Gains obtained from the Holding and Transferring of Shares") (the "Tax Notice") (國家稅務局關於外商投資企業、外國企業和外籍個人取得股票(股權)轉讓收益和股息所得稅收問題的通知) confirmed that dividends received by foreign investors from PRC listed domestic shares, and overseas listed shares such as H shares (H shares are shares issued by chinese companies outside China and denominated in a foreign currency), were exempted from withholding tax, which would otherwise have been applicable at a rate of 20 per cent..

On 31st October, 1993, the Amendments to the Income Tax Law Applicable to Individuals of the PRC (關於修改《中華人民共和國所得稅法》的決定) (the "Amendments") were promulgated taking effect from 1st January, 1994. The Amendments stipulate that all previously announced taxation laws and regulations which contradict the Amendments shall be invalid. Under the Amendments, any foreign national who is not a resident of the PRC will be subject to a withholding tax on dividends received from H shares at a rate of 20 per cent.. On 26th July, 1994, State Tax Bureau

issued the 關於外籍個人持有中國境內上市公司股票所取得的股息有關稅收問題的通知 (the “Notice”) under which dividends or other distributions received by foreign individuals who hold overseas shares (including H shares) and/or Domestic Listed Foreign shares from a PRC listing company are, for the time being, exempted from individual income tax.

Accordingly, under current PRC laws and regulations, no withholding tax is payable in respect of dividends or other distributions on H shares held by any foreign enterprise or foreign national. If, however, the Tax Notice and the Notice are withdrawn, a 20 per cent. withholding tax may be applied on such dividends or distributions, subject to any tax reductions pursuant to an applicable double taxation avoidance treaty.

(ii) Tax on the Transfer of Shares

Although the Implementing Rules of Individual Income Tax Law of the PRC (中華人民共和國個人所得稅法實施條例) (the “Implementing Rules”), issued on 28th January, 1994, stipulated that gains realised on the sale of equity securities by an individual are subject to income tax at the rate of 20 per cent. and empower the Ministry of Finance to draft detailed rules on the mechanisms of collecting such tax, the Tax Notice exempted holders of H shares from capital gains tax on the disposal of H shares. On 20th June, 1994, the Ministry of Finance and the State Tax Bureau jointly issued the “Notice on the Temporary Non-Levy of Individual Income Tax on Gains from Share Transfers” (關於股票轉讓暫不徵收個人所得稅的通知), exempting individuals from the payment of income tax on gains from the transfer of shares for the years 1994 and 1995. On 9th February, 1996, the Ministry of Finance and the State Tax Bureau jointly issued the Notice on the Temporary Non-Levy of Individual Income Tax on Gains from Share Transfers for 1996 (關於股票轉讓暫不徵收個人所得稅的通知), exempting individuals from the payment of tax on gains from the transfer of shares for the year of 1996. On 30th March, 1998, the Ministry of Finance and the State Tax Bureau jointly issued the Notice on the Non-levy of Individual Income Tax on Gains from Share Transfers (關於個人轉讓股票所得繼續暫免征收個人所得稅之通知), exempting individuals from the payment of tax on gains from the transfer of shares since 1997.

The exemption enjoyed by a foreign enterprise under the Tax Notice is not affected by the Implementing Rules and continues to apply.

## (iii) Tax Treaties

In the event that withholding tax is payable as referred to in (i) or (ii) above, foreign enterprises without an establishment or office in the PRC and non-PRC individual investors residing in countries which have entered into the avoidance of double-taxation treaties with the PRC may be entitled to a reduction of withholding tax imposed on the payment of dividends to such investors. The PRC is currently a party to the avoidance of double taxation treaties with a number of countries, including Australia, Canada, France, Germany, Japan, Malaysia, the Netherlands, Singapore, the United Kingdom and the United States.

## (iv) Stamp Duty

By virtue of the Interim Regulations Concerning Taxation Issues for Joint Stock Trial Enterprises (關於股份制試點企業稅收問題的暫行規定) and the Interim Regulations of the PRC Concerning Stamp Duty (中華人民共和國印花稅暫行規定) taking effect on 1st October, 1988, PRC stamp duty is imposed on the transfer of PRC listed domestic shares. However, H shares which are transferred outside the PRC are exempted from the payment of PRC stamp duty.

## (v) Estate, Inheritance or Gift Tax

The PRC does not currently have any estate, inheritance or gift tax.

**(e) Foreign Exchange Control**

Major reforms have been introduced to the foreign exchange control system of the PRC since 1993.

On 28th December, 1993, the People's Bank of China ("PBOC"), with the authorisation of the State Council, issued the Notice on Further Reform of the Foreign Exchange Control System (中國人民銀行關於進一步改革外匯管理體制的公告) which came into effect on 1st January, 1994. Other main regulations and implementation measures includes the PRC Foreign Exchange Control regulations (中華人民共和國外匯管理條例) effective on 1st April, 1996 and promulgated by the State Council on 29th January, 1996 and the Regulations on the Foreign Exchange Settlement, Sale and Payments (結匯、售匯及付匯管理規定) which were promulgated by PBOC on 20th June, 1996 which took effect on 1st July, 1996 and which contain detailed provisions regulating the settlement, sale and payment of foreign exchange by domestic enterprises, individuals, economic organisations and social organisations in the PRC.



Under such new regulations, the previous dual exchange rate system for Renminbi was abolished and a unified floating exchange rate system, based largely on supply and demand, was introduced. The PBOC publishes, on each business day, the Renminbi exchange rate against other major foreign currencies. Such rate is to be set by reference to the Renminbi/major foreign currencies trading price on the previous day on the inter-bank foreign exchange market.

In general, all organisations and individuals within the PRC, including foreign invested enterprises, are required to remit their foreign exchange earnings to the PRC. In relation to PRC enterprises, their recurrent foreign exchange earnings are generally required to be sold to designated banks unless specifically approved otherwise. Foreign-invested enterprises, on the other hand, are permitted to retain certain percentage of their recurrent foreign exchange earnings and the sums retained may be deposited into foreign exchange bank accounts maintained with designated banks. Capital foreign exchange must be deposited into foreign exchange bank accounts maintained with designated banks and can generally be retained in such accounts.

At present, control on the purchase of foreign exchange is being relaxed. Enterprises which require foreign exchange for their recurrent activities such as trading activities and payment of staff remuneration may purchase foreign exchange from designated banks, subject to the production of relevant supporting documents.

In addition, where an enterprise requires any foreign exchange for the payment of dividends that are payable in foreign currencies under applicable regulations, such as the distribution of profits by a foreign invested enterprise to its foreign investment party, then, subject to the due payment of tax on such dividends, the amount required may be withdrawn from funds in foreign exchange accounts maintained with designated banks, and where the amount of the funds in foreign exchange is insufficient, the enterprise may purchase additional foreign exchange from designated banks upon the presentation of the resolutions of the directors on the profit distribution plan of that enterprise.

Despite the relaxation of foreign exchange control over current account transactions, the approval of the SAFE is still required before an enterprise may borrow a loan in foreign currency or provide any foreign exchange guarantee or to make any investment outside of the PRC or to enter into any other capital account transaction which involves the purchase of foreign exchange.

When conducting actual foreign exchange transactions, the designated banks may, based on the exchange rate published by the PBOC and subject to certain limits, freely determine the applicable exchange rate.

Foreign exchange quota entitlements brought forward under the old system will be gradually phased out, and the holders of these entitlements will be permitted to use their remaining quotas to purchase foreign exchange through Swap Centres within a prescribed period.

**(f) Company Law**

On 29th December, 1993, the Standing Committee of the NPC promulgated the PRC Company Law (中華人民共和國公司法) which came into effect on 1st July, 1994. Before implementation of the PRC Company Law, the formation and regulation of joint stock limited companies were governed by the Standard Opinion for Joint Stock Companies (關於股份有限公司的規範意見) (the “Standard Opinion”) promulgated by the State Restructuring Commission on 15th May, 1992. The Standard Opinion was superseded by the PRC Company Law. The legal status of joint stock limited companies established pursuant to the Standard Opinion is preserved and these companies are required to conform to the provisions of the PRC Company Law and apply for re-registration before 31st December, 1996. The Overseas Listing Special Regulations (境外上市的特別規定) were passed by the State Council on 4th August, 1994 pursuant to Articles 85 and 155 of the PRC Company Law. On 27th August, 1994, the Mandatory Provisions, which must be incorporated in the articles of association of all PRC joint stock limited companies to be listed overseas, were jointly promulgated by the Securities Committee and the State Restructuring Commission.

Set out below is a summary of the provisions of the PRC Company Law, the Overseas Listing Special Regulations and the Mandatory Provisions:

*(i) General*

The PRC Company Law governs two types of companies, namely companies incorporated in the PRC with limited liability and companies incorporated in the PRC as joint stock limited companies. Both types of companies have the status of an enterprise legal person.

The liability of shareholders of a limited liability company is limited to the extent of the amount of capital contributed by them and the company is liable to its creditors to the full amount of the assets owned by it. A joint stock limited company is a company having a registered share capital divided into shares of equal par value. The liability of its shareholders is limited to the extent of the amount of shares subscribed by them and the company is liable to its creditors to the full amount of all the assets owned by it.

A company may invest in other limited liability companies and joint stock limited companies. Apart from investment companies and holding companies authorised by the State Council, the amount of a company's aggregate investment in other joint stock limited companies and limited liability companies may not exceed 50 per cent. of its net assets. The Mandatory Provisions provide that a company may, subject to the approval of the company's supervisory department authorised by the State Council, operate as a holding company.

(ii) *Incorporation*

Under the PRC Company Law, a joint stock limited company may be incorporated by either the promotion method or public issue.

The method of promotion means that for the purpose of establishing a joint stock company, all the shares to be issued by the company shall be subscribed by the promoters. Where a company is established by means of public issue, not less than 35 per cent. of the shares to be issued by the company shall be subscribed by its promoters and the remaining shares to be issued shall be offered to the public for subscription.

The establishment of a joint stock limited company requires a minimum of five promoters with at least half of the promoters having a residence within the PRC. The establishment of a limited liability company, as opposed to a joint stock limited liability company, requires a minimum of two and a maximum of fifty shareholders. A State-owned enterprise which is to be restructured into a joint stock limited company by the public issue method may have less than five promoters.

Under the Overseas Listing Special Regulations, a State-owned enterprise or an enterprise with the majority of its assets owned by the State can be restructured in accordance with the relevant regulations to become a joint stock limited company and may offer shares for subscription to overseas investors. If such a company is to be established by the promotion method, it may have less than five promoters and the company may issue H Shares once incorporated.

(iii) *Procedures for Establishment of Companies*

The establishment of a joint stock limited company must be approved by the relevant governmental departments authorised by the State Council or by the relevant provincial People's Government.

Where a company is established by the promotion method, the promoters shall pay for their shares in full immediately after they have completed their written subscriptions for the shares to be issued in accordance with the articles of association of the company. For shares to be issued through contributions of industrial property, non-patented technology and land use rights, the legal procedures for transferring these property rights shall be carried out in accordance with the law. When all subscription payments by the promoters have been made, the promoters shall elect the board of directors and the members of the supervisory committee. The board of directors of the company shall submit the supporting documents, such as the approval documents for the establishment of the company, its articles of association and the capital verification certificate, to the Administration of Industry and Commerce Bureau for registration of the company.

Where a company is established by the public issue method, the value of the shares to be issued through contribution of industrial property rights and non-patented technology shall not exceed twenty (20%) per cent. of the registered capital of the company. Where a State-owned enterprise is converted into a joint stock company, the State assets shall not be under-valued in exchange for shares, be sold at prices below the prevailing market price, or be allocated to any person without consideration. The promoters must submit to the relevant securities administration authority of the State Council an application for public issue together with other supporting documents including, among others, (i) the draft articles of association; (ii) the prospectus; (iii) the particulars of the receiving banker; (iv) the name of underwriters and the underwriting agreement; (v) the approval document for the establishment of the Company; (vi) the names of the promoters, the number of shares subscribed for by the promoters, the investment made and the capital verification certificate; and (vii) a business forecast report. The promoters may proceed with the public offering of shares only after the approval of the relevant securities administration authority has been obtained.

An inaugural meeting of the company shall be convened by the promoters within 30 days after the shares have been paid up in full. Matters required to be transacted at the inaugural meeting include, among others, the adoption of the company's articles of association, the election of the members of the board of directors, the election of members of the supervisory committee and the review of the value attributed to the assets injected by the promoters into the company in return for its shares. The board of directors of the company is required to submit the requisite documents to the Administration of Industry and Commerce Bureau for registration of the company within 30 days after the inaugural meeting.

The date of establishment of a company is the day when its business licence is issued by the Administration of Industry and Commerce Bureau. A joint stock company established by means of public issue shall after its establishment, report to the relevant securities administration authority of the State Council on its share subscription for record.

(iv) *Responsibilities of Promoters*

Under the PRC Company Law, the promoters of a company are liable for:

- (1) joint liabilities for payment of expenses and liabilities incurred in connection with the establishment of the company in the event of the company being established;
- (2) joint liabilities for repayment of the subscription monies to the subscribers together with interest at bank rate for savings deposit for the same period of time, in the event of the company not being established; and
- (3) damages to the company for losses suffered by the company as a result of the default of the promoters in the course of the establishment of the company.

According to the Provisional Regulations Concerning the Issue and Trading of Shares (股票發行與交易管理暫行條例) (the “Provisional Regulations”) promulgated by the State Council on 22nd April, 1993, the promoters of a company are required to assume joint and several responsibility for the accuracy of the contents of the prospectus and to ensure that the prospectus does not contain any misleading statement or omit any material information.

(v) *Shares*

(aa) Registered capital

The registered capital of a company is the total amount of paid-up capital of the company registered with the Administration of Industry and Commerce Bureau. The minimum amount of registered capital of a joint stock limited company is Rmb10,000,000. A company, the shares of which are authorised by the relevant securities administration authority to list on a stock exchange, must have a registered capital of not less than Rmb50,000,000. The registered capital of a company shall be divided into shares of equal par value.

## (bb) Allotment and issue of shares

The issue of shares must be based on the principles of transparency, equality and fairness. The same class of shares must carry equal rights. Where shares are issued at the same time, the terms (including the subscription price) of allotment of each share must be identical to the others of the same class. Any entity or individual subscribing for shares in a joint stock company shall pay the same price for each share.

Shares may be issued at par or at a premium but may not be issued below the par value. Shares to be issued as a premium shall require the approval of the securities administration authority of the State Council. The premiums generated from issuing shares at a premium shall be allocated to the capital accumulation fund of the company.

## (cc) Registered or bearer shares

Shares may be issued in registered form or bearer form. Shares issued by the company to promoters, State-designated investment institutions or legal persons shall be in registered form and shall state the name of the promoters, State-authorized investment institutions or legal persons. Such shares may not be registered under any other name, or under the name of a nominee. Shares issued to the public may be either registered or bearer shares. The Overseas Listing Special Regulations and the Mandatory Provisions provide that shares issued to foreign investors and listed overseas shall be issued in registered form, denominated in Renminbi and subscribed for in foreign currency.

Under the Overseas Listing Special Regulations and the Mandatory Provisions, shares issued to foreign investors, including investors from the territories of Hong Kong, Macau and Taiwan and listed overseas are known as “overseas listed foreign shares”, and those shares issued to investors within the PRC other than the territories specified above are known as “domestic shares”.

The State Council is empowered to prescribe detailed measures in connection with any offer of shares. A joint stock limited company may offer its shares to the overseas public with the approval of the securities administration department of the State Council. In addition to providing for the number of shares to be underwritten, an underwriting agreement may, subject to the prior approval of the Securities Committee, make provisions to set aside up to 15 per cent. of the overseas listed foreign shares in the underwriting agreement as part of the total number of shares to be offered under the Overseas Listing Special Regulations.

A register of shareholders shall be maintained by the company in respect of shares issued in registered form. Information such as the names and addresses of shareholders, number of shares held by each shareholder and the dates on which the shareholders became holders of the relevant shares is required to be entered into the register.

Where bearer shares are issued, the company shall keep a record of the amount of bearer shares issued, the number designated to each bearer share and the date of issue of each bearer share.

(vi) *Increase of share capital*

Under the PRC Company Law, a joint stock limited company may increase its share capital by means of an issue of H Shares subject to the following:

- (1) share subscription for the previous issue must have been paid in full and at least one year has elapsed since the date of the immediately preceding share issue. However, under the Overseas Listing Special Regulations, if the company increases its capital by way of an issue of overseas listed foreign shares, the time period elapsed since the last share issue may be less than 12 months;
- (2) the company must have made profits for the immediately three preceding years and its distributable profits must have been sufficient to pay dividends;
- (3) the financial and accounting statements of the company in the immediately three preceding years must not have contained any false information; and
- (4) the forecast dividend yield of the company shall exceed the interest rate of bank for savings deposit for the same period.

An issue of shares shall be approved by shareholders in general meeting. After the shareholders' approval has been obtained, the board of directors of the company shall also obtain the approval of the departments authorised by the State Council or that of the provincial People's Government. If a company issues shares by way of an offer to the public, the approval of the relevant securities administration authority of the State Council will also have to be obtained. Upon completion of the subscription of H Shares, the company must register the increase in its registered capital with the Administration of Industry and Commerce Bureau and issue a public notice.

*(vii) Reduction of share capital*

Subject to the minimum registered capital requirements, a joint stock limited company may reduce its registered capital in accordance with the following procedures prescribed:

- (1) the company shall prepare a balance sheet and a detailed inventory of its assets;
- (2) the reduction of registered capital must be approved by shareholders in general meeting;
- (3) the company shall inform its creditors of the intended reduction in capital within 10 days and publish a public announcement of the intended reduction in a newspaper at least three times within 30 days after the resolution approving the reduction has been passed;
- (4) the creditors of the company are entitled within the statutory prescribed time limit require the company to pay its debts or provide guarantees covering the debts within 30 days from the date the creditor receives the notice or, where the notice has not been received, within 90 days after the date on which the public announcement is made; and
- (5) the company must apply to the Administration of Industry and Commerce Bureau for registration of the reduction in registered capital.

*(viii) Repurchase of shares*

A company may not purchase its own shares except in cases where a company effects a cancellation of shares due to a reduction in registered share capital or a merger with another company which holds shares in the company or such other purpose permitted by law and administrative regulations. The Mandatory Provisions provide that, upon obtaining the necessary approvals in accordance with the articles of association of a company and that of the relevant supervisory authorities, the company may repurchase its issued shares for the foregoing purposes by way of a general offer to the shareholders of the company or purchase on a stock exchange or by way of an off market contract.



Under the PRC Company Law, within 10 days following a repurchase of a company's own shares, a company must, in accordance with the applicable law and administrative regulations, cancel the portion of the shares repurchased, register the change of its capital and issue a public announcement thereafter.

*(ix) Transfer of shares*

Shares may be transferred in accordance with the relevant law and regulations.

A shareholder may only effect a transfer of its shares on a stock exchange established in accordance with law. Registered shares may be transferred either by endorsement by the shareholders or by such other method specified by the applicable law and administrative regulations.

Promoters shall not transfer their shares in a company within three years after the establishment of the company. Directors, supervisors and the manager of a company shall not transfer their shares in the company during their term of office with the company and shall declare their shareholdings to the company.

There is no restriction under the PRC Company Law as to the percentage shareholding of a single shareholder of a company.

*(x) Shareholders*

Under the PRC Company Law and the Mandatory Provisions, the rights of a shareholder include the rights to:

- (1) attend and vote in person or to appoint a proxy to attend and vote on his behalf at general meetings of the company;
- (2) inspect the articles of association of the company, the minutes of shareholders' meetings and the financial report of the company and to put forward propositions and enquiries relating to the operation of the company;
- (3) transfer the shares held by it in accordance with law on a stock exchange established in accordance with the relevant laws;
- (4) receive the surplus assets of the company in its winding up in proportion to its shareholding; and

- (5) may initiate legal proceedings in the people's court if a resolution passed at a shareholders' meeting or directors' meeting has infringed the law or administrative regulations or the legitimate interests of the shareholders.

A shareholder is liable to the company to the extent of the amount of shares he subscribed for.

A shareholder may enjoy such other rights and is required to assume such other obligations as specified in the company's articles of association.

(xi) *Shareholders' general meetings*

(aa) Powers of shareholders in general meeting

The shareholders' general meeting is the organ of authority of the company and may exercise the following powers:

- (1) to determine the company's business policies and investment plans;
- (2) to elect or remove directors and supervisors who are the representatives of shareholders and to fix the remuneration and to decide upon such related matters relating to directors and supervisors;
- (3) to consider and approve the reports of Board of directors and the supervisory committee;
- (4) to consider and approve the company's annual financial budget and accounting plans;
- (5) to consider and approve the profit distribution plan and plans for recovery of losses;
- (6) to approve the increase or reduction in the registered share capital of the company;
- (7) to approve the issue of debentures by the company;
- (8) to approve the merger, demerger, dissolution and liquidation of the company; and
- (9) to approve amendments to the company's articles of association.

- (bb) Annual general meetings and extraordinary shareholders' general meetings

Shareholders' general meetings are divided into annual general meetings and extraordinary shareholders' general meetings. Annual general meetings must be held once every year. Extraordinary shareholders' general meetings are general meetings other than annual general meetings and shall be convened within two months after the occurrence of any of the following circumstances:

- (1) the number of directors is less than two thirds of the number required under the PRC Company Law or the company's articles of association;
- (2) the company's accumulated losses amount to one-third of its total paid up capital;
- (3) upon requisition by holders of not less than 10 per cent. of the shares of the company; or
- (4) the board of directors or the supervisory committee considers such a meeting necessary.

- (cc) Proceedings of shareholders' general meetings

A shareholders' general meeting shall be convened by the board of directors in accordance with the PRC Company Law and presided over by the chairman of the board of directors. Notice of shareholders' meeting shall be given not less than 30 days before the date of such meeting. A company which has bearer shares in issue shall make a public announcement of the shareholders' general meeting at least 45 days prior to the meeting being held. Under the Overseas Listing Special Regulations and the Mandatory Provisions, 45 days' notice of a shareholders' general meeting is required to be given to shareholders specifying the matters to be considered at and the date and place of the meeting.

Under the Overseas Listing Special Regulations and the Mandatory Provisions, shareholders who intend to attend a shareholders' general meeting are required to provide the company with a written confirmation of their attendance 20 days prior to the meeting. Shareholders holding 5 per cent. or more of the voting rights of a company are entitled, under the Overseas Listing Special Regulations, to propose to the company, in writing, new resolutions to be considered at an annual general meeting and the company

shall include any proposed resolutions which are within the powers of a shareholders' general meeting in the agenda of that meeting.

The PRC Company Law does not specify any quorum requirement for a general meeting. The Overseas Listing Special Regulations and the Mandatory Provisions provide that a shareholders' general meeting may be held if shareholders holding 50 per cent. or more of the voting rights of a company have replied in writing 20 days prior to the proposed date of the meeting that they intend to attend the meeting. In the event that the 50 per cent. level is not attained, a shareholders' general meeting may be held if the company shall within 5 days after the last day for receipt of the replies notify shareholders by public announcement of the matters to be considered at and the place and date of the meeting.

Each shareholder present at a shareholders' general meeting is entitled to one vote for every share held. A shareholder may appoint a proxy to attend and vote on his behalf at a shareholders' general meeting. Ordinary resolutions proposed at a shareholders' general meeting must be passed by more than half of the votes cast by shareholders present in person or by proxy at the meeting. Resolutions on: (i) amendments to the company's articles of association; (ii) the merger, division or dissolution of the company; (iii) the increase and reduction of capital of and the issue of any class of shares, bonds and securities by the company; and (iv) other matters which the shareholders' general meeting has resolved by way of ordinary resolution as having a potentially material effect on the company and should be approved by special resolution of more than two-thirds of the votes so cast.

The Mandatory Provisions require class meetings to be held in the event of a variation or abrogation of the class rights of a class of shareholders. Holders of domestic shares and holders of overseas listed foreign shares are deemed to be different classes of shareholders.

*(xii) Directors*

## (aa) Board of directors

The board of directors of a joint stock company shall comprise between 5 and 19 directors. The term of office of a director shall be prescribed by the company's articles of association but shall not exceed three years. A director may serve consecutive terms if re-elected. The board of directors of a company may exercise the following powers:

- (1) to convene shareholders' meetings and to report on its work to the shareholders;
- (2) to implement resolutions passed by shareholders in general meetings;
- (3) to formulate on the company's business plans and investment plans;
- (4) to formulate the company's annual budgets and accounts;
- (5) to formulate profit distribution plans and plans for recovery of losses;
- (6) to formulate plans for the increase or decrease in registered capital and plans for issue of debentures;
- (7) to formulate plans for the merger, division or dissolution of the company;
- (8) to decide on the internal management structure of the company;
- (9) to appoint or dismiss the manager, and at the recommendation of the manager, employ or dismiss deputy managers and financial controllers and to fix their remuneration; and
- (10) to formulate the management control system of the company.

In addition, the Mandatory Provisions provide that the board of directors is also responsible for formulating proposals for amending the articles of association of the company.

(bb) Board meetings

Regular meetings of the board of directors of a company shall be held at least twice every year. Notice of regular board meetings shall be given at least 10 days before the date of the meeting. Notices of any other extraordinary board meetings shall be given in such manner and for such notice period as may be determined by the board of directors.

A quorum for a board meeting shall be constituted by more than half of the directors. A director may attend a board meeting personally or may authorise in writing another director as his representative to attend on his behalf. The power of attorney shall define the scope of the representative's authority. All board resolutions must be passed by the affirmative votes of more than half of the directors. All resolutions passed at a board meeting shall be recorded in the minutes of the relevant meeting and the minutes shall be signed by the directors who attended the meeting and the person who recorded the minutes.

If any board resolution contravenes any applicable laws and regulations or the company's articles of association and results in substantial damages to the company, any director who participated in passing the resolution (except those who voted against the resolution and whose dissenting vote is recorded in the relevant minutes) shall be personally liable to the company.

(cc) Chairman of the board of directors

The board of directors shall appoint a chairman. The appointment of the chairman shall be approved by more than half of the directors. The chairman is the legal representative of the company and may exercise the following powers:

- (1) to preside over shareholders' meetings and convene and preside over meetings of the board of directors;
- (2) to examine the implementation of resolutions of the board of directors; and
- (3) to sign the share certificates and debentures issued by the company.

(dd) Qualification of directors

The PRC Company Law provides that the following persons are not eligible to act as directors:

- (1) a person who has no civil capacity or has a restricted civil capacity;
- (2) a person who has been convicted of offences relating to bribery, corruption, misappropriation of property, or the sabotage of social economic order, where less than five years have elapsed since the date of completion of the sentence; or a person who has been deprived of his political rights where less than five years have elapsed since completion of such deprivation;
- (3) a person who is a former director, factory manager or manager of a company or enterprise which has become bankrupt or has been liquidated due to mismanagement and who is personally liable for the bankruptcy or liquidation of such company or enterprise, where less than three years have elapsed since the date of the completion of the liquidation of the company or enterprise;
- (4) a person who has been a legal representative of a company or enterprise the business licence of which has been revoked due to unlawful operation by the company or enterprise and the person is personally responsible for such revocation, where less than three years has elapsed since the date of such revocation;
- (5) a person who is liable for a relatively large amount of debt which has not been repaid when due; or
- (6) a person who is a State civil servant.

Other circumstances under which a person is disqualified from acting as a director of a company are set out in the Articles of Association and the Mandatory Provisions.

*(xiii) Supervisory committee*

A company is required to establish a supervisory committee comprising not less than three members. The supervisory committee is responsible for:

- (1) examining the financial matters of the company;
- (2) supervising the directors and manager of the company to ensure that they carry out their duties in compliance with the relevant laws and regulations and the company's articles of association;
- (3) requiring the directors and manager to rectify any action which adversely affects the interests of the company;
- (4) proposing the convening of extraordinary shareholders' general meetings; and
- (5) carrying out other duties specified in the company's articles of association.

A supervisor is also required to attend board meetings.

Under the Supplemental Amendments, resolutions of a supervisory committee are required to be passed by the affirmative votes of two thirds or more of the supervisors.

Members of the supervisory committee shall comprise representatives elected by the workers of the company and representatives elected by shareholders in general meeting in an appropriate proportion specified in the company's articles of association. A director, manager or financial controller of the company cannot become a supervisor. The term of office of a supervisor is three years and a supervisor may serve consecutive terms if re-elected. The circumstances under which a person is disqualified from acting as a director of a company under the PRC Company Law and the Mandatory Provisions apply equally to a supervisor of the company.



*(xiv) Manager and officers*

The company shall have a manager who shall be appointed or removed by the board of directors. The manager is accountable to the board of directors and may exercise the following powers:

- (1) to supervise the production, business and administration of the company and to organise the implementation of resolutions of the board of directors;
- (2) to organise the implementation of the company's business and investment plans;
- (3) to formulate plans for the establishment of the company's internal management structure;
- (4) to formulate the basic administration system of the company;
- (5) to formulate the company's internal rules;
- (6) to recommend the appointment and dismissal of deputy managers and the financial controller and appoint or dismiss other administration officers (other than those required to be appointed or dismissed by the board of directors);
- (7) to attend board meetings; and
- (8) other powers conferred by the board of directors or the company's articles of association.

The Overseas Listing Special Regulations provide that the officers of a company shall include its financial controller, company secretary and other executives specified in the company's articles of association.

The circumstances under which a person is disqualified from acting as a director of a company under the PRC Company Law and the Mandatory Provisions apply equally to managers and officers of the company.

(xv) *Duties of directors, supervisors, managers and officers*

A director, supervisor, manager and an officer of a company are required under the PRC Company Law to comply with the relevant laws, regulations and the company's articles of association, carry out their duties honestly, and protect the interests of the company. The Overseas Listing Special Regulations and the Mandatory Provisions provide that a director, a supervisor, a manager or an officer of a company owes fiduciary duties to the company and is required to perform its duties faithfully, protect the interests of the company and not to make use of its positions in the company for its own benefit. A director, supervisor, manager and an officer of a company is also under a duty of confidentiality to the company and is prohibited from divulging the secret information of the company save as permitted by the relevant law and regulations or by the shareholders.

A director, supervisor, manager or an officer who contravenes any law, regulation or the company's articles of association in the performance of his duties which resulted in any loss to the company shall be personally liable to the company.

(xvi) *Finance and accounting*

A company is required to establish a financial and accounting system in accordance with the relevant laws and regulations as well as rules stipulated by the Ministry of Finance and the State Council.

A company is required to prepare its financial statements at the end of each financial year, comprising its balance sheet, profit and loss account, a statement on financial status and changes of financial status and a profit distribution statement. The financial statements shall be made available for inspection by the shareholders of the joint stock limited company at least 20 days prior to the annual general meeting of the company. A joint stock limited company established by the public subscription method must publish its financial statements by way of public announcement.

A company is required to make the following transfers from its after tax profit before distributing its profits to the shareholders of the company:

- (1) 10 per cent. of its after tax profit to the statutory common reserve of the company provided that no further transfer is required to be made if the accumulated statutory common reserve exceeds/reaches 50 per cent. of the registered capital of the company;

- (2) between 5 per cent. and 10 per cent. of its after tax profit to the statutory public welfare fund;
- (3) subject to the shareholders' approval in shareholders' general meeting and after transfer of the requisite amount to the statutory common reserve, the amount from the after tax profit of the company to the discretionary common reserve; and
- (4) any balance of the after tax profit after making up losses and transfers to the common reserve and statutory public welfare fund shall be distributed to the shareholders in proportion to their respective shareholdings in the company.

When a company's statutory common reserve is insufficient to make up for the company's losses for the previous year, the profits of the company for the current year shall be applied to make up such losses before making allocations in accordance with the foregoing requirements to the statutory common reserve and the statutory public welfare fund.

The common reserve of a joint stock limited company comprises the statutory common reserve, discretionary common reserve and the capital common reserve.

The capital common reserve of a company is made up of the premium over the nominal value of the shares of the company and other amounts required by the relevant governmental financial authority are to be treated as the capital common reserve.

The common reserve of a company shall be applied for the following purposes:

- (1) to make up the company's losses;
- (2) to expand the business operations of the company; and
- (3) to pay up the registered share capital of the company by the issue of H Shares to shareholders in proportion to their existing shareholdings in the company or by increasing the par value of the shares currently held by the shareholders, provided that if the statutory common reserve is converted into registered capital, the balance of the statutory common reserve after such conversion shall not be less than 25 per cent. of the registered capital of the company.

The statutory public welfare fund shall be applied for the collective welfare of the company's employees.

*(xvii) Appointment and retirement of auditors*

The Overseas Listing Special Regulations require a company to employ an independent PRC qualified firm of accountants to audit the company's annual financial statements and review other financial reports.

The auditors are to be appointed for a term commencing from their appointment at an annual general meeting to the close of the next annual general meeting.

If a company removes or ceases to continue to appoint its existing auditors, it is required by the Overseas Listing Special Regulations to give prior notice to the auditors and the auditors are entitled to make representations before the shareholders in general meeting. The auditors who resigned from their office should make a statement to the shareholders stating whether or not the company has undertaken any inappropriate transactions. The appointment, removal or non-renewal of appointment of auditors shall be decided by the shareholders and shall be registered with the CSRC.

*(xviii) Distribution of profits*

The Overseas Listing Special Regulations provide that the dividends and other distributions payable to holders of overseas listed foreign shares shall be declared and calculated in Renminbi and paid in foreign currency. Under the Mandatory Provisions, the payment of foreign currency to shareholders shall be made through a receiving agent.

*(xix) Amendments to articles of association*

Amendments to a company's articles of association must be approved by more than two thirds of the votes cast by shareholders present at the shareholders' general meeting. Any amendment to the provisions in a Company's articles of association in accordance with the Mandatory Provisions will only be effective after the approval of the relevant department authorised by the State Council and the Securities Committee are obtained. A company must change its registration particulars in accordance with the applicable law if any amendments to its articles of association involving registration matters are adopted.

(xx) *Merger and demerger*

The merger or demerger of a company shall be approved by the shareholders in general meeting and the relevant governmental authority. The merger of a company may be effected either by way of absorption followed by the dissolution of the company being absorbed or by the establishment of a new entity followed by the dissolution of the original entities.

All parties to a merger are required to sign a merger agreement and to prepare their respective balance sheets and inventory of assets. Each relevant party to a merger shall notify the creditors of the merger within 10 days and publicly announce the merger in the newspapers at least three times within 30 days after the resolution approving the merger has been passed. The creditors are required within the statutory prescribed time limit to request the company to repay any outstanding indebtedness or provide guarantees covering such indebtedness. Any company which is unable to repay its debts or provide such guarantees is prohibited from proceeding with the merger.

A company is required to prepare its balance sheet and inventory of assets prior to its demerger. Similar requirements on notification of the demerger to creditors, publication of notice of the demerger and repayment of or provision of guarantees to creditors are applicable in the case of a demerger.

Any changes in the registrar's particulars of the companies resulting from merger or demerger should be re-registered with the company registration authority in accordance with the law.

(xxi) *Dissolution and liquidation*

Under the PRC Company Law, a company shall be dissolved and liquidated if any of the following events shall occur:

- (1) the term of its operations stipulated in the Company's articles of association has expired or on the occurrence of an event provided in the Company's articles of association which triggers the dissolution of the company;
- (2) the shareholders in general meeting have resolved to dissolve the company by special resolution;
- (3) a merger or demerger of the company which requires the company to be dissolved;

- (4) the declaration of the insolvency of the company according to law by reason of its not being able to pay its debts when become due and payable; or
- (5) the company has been ordered to close down as a result of violation of the law or administrative regulations.

Where a company is dissolved in the circumstances referred to in (1) or (2) above, the shareholders in general meeting shall, within 15 days of the occurrence of the event, appoint the members of the liquidation committee. If the liquidation committee is not established within the specified time, the creditors of the company may apply to the people's court to appoint the members of the liquidation committee. The people's court or the relevant supervising department shall organise a liquidation committee to conduct the liquidation. A liquidation committee shall comprise shareholders, the relevant department and the relevant professional personnel if the company is dissolved in the circumstances described in (4) or (5) above. A liquidation committee shall be responsible for dealing with the assets of the company, preparing a balance sheet and an inventory of the Company's assets, notifying the creditors of the Company's dissolution, handling the outstanding business of the company, discharging the outstanding indebtedness (including unpaid taxes) of the company, distributing the Company's surplus assets after repayment of all its indebtedness and representing the company in all civil litigation.

A liquidation committee is required to notify the creditors of the dissolution of the company within 10 days after its establishment and issue a public announcement of the dissolution of the company at least three times within 60 days after its establishment. A creditor is required to lodge its claim with the liquidation committee within the statutory prescribed time limit.

The Company's assets shall be applied to pay all expenses incurred in connection with the liquidation, the employees' wages, employees' insurance, tax and the indebtedness of the company. Any surplus assets after discharge of the Company's liabilities shall be distributed to the shareholders in proportion to their respective shareholdings in the company. If the assets of the company are insufficient to repay/discharge its indebtedness, the liquidation committee shall apply to the people's court for a declaration of insolvency and shall transfer the liquidation proceedings to the people's court.

A company cannot engage in any new business operations during its liquidation.

On completion of the liquidation process, the liquidation committee is required to submit a liquidation report to the shareholders in general meeting and the relevant administrative department for confirmation. The liquidation committee is also required to apply to the Administration of Industry and Commerce Bureau for the cancellation of the Company's registration and to make a public announcement of the Company's dissolution following such cancellation.

Members of the liquidation committee are required to discharge their duties honestly and in compliance with laws. A member of the liquidation committee is liable to indemnify the company and its creditors in respect of any loss arising from his wilful or material default.

*(xxii) Overseas listing*

The shares of a company shall only be listed overseas after obtaining approval from the CSRC and the listing must be arranged in accordance with procedures specified by the Overseas Listing Special Regulations.

According to the Special Regulations and the Mandatory Provisions, a Company's plan to issue overseas listed foreign shares and domestic shares, which has been approved by the Securities Committee, may be implemented by its board of directors separately within 15 months after approval is obtained from the Securities Committee.

*(xxiii) Loss of shares certificates*

In the event that share certificates in registered form are either stolen or lost, a shareholder may apply, in accordance with the relevant provisions set out in the PRC Civil Procedure Law, to a people's court for a declaration that such certificates will no longer be valid. After such a declaration has been made by the people's court, the shareholder may apply to the company for the issue of replacement certificates.

A separate procedure regarding the loss of H Share certificates is provided in the Mandatory Provisions, which has been incorporated into the Company's Articles of Association, a summary of which is set out in appendix 4 of this prospectus.

*(xxiv) Suspension and termination of listing*

A company which is listed on a stock exchange may have its listing suspended by the securities administration department of the State Council if any of the following event occur:

- (1) the registered capital of the company or the distribution of the company's shares no longer complies with the relevant listing requirements;
- (2) the company has failed to disclose its financial position in accordance with the relevant law and regulations or the financial report of the company contains false information;
- (3) the company has committed a material breach of the law; or
- (4) the company has incurred losses for each of the immediately preceding three years.

If the circumstances referred to in (2) or (3) above have occurred and investigation has established that the consequences are serious, or if the circumstances referred to in (1) or (4) above have occurred and the situation has not been rectified within the time stipulated, the securities administration department of the State Council may decide to terminate the listing of a Company's shares.

The securities administration department of the State Council may also terminate the listing of a Company's shares in the event that the company has resolved to be wound up or is ordered by the relevant governmental authority to be dissolved, or the company is declared insolvent.

**(g) Securities Law and Regulations**

At present, the PRC has promulgated a number of regulations in relation to the issue and trading of shares and disclosure of information.

In early 1993, the State Council established the Securities Committee and the CSRC. The Securities Committee is responsible for co-ordinating the drafting of securities regulations, formulating securities related polices, planning the development of securities markets, directing, coordinating and supervising all securities related institutions in the PRC and administering the CSRC. The CSRC is the regulatory arm of the Securities Committee and is responsible for the drafting of regulatory provisions of securities markets, supervising securities companies, regulating public offers of securities by PRC



companies in the PRC or overseas, regulating the trading of securities, compiling securities related statistics and undertaking research and analysis. In 1998, the Securities Committee was canceled and its main functions were merged into the CSRC due to the restructuring reforms of the State Council.

On 22nd April, 1993, the State Council promulgated the Provisional Regulations Governing the Issue and Trading of Shares (股票發行與交易管理暫行條例) (the “Securities Provisional Regulations”). These regulations deal with the application and approval procedures for public offerings of equity securities, trading in equity securities, the acquisition of listed companies, deposit, settlement, clearing and transfer of listed equity securities, the disclosure of information with respect to a listed company, investigation and penalties and dispute settlement. These regulations specifically provide that the offer of shares by a PRC company directly and indirectly outside the PRC requires the approval of the Securities Committee and also provide that separate measures will be promulgated in relation to the issue of and trading in special Renminbi-denominated shares. However, (i) if a PRC joint stock limited company proposes to issue Renminbi denominated ordinary shares as well as special Renminbi-denominated shares, it has to comply with the Securities Provisional Regulations; and (ii) provisions of the Securities Provisional Regulations in relation to acquisitions of listed companies and disclosure of information are expressed to apply to companies listed on a stock exchange in general without being confined to companies listed on any particular stock exchange. Such provisions may, therefore, be applicable to joint stock limited companies with shares listed on a stock exchange outside the PRC including, for instance, joint stock limited companies with shares listed on the Hong Kong Stock Exchange.

On 12th June, 1993, the CSRC promulgated the Implementation Measures (Provisional) on Disclosure of Information of the Public Issuing Share’s Company (公開發行股票公司信息披露的實施細則(暫行)) pursuant to the Securities Provisional Regulations. Under these measures, the CSRC is responsible for supervising the disclosure of information by companies which have offered shares to the public in the PRC. These measures contain provisions regarding prospectuses and listing reports to be issued in connection with a public offering of shares in the PRC, publication of interim and final reports and announcement of material transactions or matters by companies which have offered shares to the public. Material transactions or matters are those the occurrence of which may have a material effect on the share price of a company. They include changes to a Company’s articles of association or registered capital, removal of auditors, mortgage or disposal of major operating assets or writing down the value of such assets where the amount being written down exceeds 30 per cent. of the total value of such assets, revocation by a court of any resolution passed by the shareholders or the supervisors of a company and the merger or demerger of a company. These measures also contain disclosure provisions in relation to acquisition of listed companies which supplement the requirements contained in the Securities Provisional Regulations.

On 2nd December, 1993, the Securities Committee promulgated the Provisional Measures Prohibiting Fraudulent Conduct Relating to Securities (禁止證券欺詐行為暫行辦法). The prohibitions imposed by these measures include the use of insider information in connection with the issue of or trading in securities (insider information being defined to include undisclosed material information known to any insider, which may affect the market price of securities); the use of funds or information or through an abuse of power in creating a false or disorderly market or influencing the market price of securities or inducing investors to make investment decisions without knowledge of actual circumstances; and the making of any statement in connection with the issue of and trading in securities which is false or materially misleading or in respect of which there is any material omission. Penalties imposed for contravening any of the provisions of the measures include fines, confiscation of profits and suspension of trading. In serious cases, criminal liability may be imposed.

On 4th July, 1994, the State Council promulgated the Special Regulations. These provisions deal mainly with the issue, subscription, trading and declaration of dividends and other distributions of foreign capital stock listed aboard and disclosure of information, articles of association of joint stock limited companies having foreign capital stock listed aboard.

On 25th December, 1995, the State Council promulgated the Regulations of the State Council Concerning Domestic Listed Foreign Shares of Joint Stock Limited Companies (國務院關於股份有限公司境內上市外資股的規定). These regulations deal mainly with the issue, subscription, trading and declaration of dividends and other distributions of domestic listed foreign shares and disclosure of information of joint stock limited companies having domestic listed foreign shares.

On 29th December, 1998, the Securities Law of the PRC (中華人民共和國證券法) was passed by the Standing Committee of the National People's Congress (全國人民代表大會常務委員會). The Securities Law took effect on 1st July, 1999. This is the first national securities law in the PRC, and it is divided into 12 chapters and 214 articles regulating, among other things, the issue and trading of securities, takeovers by listed companies, securities exchanges, securities companies and the duties and responsibilities of the State Council's securities regulatory authorities. The Securities Law is the fundamental law which comprehensively regulates activities in the PRC securities market. Article 29 of the Securities Law provides that enterprises in the PRC which intend to directly or indirectly issue securities outside the PRC or to list their securities outside the PRC must obtain prior approval from the State Council's regulatory authorities. Article 213 of the Securities Law provides that specific measures in respect of shares of companies in the PRC which are to be subscribed and traded in foreign currencies by person and organisation outside the PRC shall be separately formulated by the State Council. Currently, the issue and trading of foreign issued shares (including

H shares and B shares) are still mainly governed by the rules and regulations promulgated by the State Council and the CSRC.

In order to further promote strict compliance of “companies listed outside China” (“Listed Companies”) with the relevant domestic and foreign laws and regulations, their conscientious performance of their continuing obligations toward investors and their establishment of a good corporate image on domestic and foreign capital markets, the State Economic and Trade Commission and the CSRC jointly issued 關於進一步促進境外上市公司規範運作和深化改革的意見 (the Further Standardizing Operations and Reform of Companies Listed Outside China Opinion) (“Standardizing Opinion”) on 29th March, 1999. The Standardizing Opinion sets out regulations governing the relationship between the Companies and their controlling entities (hereafter “controlling entities” refers to companies or enterprises with legal person status that have a controlling interest in a Listed Company) and the operations of the administrative organizations of the Listed Companies. The board of directors, management, the financial and marketing organizations of a Listed Company must be independent from those of the controlling entity. No more than two senior management personnel from the controlling entity (i.e. the chairman of the board, vice-chairman of the board and executive directors) may concurrently hold the position of senior management personnel in the Company. The Standardizing Opinion also requires a Company to specify its decision-making process, strengthen director responsibility, establish a sound external director and independent director system, strengthen the functions of its supervisory board and secretary of the board of directors, explore methods to motivate its senior management personnel and to intensify its internal reform.

#### **(h) Legal Opinion**

Jingtian & Gongcheng the Company’s legal advisor on PRC laws, has sent to the Company a letter confirming that they have reviewed the summary of relevant PRC laws and regulations contained in this appendix and that, in their opinion, such summary is a correct summary of the relevant PRC laws and regulations. A copy of this letter is available for inspection as referred to in paragraph B headed “Documents available for inspection” in appendix 6 to this prospectus. Any person wishing to obtain detailed information on PRC laws and regulations is recommended to seek independent legal advice.

## 2. HONG KONG LAWS AND REGULATIONS

### (a) Company Law

The Hong Kong law applicable to a company having share capital incorporated in Hong Kong is based on the Companies Ordinance and supplemented by the common law and the rules of equity which apply to Hong Kong by virtue of section 3 of the Application of English Law Ordinance (Chapter 88 of the Laws of Hong Kong).

The Company, which is a joint stock limited liability company established in the PRC seeking a listing of H Shares on the Hong Kong Stock Exchange is governed by the PRC Company Law which came into effect on 1st July, 1994 and all other rules and regulations promulgated pursuant to the PRC Company Law applicable to a joint stock limited company established in the PRC issuing overseas listed foreign shares to be listed on the Hong Kong Stock Exchange.

Set out below is a summary of certain material differences between the Hong Kong company law applicable to a company incorporated in Hong Kong and the PRC Company Law applicable to a joint stock limited company incorporated and existing under the PRC Company Law. This summary is, however, not intended to be an exhaustive comparison:

#### (i) *Corporate existence*

Under Hong Kong company law, a company having share capital is incorporated by the Registrar of Companies in Hong Kong issuing a certificate of incorporation and upon its incorporation, a company will acquire an independent corporate existence. A company may be incorporated as a public company or a private company. The articles of association of a private company incorporated in Hong Kong are required by the Companies Ordinance to contain certain pre-emptive and other provisions. Any company which does not contain such provisions in its articles of association is a public company.

Under the PRC Company Law, a joint stock limited company may be incorporated by either the promotion method or the public subscription method. A company established by the public subscription method will only acquire its corporate existence after it has completed its initial share offering to the public and a company may only issue further shares after a year has elapsed since its last share issue. The PRC Company Law requires a State owned enterprise to be converted into a joint stock limited company by the public subscription method. The Special Regulations, however, permit a State-owned enterprise to be converted into a joint stock limited company by the promotion method and to offer H Shares to the public on its establishment.

Under the PRC Company Law, a company which is authorised by the relevant securities administration authority to list its shares on a stock exchange must have a registered capital of not less than RMB50,000,000. Hong Kong law does not prescribe any minimum capital requirements for a Hong Kong company.

Under the PRC Company Law, the shares allotted by a joint stock limited company in return for injection of intellectual property rights and non-patented technology shall not exceed 20 per cent. of the registered capital of a company. There is no such restriction on a Hong Kong company under Hong Kong law.

*(ii) Share capital*

Under Hong Kong law, the authorised share capital of a Hong Kong company is the amount of share capital which the company is authorised to issue and a company is not bound to issue the entire amount of its authorised share capital. The PRC Company Law does not have the concept of authorised share capital. The registered capital of a joint stock limited company is the amount of the issued share capital. Any increase in registered capital must be approved by the shareholders in general meeting and the relevant PRC governmental and regulatory authorities.

*(iii) Restrictions on shareholding and transfer of shares*

Under the PRC law, the domestic shares in the share capital of a joint stock limited company (“domestic shares”) which are denominated and subscribed for in Renminbi may only be subscribed or traded by the State, PRC legal persons and natural persons. The overseas listed foreign shares (“foreign shares”) issued by a joint stock limited company which are denominated in Renminbi and subscribed for in a currency other than Renminbi may only be subscribed and traded by investors from Hong Kong, Macau and Taiwan or any country and territory outside the PRC.

Under the PRC Company Law, shares in a joint stock limited company held by its promoters cannot be transferred within three years after the date of establishment of the company. Shares in a joint stock limited company held by its directors, supervisors and manager cannot be transferred during their term of office.

There are no such restrictions on shareholdings and transfers of shares under Hong Kong law.

(iv) *Financial assistance for acquisition of shares*

The PRC Company Law does not contain any provision prohibiting or restricting a joint stock limited company or its subsidiaries from providing financial assistance for the purpose of an acquisition of its own or its holding Company's shares. The Mandatory Provisions contain certain restrictions on a company and its subsidiaries providing such financial assistance similar to those under Hong Kong company law.

(v) *Variation of class rights*

Under Hong Kong company law, if the share capital of a company is divided into different classes of shares, special rights attaching to any class of shares may only be varied if approved by a specified proportion of the holders of the relevant class.

The PRC Company Law does not contain any specific provision relating to variation of class rights. Under the Mandatory Provisions, class rights may not be varied or abrogated unless approved by a special resolution of shareholders in general meeting and by two thirds of the votes cast by shareholders of the affected class present in person or by proxy at a separate class meeting. For the purpose of a variation of class rights, domestic shares and foreign shares are treated as separate classes of shares except in the case of (i) an issue of shares by the joint stock limited company once every 12 months either separately or concurrently following the approval by a special resolution of shareholders in general meeting not exceeding 20 per cent. of each of the issued domestic shares and foreign shares existing as at the date of such special resolution; and (ii) an issue of domestic shares and foreign shares in accordance with the plan of the company at the time of its establishment approved by the Securities Committee and which are completed within 15 months from the date of the approval. The Mandatory Provisions contain detailed provisions relating to circumstances which are deemed to constitute a variation of class rights.

(vi) *Directors*

The PRC Company Law, unlike Hong Kong company law, does not contain any requirements relating to the declaration of interests in material contracts, restrictions on interested directors being counted towards the quorum of and voting at a meeting of the board of directors at which a transaction in which a director is interested is being considered, restrictions on directors' authority in making major dispositions, restrictions on companies providing certain benefits such as loans to directors and guarantees in respect of directors' liability and prohibition against compensation for loss of office without shareholders' approval.

The Mandatory Provisions contain requirements and restrictions in relation to the foregoing matters similar to those applicable under Hong Kong law.

*(vii) Supervisory committee*

Under the PRC Company Law, the directors and managers of a joint stock limited company is subject to the supervision of a supervisory committee but there is no mandatory requirement for the establishment of a supervisory committee for a company incorporated in Hong Kong.

The Mandatory Provisions provide that each supervisor owes a duty, in the exercise of his powers, to act in good faith and honestly in what he considers to be in the best interests of the company and to exercise the care, diligence and skill that a reasonable prudent person would exercise in comparable circumstances.

*(viii) Derivative action by minority shareholders*

Hong Kong law permits minority shareholders to start a derivative action on behalf of all shareholders against directors who have committed of a breach of their fiduciary duties to the company, if they control a majority of votes at a general meeting thereby effectively preventing a company from suing the directors in breach of their duties in its own name. Although the PRC Company Law gives a shareholder of a joint stock limited company the right to initiate proceedings in the people's court to restrain the implementation of any resolution passed by shareholders in general meeting or by the board of directors which violates any law or infringes the lawful rights and interests of shareholders, the PRC law does not have a form of proceedings which is the same as a derivative action. The Mandatory Provisions, however, provide remedies to the company against directors, supervisors and officers in breach of their duties to the company. In addition, every director and supervisor of a joint stock limited company applying for a listing of its foreign shares on the Hong Kong Stock Exchange is required to give an undertaking in favour of the company acting as agent for each shareholder to comply with the Company's articles of association. This allows minority shareholders to act against directors and supervisors in default.

*(ix) Protection of minorities*

Under Hong Kong law, a shareholder who complains that the affairs of a company incorporated in Hong Kong are conducted in a manner unfairly prejudicial to his interests may petition to court to either wind up the company or make an appropriate order regulating the affairs of the company. In addition, on the application of a specified number of members, the Financial Secretary may appoint inspectors who are given extensive statutory powers to investigate the affairs of a

company incorporated in Hong Kong. The PRC law does not contain similar safeguards. The Mandatory Provisions, however, contain provisions to the effect that a controlling shareholder may not exercise its voting rights in a manner prejudicial to the interests of the shareholders generally or of some part of the shareholders of a company to relieve a directors or supervisor of his duty to act honestly in the best interests of the company or to approve the expropriation by a director or supervisor of the Company's assets or the individual rights of other shareholders.

(x) *Notice of shareholders' meetings*

Under the PRC Company Law, notice of a shareholders' general meeting must be given not less than 30 days before the meeting or, in the case of a company having bearer shares, public announcement of a shareholders' general meeting must be made at least 45 days prior to it being held. Under the Special Regulations and the Mandatory Provisions, 45 days' written notice must be given to all shareholders and shareholders who wish to attend the meeting must reply in writing 20 days before the date of the meeting. For a company incorporated in Hong Kong, the minimum notice period of a general meeting convened for passing an ordinary resolution and a special resolution is 14 days and 21 days respectively; and the notice period for an annual general meeting is 21 days.

(xi) *Quorum for shareholder's meetings*

Under Hong Kong law, the quorum for a general meeting is provided for in the articles of association of the company, which shall not in any event be less than two members. The PRC Company Law does not specify any quorum requirement for shareholders' general meeting but the Special Regulations and the Mandatory Provisions provide that a Company's general meeting can be convened when replies to the notice of that meeting have been received from shareholders whose shares represent 50 per cent. of the voting rights in the company at least 20 days before the proposed date of the meeting, or if that 50 per cent. level is not achieved, the company shall within 5 days notify shareholders by public announcement and the shareholders' general meeting may be held thereafter.

(xii) *Voting*

Under Hong Kong law, an ordinary resolution is passed by a simple majority of votes cast by members present in person or by proxy at a general meeting and a special resolution is passed by a majority of not less than three fourths of votes cast by members present in person or by proxy at a general meeting.



Under the PRC Company Law, the passing of any resolution requires one half or more votes held by shareholders present in person or by proxy at a shareholders' general meeting except in cases of proposed amendment to the articles of association, merger, demerger or dissolution of a joint stock limited company which requires two thirds of votes held by shareholders present in person or by proxy at a shareholders' general meeting.

*(xiii) Financial disclosure*

A joint stock limited company is required under the PRC Company Law to make available at its office for inspection by shareholders its annual balance sheet, profit and loss account, changes in financial position and other relevant annexures 20 days before the annual general meeting of shareholders. In addition, a company established by the public subscription method under the PRC Company Law must publish its financial statements. The annual balance sheet has to be verified by registered accountants. The Companies Ordinance requires a company to send to every shareholder a copy of its balance sheet, auditors' report and directors' report which are to be laid before the company in its annual general meeting not less than 21 days before such meeting.

A joint stock limited company is required under the PRC law to prepare its financial statements in accordance with the PRC accounting standards. The Mandatory Provisions require that the company must, in addition to preparing accounts according to the PRC standards, have its accounts prepared and audited in accordance with International Accounting Standards or Hong Kong accounting standards and its financial statements must also contain a statement of the financial effect of the material differences (if any) from the financial statements prepared in accordance with the PRC accounting standards.

*(xiv) Information on directors and shareholders*

There are no provisions in the PRC Company Law concerning the public's or a joint stock limited Company's shareholders' right to access information on its directors and shareholders. Under the Mandatory Provisions, shareholders have the right to inspect and copy (at reasonable charges) certain information on shareholders and on directors similar to that available under Hong Kong law to shareholders of a company incorporated in Hong Kong.

*(xv) Receiving agent*

Under both the PRC and Hong Kong law, dividends once declared become debts payable to shareholders. The limitation period for debt recovery action under Hong Kong law is six years while that under the PRC law such limitation period is two years. The Mandatory Provisions require the appointment of a trust company registered under the Hong Kong Trustee Ordinance (Chapter 29) of the Laws of Hong Kong as receiving agent to receive on behalf of holders of foreign shares dividends declared and all other monies owing by a joint stock limited company in respect of such foreign shares.

*(xvi) Corporate reorganisation*

Corporate reorganisation involving a company incorporated in Hong Kong may be effected in a number of ways, such as a transfer of the whole or part of the business or property of the company in the course of being wound up voluntarily to another company pursuant to section 237 of the Companies Ordinance or a compromise or arrangement between the company and its creditors or between the company and its members pursuant to section 166 of the Companies Ordinance which requires the sanction of the court. Under the PRC law, the merger or demerger of a joint stock limited company has to be approved by shareholders in general meeting and the relevant governmental authorities.

*(xvii) Arbitration of disputes*

In Hong Kong, disputes between shareholders and a company incorporated in Hong Kong or its directors may be resolved through the courts. The Mandatory Provisions provide that such disputes should be submitted to arbitration at either the HKIAC or the CIETAC, at the claimant's choice.

*(xviii) Mandatory transfers*

Under the PRC Company Law, a joint stock limited company is required to make transfers equivalent to certain prescribed percentages of its after tax profit to the statutory common reserve and statutory public welfare fund. There are no such requirements under Hong Kong law.

**(b) GEM Listing Rules**

The Listing Rules provide additional requirements which apply to an issuer which is incorporated in the PRC as a joint stock limited company and seeking a primary listing or whose primary listing is on the GEM of the Hong Kong Stock Exchange. Set out below is a summary of the principal provisions containing such additional requirements which apply to the Company:

*(i) Accountants' report*

An accountants' report for a PRC issuer will not normally be regarded as acceptable unless the relevant accounts have been audited to a standard comparable to that required in Hong Kong. Such report will normally be required to conform to either Hong Kong or international accounting standards.

*(ii) Process agent*

The Company is required to appoint and maintain a person authorised to accept service of process and notices on its behalf in Hong Kong throughout the period during which its securities are listed on the Hong Kong Stock Exchange and must notify the Hong Kong Stock Exchange of his appointment, the termination of his appointment and his contract particulars.

*(iii) Public shareholdings*

If a PRC issuer do not have existing issued securities in public hands other than H Shares (that is, overseas shares of the Company which are listed on the Stock Exchange), the Listing Rules require that, the H Shares must constitute not less than 20 per cent. of the issuer's issued share capital unless the market capitalisation of the total existing issued share capital at the time of listing is over HK\$1,000 million in which case, the prescribed minimum public shareholdings percentage is between 15 and 20 per cent..

If at any time there are other existing issued securities of a PRC issuer in public hands other than H Shares, the Listing Rules require that:

- (aa) all H shares must be held by the public;
- (bb) the H shares held by the public must represent not less than 10 per cent. of the PRC issuer's total existing issued share capital; and

- (cc) the aggregate amount of H shares and other existing securities in public hands must constitute not less than 20 per cent. of the PRC issuer's issued share capital unless the expected market capitalization of the total existing issued share capital at the time of listing of the H Shares is over HK\$1,000 million in which case, the prescribed minimum public shareholdings percentage is between 15 and 20 per cent..

(iv) *Independent non-executive directors and supervisors*

The independent non-executive directors of a PRC issuer are required to demonstrate an acceptable standard of competence and adequate commercial or professional expertise to ensure that the interests of the general body of shareholders will be adequately represented. The supervisors of a PRC issuer must have the character, expertise and integrity and be able to demonstrate a standard of competence commensurate with their position as supervisors.

(v) *Restrictions on purchase and subscription of its own securities*

Subject to governmental approvals and the provisions of the Articles of Association, the Company may repurchase its own H shares on the Hong Kong Stock Exchange in accordance with the provisions of the Listing Rules. Approval by way of special resolution of the holders of domestic shares and the holders of H Shares at separate class meetings conducted in accordance with the Articles of Association is required for shares repurchases. In seeking approvals, the Company is required to provide information on any proposed or actual purchases of all or any of its equity securities, whether or not listed or traded on the Hong Kong Stock Exchange. The Directors must also state the consequences of any purchases which will arise under either or both of the Hong Kong Code on Takeovers and Mergers and any similar PRC law of which the directors are aware, if any. Any general mandate given to the directors to repurchase H shares must not exceed 10 per cent. of the total amount of existing issued H shares of the Company.

(vi) *Continuing obligations and financial information*

(aa) Redeemable shares

The Company must not issue any redeemable shares unless the Hong Kong Stock Exchange is satisfied that the relative rights of the holders of the H Shares are adequately protected.

## (bb) Pre-emptive rights

Except in the circumstances mentioned below, the Directors are required to obtain the approval by a special resolution of shareholders in general meeting, and the approvals by special resolutions of the holders of domestic shares and H Shares (each being otherwise entitled to vote at general meetings) at separate class meetings conducted in accordance with the Articles of Association, prior to: (i) authorising, allotting, issuing or granting shares or securities convertible into shares, or options, warrants or similar rights to subscribe for any shares or such convertible securities; or (ii) any major subsidiary (if any) of the Company making any such authorisation, allotment, issue or grant so as materially to dilute the percentage equity interest of the Company and its shareholders in such subsidiary.

No such approval will be required, but only to the extent that, the existing shareholders of the Company have by special resolution in general meeting given a mandate to the Directors, either unconditionally or subject to such terms and conditions as may be specified in the resolution, to authorise, allot or issue, either separately or concurrently once every 12 months, not more than 20 per cent. of each of the existing issued domestic shares and H shares of the Company or, such shares are part of the Company's plan at the time of its establishment to issue domestic shares and H Shares and which plan is implemented within 15 months from the date of approval by China Securities Regulatory Commission or such other competent share council securities regulatory authority.

## (cc) Supervisors

The Company is required to adopt rules governing dealings by its supervisors in securities of the Company in terms no less exacting than those minimum standard of good practice, as set out in Rules 5.40 to 5.59 of the GEM Listing Rules, issued by the Hong Kong Stock Exchange.

The restriction on the Company or any of its subsidiaries entering into a service contract of ten years or longer duration with a Director or proposed Director of the Company or its subsidiary without the prior approval of the shareholders in a general meeting at which the relevant Director did not vote on the matter also applies to a service contract of such duration between the Company or its subsidiary with a Supervisor or proposed Supervisor.

## (dd) Amendment to Articles of Association

The Company is required not to permit or cause any amendment to be made to its Articles of Association which would cause the same to cease to comply with the mandatory provisions of the GEM Listing Rules relating to such Articles of Association.

## (ee) Documents for inspection

The Company is required to make available at a place in Hong Kong for inspection by the public and shareholders free of charge, and for copying by shareholders at reasonable charges the following:

- a complete duplicate register of shareholders;
- a report showing the state of the issued share capital of the Company;
- the Company's latest audited financial statements and the reports of the Directors, auditors and Supervisors, if any, thereon;
- special resolutions of the Company;
- reports showing the number and nominal value of securities repurchased by the Company since the end of the last financial year, the aggregate amount paid for such securities and the maximum and minimum prices paid in respect of each class of securities repurchased (with a breakdown between Promoters Shares and H Shares);
- a copy of the latest annual return filed with the Administration for Industry and Commerce Bureau of the PRC; and
- for shareholders only, copies of minutes of meetings of shareholders.

## (ff) Receiving agents

The Company is required to appoint one or more receiving agents in Hong Kong and pay to such agents dividends declared and other monies owing in respect of the H Shares to be held, pending payment, in trust for the holders of such H Shares.

## (gg) Statements in share certificates

The Company is required to ensure that all its listing documents and share certificates include the statements stipulated below and to instruct and cause each of its share registrars not to register the subscription, purchase or transfer of any of its shares in the name of any particular holder unless and until such holder delivers to such share registrar a signed form in respect of such shares bearing statements to the following effect that the acquirer of shares:

- agrees with the Company and each shareholder of the Company, and the Company agrees with each shareholder, to observe and comply with the PRC Company Law, the Special Regulations and the Articles of Association;
- agrees with the Company, each shareholder, Director, Supervisor, manager and other officer of the Company and the Company acting for itself and for each Director, Supervisor, manager and other officer agrees with each shareholder to refer all differences and claims arising from the Articles of Association or any rights or obligations conferred or imposed by the PRC Company Law or other relevant laws and administrative regulations concerning the affairs of the Company to arbitration in accordance with the Articles of Association. Any reference to arbitration will be deemed to authorise the arbitration tribunal to conduct its hearing in open session and to publish its award. Such arbitration will be final and conclusive;
- agrees with the Company and each shareholder of the Company that shares in the Company are freely transferable by the holder thereof; and
- authorises the Company to enter into a contract on his behalf with each Director and officer whereby such Director and officer undertake to observe and comply with their obligations to shareholders stipulated in the Articles of Association.

## (hh) Compliance with the PRC Company Law, the Special Regulations and the Articles of Association

The Company is required to observe and comply with the PRC Company Law, the Special Regulations and the Articles of Association.

(ii) Contract between the Company and its Directors, officers and Supervisors

The Company is required to enter into a contract in writing with every Director and officer containing at least the following provisions:

- an undertaking by the Director or officer to the Company to observe and comply with the PRC Company law, the Special Regulations, the Articles of Association, the Hong Kong Codes on Takeovers and Mergers and Share Repurchases and an agreement that the Company shall have the remedies provided in the Articles of Association and that neither the contract nor his office is capable of assignment;
- an undertaking by the Director or officer to the Company acting as agent for each shareholder to observe and comply with his obligations to shareholders stipulated in the Articles of Association; and
- an arbitration clause which provides that whenever any differences or claims arise from that contract, the Articles of Association or any rights or obligations conferred or imposed by the PRC Company Law or other relevant law and administrative regulations concerning the affairs of the Company between the Company and its Directors or officers and between a holder of H Shares and a Director or officer of the Company, such differences or claims will be referred to arbitration at either the CIETAC in accordance with its rules or the HKIAC in accordance with its Securities Arbitration Rules, at the election of the claimant and that once a claimant refers a dispute or claim to arbitration, the other party must submit to the arbitral body elected by the claimant. Such arbitration will be final and conclusive.

The Company is also required to enter into a contract in writing with every Supervisor containing statements in substantially the same terms.

(jj) Subsequent listing

The Company must not apply for the listing of any of its foreign shares on a PRC stock exchange unless the Hong Kong Stock Exchange is satisfied that the relative rights of the holders of foreign shares are adequately protected.



(kk) English translation

All notices or other documents required under the Listing Agreement to be sent by the Company to the Hong Kong Stock Exchange or to holders of the H Shares are required to be in the English language, or accompanied by a certified English translation.

(viii) *General*

If changes in the PRC law or market practices materially alters the validity or accuracy of any of the basis upon which the additional requirements have been prepared, then the Hong Kong Stock Exchange may impose additional requirements or make listing of the equity securities of a PRC issuer, including the Company, subject to special conditions as the Hong Kong Stock Exchange considers appropriate. Whether or not any such changes in the PRC law or market practices occur, the Hong Kong Stock Exchange retains its general power under the Listing Rules to impose additional requirements and make special conditions in respect of the listing of the Company.

**(c) Other Legal and Regulatory Provisions**

Upon the listing of the Company on the Hong Kong Stock Exchange, the provisions of the Securities Ordinance (Chapter 333 of the Laws of Hong Kong), the Securities (Disclosure of Interests) Ordinance (Chapter 396 of the Laws of Hong Kong), the Securities (Insider Dealing) Ordinance (Chapter 395 of the Laws of Hong Kong), the Hong Kong Codes on Takeovers and Mergers and Share Repurchases and such other relevant ordinances and regulations as may be applicable to companies listed on the Hong Kong Stock Exchange will apply to the Company.

**(d) Securities Arbitration Rules**

The Articles of Association provide that certain claims arising from the Articles of Association or the PRC Company Law shall be arbitrated at either the CIETAC or the HKIAC in accordance with their respective rules.

The Securities Arbitration Rules of the HKIAC contain provisions allowing an arbitral tribunal to conduct a hearing in Shenzhen for cases involving the affairs of companies incorporated in the PRC and listed on the Hong Kong Stock Exchange so that PRC parties and witnesses may attend. Where any party applies for a hearing to take place in Shenzhen, the tribunal shall, where satisfied that such application is based on bona fide grounds, order the hearing to take place in Shenzhen conditional upon all parties including witnesses and the arbitrators being permitted to enter Shenzhen for the purpose of the hearing. Where a party, other than a PRC party, or any of its witnesses or

any arbitrator is not permitted to enter Shenzhen, then the tribunal shall order that the hearing be conducted in any practicable manner, including the use of electronic media. For the purpose of the Securities Arbitration Rules, a PRC party means a party domiciled in the PRC other than the territories of Hong Kong, Macau and Taiwan.

(e) **Taxation in Hong Kong**

(i) *Dividends*

Where a company is not chargeable to Hong Kong profits tax, any dividends paid by it to persons who carry on a business in Hong Kong are liable to profits tax, to the extent that such dividends form part of the profits of such persons arising from their Hong Kong business.

(ii) *Profits tax*

Hong Kong does not have any capital gains tax. Persons who carry on a trade, profession or business in Hong Kong and derive income in Hong Kong from such trade, profession or business are liable to profits tax. Securities dealers carrying on a business in Hong Kong and making trading gains from the sale and purchase of shares will be subject to profits tax. Currently, profits tax for corporations is payable at the rate of 16 per cent. of their assessable profits. Profits tax for individuals is levied on a progressive scale and the maximum rate is 15 per cent..

(iii) *Stamp duty*

The sale and purchase of shares is subject to stamp duty payable by both the seller and the buyer. Duty is payable with reference to the amount of the consideration or, if higher, the fair value of the shares being sold. In respect of every HK\$1,000, or part thereof, of the consideration or, if higher, the fair value of the shares, the current rate of duty is HK\$2.25. Stamp duty is usually shared between the buyer and the seller equally in respect of transactions on the Hong Kong Stock Exchange. A fixed rate of duty of HK\$5 is also payable in respect of every instrument of transfer which is required to be registered on a register or branch register maintained in Hong Kong.

(iv) *Estate duty*

Properties situated in Hong Kong which pass or are deemed to pass upon the death of a person, wherever domiciled or resident, are liable to estate duty based on the value of the property in question. H Shares will constitute property situated in Hong Kong for estate duty purposes by virtue of them being on the Hong Kong branch register of the Company. Hong Kong estate duty is imposed on a progressive scale from 5 per cent. to 15 per cent.. The rate of and the threshold for estate duty have, in the past, been adjusted on a fairly regular basis. No estate duty is payable where the aggregate value of the dutiable estate does not exceed HK\$7.5 million, and the maximum rate of duty of 15 per cent. applies where the aggregate value of the dutiable estate exceeds HK\$10.5 million.