

*This Appendix sets out summaries of certain aspects of the PRC legal and judicial system, its arbitration system, its company and securities regulations. It also contains summaries 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 Stock Exchange for inclusion in the articles of association of PRC issuers.*

## 1. PRC LAWS AND REGULATIONS

### (a) Legal System

The PRC legal system is based on the PRC Constitution and is made up of laws, administrative regulations, local regulations and government directives, etc.. Decided court cases do not constitute binding precedents.

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 to enact and amend primary laws governing the relevant administrative, 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 regulatory documents 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, any national laws or any 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 the 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 in 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 promulgated. At the regional level, the power to give interpretation of regional rules and regulations is vested in the regional legislative and administration organs which promulgate such rules and regulations. 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 comprise 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 further 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, where the circumstances so warrant,

may have other special divisions (such as the intellectual property division). The judicial functions of people's courts at lower levels are subject to supervision of people's courts at higher levels. The people's procuratorates also have the right to exercise legal supervision over the criminal proceedings of people's courts of the same and lower levels. 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 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, the people's procuratorates at a higher level may appeal against a judgment which has taken effect by a people's court at a lower level, or if the parties re-apply for retrial with the criteria satisfied, 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 shall 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. The Civil Procedure Law contains regulations on the institution of the fundamental principles of a civil action, the jurisdiction, trial procedures and procedures for the enforcement of a civil judgment. All parties to a civil action conducted within the territory of 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 jurisdiction of the people's court selected has some actual connection with the dispute, that is to say, the plaintiff or the defendant is located or domiciled, or the contract was executed or implemented in the jurisdiction selected, or the subject matter of the proceedings is located in the jurisdiction selected, but it must not violate the regulations in respect of jurisdiction by forum level and exclusive jurisdiction as stated in the Civil Procedure Law. A foreign national or foreign enterprise is accorded 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 exercise equivalent principles 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 body in the PRC, the aggrieved party may apply to the people's court to enforce the judgment, order or award. Time limits are imposed on the right to apply for such enforcement. Where 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 entities, 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 the counter 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 directly 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 courts in accordance with the principle of reciprocity or if there exists an international or bilateral treaty with or acceded to by the foreign country that provides for such recognition and enforcement, unless the people's court considers that the recognition or enforcement of the judgment or ruling will violate fundamental legal principles of the PRC or its sovereignty, security or social or public interest.

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

The Arbitration Law of the PRC (中華人民共和國仲裁法) (the "Arbitration Law") was promulgated 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 on contracts and on other properties involving foreign parties, where the parties have entered into a written agreement to refer the matter to an arbitration panel 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 Civil Procedure Law. Where the parties have by an agreement provided arbitration as a 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 incorporated in the PRC and listed in Hong Kong and, in the case of the Listing Rules, also in a contract between the company and each of its directors and supervisors, to the effect that whenever any dispute or claim arises from any rights or obligations provided in the articles of association, the Company Law and other relevant laws and administrative regulations concerning the affairs of the company between (i) a holder of overseas listed foreign shares and the company; (ii) a holder of overseas listed foreign shares and the directors, supervisors, manager or other officers of the company; or (iii) a holder of overseas listed foreign shares and a holder of domestic shares, unless otherwise specified in the articles of association of the company concerned, such parties may 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 HKIAC, then any party to the dispute may apply to have such arbitration conducted in Shenzhen according to the securities arbitration rules of HKIAC. CIETAC is a arbitration body in the PRC located in Beijing with branches in Shenzhen and Shanghai.

Under the Arbitration Law and the Civil Procedure Law, an arbitral award is final and binding on the parties and 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 committee if there are discrepancies over the constitution of the arbitration rules of the arbitration proceedings or the arbitration committee, or the arbitration award goes beyond the arbitration agreement or the jurisdiction of the arbitration committee, or the enforcement of the arbitration award violates the social and public interest.

A party seeking to enforce an arbitral award of a foreign affairs arbitration body 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.

In respect of contractual and non-contractual commercial-law-related disputes which are recognised as such for the purposes of the PRC law, the PRC has 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 (1) the PRC would only recognise and enforce foreign arbitral awards on the principle of reciprocity; and (2) the PRC would only apply the New York Convention in disputes considered under PRC laws to be arising from contractual and noncontractual mercantile legal relations.

Following the resumption of sovereignty over Hong Kong by the PRC on 1st July, 1997, the New York Convention no longer applies to the enforcement of Hong Kong arbitral awards in other parts of the PRC. A Memorandum of Understanding on the arrangement for reciprocal enforcement of arbitral awards between Hong Kong and the PRC has been signed on 21st June, 1999. The new arrangement is made in accordance with the spirit of the New York Convention. It will allow awards made over 100 China arbitral authorities with relevant experience to be enforced in Hong Kong. Under the agreed arrangement, Hong Kong arbitration awards will also be enforceable in the PRC. This new arrangement has been approved by the Hong Kong Legislative Council and the Supreme People’s Court of the PRC and became effective on 1st February, 2000.

#### **(d) Foreign Exchange Control**

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

The PBOC, with the authorisation of the State Council, issued on 28th December, 1993 the Notice on the Further Reform of the Foreign Exchange Control System (中國人民銀行關於更進一步改革外匯管理體制的公告) and on 26th March, 1994 the Provisional Regulations on the Settlement, Sale and Payment of Foreign Exchange (結匯、售匯及付匯管理暫行規定), which came into effect on 1st January, 1994 and 1st April, 1994 respectively. On 29th January, 1996, the State Council promulgated the PRC Foreign Exchange Control Regulations (中華人民共和國外匯管制條例) which took effect on 1st April, 1996. On 20th June, 1996, the PBOC issued the

Administration Regulations on the Settlement, Sale and Payment of Foreign Exchange (結匯、售匯及付匯管理規定), which took effect on 1st July, 1996. These regulations contain detailed provisions regulating the holding, sale and purchase of foreign exchange by individuals, enterprises, economic bodies and social organisations in the PRC.

Under the new regulations, the previous dual exchange rate system for Renminbi was abolished and a unified floating exchange rate system largely based on supply and demand was introduced. The PBOC, having regard to the trading prices between Renminbi and major foreign currencies on the previous day on the inter-bank foreign exchange market, publishes on each bank business day the Renminbi exchange rate against major foreign currencies.

The foreign exchange earnings of all PRC enterprises, other than those either derived by enterprises with foreign investment interests or specifically exempted under the relevant regulations, are to be sold to designated banks. Foreign exchange earnings obtained from borrowings from foreign institutions or issues of shares or bonds denominated in foreign currency need not be sold to designated banks.

At present, control on the purchase of foreign exchange is being relaxed. Enterprises which require foreign exchange for their current account transactions 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 dividends on the H Shares and 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.

The foreign exchange proceeds of an issue of shares by a PRC enterprise (such as the Company) constitute a capital account item under the PRC Foreign Exchange Control Regulations. Under the Regulations, such proceeds are required to be remitted to the PRC and maintained in an account with a designated bank or, with the approval of the foreign exchange regulatory authorities, sold to designated banks.

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, designated banks may, based on the exchange rate published by the PBOC and subject to certain limits, freely determine the applicable exchange rate. The China Foreign Exchange Trading Centre (“CFETC”) was formally established and came into operation on 1st January, 1994. CFETC has set up a computerised network with sub-centres in several major cities, thereby forming an inter-bank market in which designated PRC banks can trade in foreign exchange and settle their foreign currency obligations.

The establishment of CFETC was originally intended to coincide with the elimination of swap centres. The swap centres have, however, been retained as an interim measure and enterprises with foreign investment are currently required to enter into exchange transactions only through the swap centres, rather than through designated PRC banks, upon obtaining the approval of SAFE or its local office where the swap centres are located.

On 13th January, 1994, CSRC and SAFE jointly issued the Notice Relating to Certain Exchange Control Matters for the Overseas Listed Enterprises (關於境外上市企業外匯管理有關問題的通知). The Notice provides that:

- upon the approval of SAFE, an overseas listed enterprise may open a foreign exchange account at a bank within the PRC for the deposit of foreign currency proceeds received from overseas placings;
- within 10 days after receiving the foreign currency proceeds of the placing, the enterprise should transfer such proceeds into a PRC bank account;

- upon the approval of SAFE, the enterprise may remit abroad the foreign exchange from its foreign currency bank account to foreign investors outside the PRC for the purposes of payment of dividends or other profit distribution; and
- where 25 per cent. or more of the share capital of the enterprise is held by foreign investors, such enterprise may apply to MOFTEC for foreign invested enterprises status, and upon the approval of MOFTEC, the foreign exchange matters of such enterprise shall be dealt with in accordance with foreign exchange regulations applicable to foreign invested enterprises.

The Notice Concerning Further Upgrading of Foreign Exchange Control of Overseas Listed Enterprises (關於進一步完善境外上市外匯管理有關問題的通知) was jointly issued by CSRC and SAFE on 5th August, 2002. The Notice provides that:

- within 30 days after the approval of the CSRC for the overseas issue of shares listing, a domestic enterprise holding shares of the overseas listed enterprise should proceed with the foreign exchange registration procedures at local administration authority for foreign exchange in respect of the overseas listed shares;
- within 30 days after receiving the foreign currency proceeds of the placing, the overseas listed enterprise should transfer the balance of the foreign currency proceeds received to the PRC, after deducting the related expenses, and should not retain the proceeds overseas without the approval of local administration authority for foreign exchange. The transferred funds shall be administered as direct investment funds of the foreign investor, and subject to approval by local administration authority for foreign exchange, a special account may be opened to retain the funds, which may be used for foreign exchange settlements;
- before the proceeds are transferred to the PRC, if the overseas listed enterprise need to open an overseas account for temporary deposit of the proceeds, application can be made to local administration authority for foreign exchange to open an overseas special foreign exchange account, with a maximum time limit of three months from the date of the opening of the account;
- in the event the overseas listed enterprise is required to repurchase the company's own overseas listed foreign shares, approval should be obtained from CSRC, after which application should be made for foreign exchange registration changes in respect of the overseas listed shares and the related opening of account overseas and approval for the remittance of funds.

(e) **Taxation**

(i) *Income tax on enterprises*

Under the Provisional Regulations of the PRC Concerning Income Tax on Enterprises (中華人民共和國企業所得稅暫行條例) promulgated by the State Council and which came into effect on 1st January, 1994, state-owned enterprises, collectively-owned enterprises, private enterprises, joint ventures and joint stock limited enterprises engaged in production, businesses and other income producing enterprises are liable to pay income tax at the rate of 33 per cent. on their taxable incomes except that where, in relation to particular categories of enterprises, existing laws, administrative regulations or any other relevant regulations promulgated by the State Council provide for tax privilege and tax reduction policy.

Pursuant to the Income Tax Law of China Concerning Foreign Investment Enterprises and Foreign Enterprises (中華人民共和國外商投資企業和外國企業所得稅法) promulgated by the Ninth National People's Congress on 9th April, 1991, the productive foreign investment enterprises, subject to the approval of tax authority, shall be entitled to taxation privilege and tax reduction policy.

Pursuant to the Enterprise Income Tax Law of the PRC promulgated by the Tenth National People's Congress on 16th March, 2007, enterprises will be subject to an income tax rate of 25% with effect from 1st January, 2008, but enterprises engage in environmental protection or water savings projects will be subject to taxation exemption and taxation reduction policy. The abovementioned Provisional Regulations of the PRC

Concerning Income Tax on Enterprise (中華人民共和國企業所得稅暫行條例) and the Income Tax Law of China Concerning Foreign Investment Enterprises and Foreign Enterprises (中華人民共和國外商投資企業和外國企業所得稅法) will be repealed with effect 1st January, 2008.

(ii) *Value added tax*

The Provisional Regulations of the PRC Concerning Value Added Tax (中華人民共和國增值稅) promulgated by the State Council came into effect on 1st January, 1994. Under these regulations and the Implementing Rules of the Provisional Regulations of the PRC Concerning Value Added Tax (中華人民共和國增值稅暫行條例實施細則), value added tax is imposed on goods sold in or imported into the PRC and on processing, repair and replacement services provided within the PRC.

Value added tax payable in the PRC is charged on an aggregated basis at a rate of 13 or 17 per cent. (depending on the type of goods involved) on the full price collected for the goods sold or, in the case of taxable services provided, at a rate of 17 per cent. on the charges for the taxable services provided, but excluding, in respect of both goods and services, any amount paid in respect of value added tax included in the price or charges, and less any deductive value added tax already paid by the taxpayer on purchases of goods and services in the same financial year.

(iii) *Business tax*

Under the Provisional Regulations of the PRC on Business Tax (中華人民共和國營業稅暫行條例) effective from 1st January, 1994 and the Implementing Rules of the Provisional Regulations of the PRC on Business Tax (中華人民共和國營業稅暫行條例實施細則), business that provide services (save for entertainment business), assign intangible assets or sell immovable property became liable to business tax at the rate of 3 to 5 per cent. of the turnover attributable to the services provided, intangible assets assigned or immovable property sold, as the case may be. Business that provides entertainment services is liable to a business tax at the rate of 5 to 20 per cent. of the turnover attributable to the services provided. Business tax and value added tax are mutually exclusive.

(iv) *Tax on dividends*

Under the Provisional Regulations of the PRC Concerning Questions of Taxation on Pilot Joint Stock Enterprises (中華人民共和國股份制試點企業有關稅收問題的暫行規定) promulgated on 12th June, 1992, a 20 per cent. tax is required to be withheld on dividends received by an individual from a pilot joint stock enterprise; and the withholding is required under these regulations to be made in accordance with the provisions of the Individual Income Tax Law of the PRC (中華人民共和國個人所得稅法) adopted on 10th September, 1980. A reduced tax rate will apply if dividends are received by a foreign individual who is not resident in the PRC and is resident in a country that has a double taxation treaty with the PRC.

Under the Income Tax Law of the PRC for Enterprises with Foreign Investment and Foreign Enterprises (中華人民共和國外商投資企業和外國企業所得稅法) (the “Foreign Enterprises Tax Law”) promulgated on 9th April, 1991, income such as dividends and profits distribution from the PRC derived from a foreign enterprise which has no establishment in the PRC is subject to a 20 per cent. withholding tax, subject to reduction as provided by any applicable double taxation treaty, unless the relevant income is specifically exempted from tax under the Foreign Enterprises Tax Law.

On 21st July, 1993, the PRC State Administration of Taxation (the “SAT”) issued the Circular of the Question concerning Tax on the Profits Earned By Enterprises with Foreign Investment, Foreign Enterprises and Individual Foreigners from the Transfer of Stock (Stock Rights) and on Dividend Income (Guo Shui Fa [1993] No. 045) (國家稅務總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(國稅法[1993]045號)) (the “1993 Tax Notice”). The 1993 Tax Notice provides that dividends received by a foreign enterprise or a foreign individual from a PRC enterprise with shares listed on an overseas stock exchange (“overseas shares”) or with special Renminbi denominated shares listed on a PRC stock exchange will not for the time being be subject to any withholding tax.

On 31st October, 1993, the Amendments to the Individual Income Tax Law of the PRC (關於修改《中華人民共和國個人所得稅》的決定) (the “Amendments”) were promulgated and came into effect on 1st January, 1994. Under the Amendments, dividends received from a PRC enterprise by a foreign individual who is not a resident of the PRC are subject to a 20 per cent. withholding tax. Notwithstanding the Amendments, the 1993 Tax Notice issued by the SAT continues to be effective.

On 13th May, 1994, the PRC Ministry of Finance and the PRC SAT jointly issued the Notice on the Relevant Policies Concerning Individual Income Tax (Cai Shui Zi [1994] No. 020) (關於個人所得稅若干政策問題的通知(財稅字[1994]020號)) under which dividends received by a foreign individual from a PRC enterprise with foreign investment are, for the time being, exempted from individual income tax.

On 26th July, 1994, the PRC SAT issued the Notice on Matters Concerning Taxation on Dividend Income Received by Foreign Individuals from Shares in Domestic Listed or Overseas Listed PRC Companies (the “1994 Tax Notice”) (關於外籍個人持有中國境內外上市公司股票所取得的股息有關稅收問題的通知). The 1994 Tax Notice provides that dividends or other distributions received by foreign individuals who hold overseas shares and/or domestic listed foreign shares from a PRC listed 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 overseas shares held by any foreign enterprise or foreign individuals. If, however, the 1993 Tax Notice and/or the 1994 Tax Notice are withdrawn, a 20 per cent. withholding tax may be applied on such dividends or distributions, subject to any tax reduction pursuant to any applicable avoidance of double taxation treaty.

(v) *Taxation on transfer of shares*

The 1993 Tax Notice provides that gains realised by a foreign enterprise or a foreign individual through the transfer of overseas shares are exempted from capital gains tax. Under the Provisions for Implementation 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 “Implementation Provisions”) promulgated on 28th January, 1994, gains realised on the sale of securities by an individual are subject to income tax at a rate of 20 per cent. and the Ministry of Finance is empowered to enact detailed rules for the collection of such tax. No such rules have yet been promulgated and it is not certain how such tax is to be paid to the PRC tax authorities. On 20th June, 1994, the Ministry of Finance and the SAT issued the Notice on the Non-Levy on a Temporary Basis of Individual Income Tax on Gains from Share Transfer (關於股票轉讓所得暫不徵收個人所得稅的通知) which provides that gains realised by an individual arising from a sale of shares would not be subject to individual income tax for 1994 and 1995. Notice that exempted individuals from payment of tax on gains arising from a sale of shares for the year 1996 was also issued. On 30th March, 1998, the PRC Ministry of Finance and the PRC SAT issued the Notice on the Continued Non-Levy on a Temporary Basis of Individual Income Tax on Gains from Share Transfers (關於個人轉讓股票所得繼續暫免徵收個人所得稅的通知) which provides for the exemption of income tax payable by individuals arising from the transfer of shares in listed companies with effect from 17th January, 1997.

The exemption enjoyed by foreign companies under the 1993 Tax Notice is not affected by the Implementation Provisions and continues to apply.

(vi) *Stamp Duty*

According to the provisions of the Provisional Regulations of the PRC concerning Stamp Duty (中華人民共和國印花稅暫行條例) and the Implementing Measures for the Provisional Regulations of the PRC concerning Stamp Duty (中華人民共和國印花稅暫行實施細則) which took effect on 1st October, 1988, PRC stamp duty will only be imposed on documents signed in China or documents signed outside China but used within China which are legally valid and protected under PRC laws. As such, according to the Provisional Regulations of the PRC concerning Stamp Duty, the PRC stamp duty which is imposed on the transfer of shares of a PRC listed company is not applicable for H shares purchased or sold by H shares investors outside PRC.

(vii) *Tax treaties*

Foreign enterprises with no establishment in the PRC and individuals who are not resident in the PRC and are resident in countries which have entered into double taxation treaties with the PRC may be entitled to a reduction of withholding tax on dividends. At present, the PRC has entered into 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.

(viii) *Estate Duty*

The PRC does not currently have any estate tax.

**(f) Company Law**

On 29th December, 1993, the NPC promulgated the Company Law which came into effect on 1st July, 1994. The Company Law was amended for the first time on 25th December, 1999, the second time on 28th August, 2004 and the third time at the 18th session of the 10th NPC on 27th October, 2005. The newly amended Company Law came into effect on 1st January, 2006. Before the implementation of the Company Law, the formation and regulation of joint stock limited companies were governed by the Standard Opinion for Joint Stock Companies (股份有限公司規範意見) (the “Standard Opinion”) promulgated by the State Commission for Restructuring the Economic System of the PRC (the “State Restructuring Commission”) on 15th May, 1992. The Standard Opinion was superseded by the 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 Company Law and apply for re-registration pursuant to the Company Law before 31st December, 1996. The Special Regulations applicable to joint stock limited companies to be listed overseas were passed by the State Council on 4th August, 1994 pursuant to the Company Law. On 27th August, 1994 the Mandatory Provisions, being 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 Commission of the State Council and the State Restructuring Commission. The Mandatory Provisions were supplemented by the Letter on the Opinion Regarding the Supplemental Amendments to the Articles of Association of Companies to be listed in Hong Kong (關於到香港上市公司對公司章程作補充修改的意見的函) (the “Supplemental Amendments”) jointly promulgated by the Securities Commission and the State Restructuring Commission on 3rd April, 1995. The Mandatory Provisions as supplemented by the Supplemental Amendments have been incorporated in the Articles of Association with amendments pursuant to the newly amended Company Law.

Set out below is a summary of the provisions of the Company Law, the Special Regulations and the Mandatory Provisions as supplemented by the Supplemental Amendments.

**(i) General**

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

A company is a legal person with independent corporate properties and enjoys the right of corporate properties. A company uses all its properties to bare liabilities of the company. The liability of shareholders of a limited liability company is limited to the extent of the amount of capital contributed by them; and the liability of shareholders of a joint stock limited company is limited to the extent of the amount credited as paid on the shares subscribed by them.

A company may invest in other enterprises but unless otherwise required by law, the company can not become an investor with several and joint liability regarding the liabilities of the company invested.

On 10th January, 1995, the Ministry of Foreign Trade and Economic Cooperation promulgated the Provisional Regulations on Certain Issues Concerning the Establishment of Companies Limited by Shares with Foreign Investment (關於設立外商投資股份有限公司若干問題的暫行規定) (“Regulations on Foreign Invested Companies”) which regulates the procedures and other matters regarding the establishment of joint stock



limited companies with foreign investment in the PRC. Any matter relating to a joint stock limited company with foreign investment which is not provided in the Regulations on Foreign Invested Companies is continued to be governed by the Company Law and the Special Regulations.

References below to “company” are to a joint stock limited company incorporated under the Company Law with overseas listed foreign shares to be directly offered and listed in Hong Kong. References below to “foreign invested company” are to a joint stock limited company with foreign investment incorporated under the Regulations on Foreign Invested Companies.

**(ii) *Incorporation***

Under the Company Law, a company may be incorporated by either the promotion method or the public subscription method.

The entire share capital to be issued by a company incorporated by the promotion method must be subscribed by the promoters. If a company is established by the public subscription method, not less than 35 per cent. of the issued shares of the company must be subscribed by its promoters (those otherwise required by law and administrative regulations are followed accordingly), the remaining issued shares must be offered for subscription by the public or offered for subscription by specified persons.

Under the Company Law, the establishment of a company requires more than two but under 200 promoters and over half of the promoters are required to have a residential address in the PRC.

Under the 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 placing shares for subscription by overseas investors. If such a company is established by the promotion method, it may have fewer than five promoters and the company may issue new shares once it has been incorporated.

Any overseas entity, organisation or individual may establish a foreign invested company with any entity in the PRC. A foreign investor(s) may own less than 25 per cent. of the registered share capital of a foreign invested company provided that the words “the percentage of foreign investment is less than 25%” must be printed on the business licence and certificate of approval of such company. At least one promoter of a foreign invested company established by the promotion method must be a foreign investor.

In addition to this, at least one promoter of a foreign invested company established by the public subscription method is required to have three years of profitable track record immediately preceding the share subscription by the public.

**(iii) *Procedures for establishment of companies***

The establishment of a foreign invested company must be approved by the Ministry of Foreign Trade and Economic Co-operation (presently the Ministry of Commerce (商務部)).

In respect of a company established by the promotion method, the promoters may elect to make contributions by installments and they will be required to elect a board of directors and a supervisory committee after they have paid the first installment. The board of directors shall submit supporting documents to the company registration authority for registration of the company.

In respect of a company established by the public subscription method, according to the relevant requirements of the PRC Securities Law, if a company wants to issue shares publicly, it must deliver to the securities regulatory department of the State Council an application for public offering together with other supporting documents. According to the Company Law, an inaugural meeting of the company is required to be convened by the promoters within 30 days after the shares have been paid up in full. Matters that are required to be transacted at the inaugural meeting include the adoption of the company’s articles of association, the election of directors, the election of members of a supervisory committee, the review of the expenses incurred in connection with the establishment of the company 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 apply for the registration of the company within 30 days after the inaugural meeting by submitting all required documents to the registration authority.

The date of establishment of a company is the day when its business licence is issued by the relevant administrative bureau for industry and commerce.

(iv) *Responsibilities of promoters*

Under the Company Law, the promoters of a company are jointly and severally liable for:

- (1) the payment of expenses and liabilities incurred in connection with the establishment of the company if the company cannot be incorporated;
- (2) the repayment of subscription monies to the subscribers together with interest at bank rates for a deposit of the same term if the company cannot be incorporated; and
- (3) compensation to the company for damages suffered by the company as a result of the default of the promoters in the course of the incorporation of the company.

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

(v) *Shares*

(aa) *Registered capital*

The registered capital of a company established by the promotion method is the total share capital subscribed by all promoters registered with the company registration authority. The initial contribution by all promoters of a company must not be less than 20% of the registered capital and the rest must be paid up by the promoters within two years of the company's establishment. Contributions to investment companies can be paid up in five years. The registered capital of a company established by the public subscription method is the total paid up capital registered with the company registration authority and the shares subscribed by the promoters must not be less than 35% of the total shares of the company (those otherwise required by law and administrative regulations are followed accordingly). The minimum registered capital of a company is RMB5,000,000. The minimum registered capital of a foreign invested company is RMB30,000,000. A company the shares of which are authorised to be listed on a stock exchange must have a registered capital of not less than RMB30,000,000. The registered capital of a company shall be divided into shares of equal par value.

A company's promoters may subscribe for shares in cash or by way of injection of assets, intellectual property rights, land use rights and other kinds of non-currency properties the value of which can be measured by currency and are legally transferable, but not including properties that may not be used as contribution under the laws and administrative regulations. The value of non-currency properties used for subscription of shares should be evaluated and their value must not be over or under valued. The evaluation requirements under the laws or administrative regulations are followed accordingly. The total currency contribution by all shareholders must not be less than 30% of the registered capital of the company.

(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 other.

Shares may be issued at par or at a premium but may not be issued below their par value.

(cc) *Registered or bearer shares*

Shares may be issued in registered or bearer form. Shares issued to promoters and corporate holders must be in registered form and may not be held in the names of nominees. Shares issued to the public may be in registered or bearer form. The 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 Special Regulations and the Mandatory Provisions, shares issued to foreign investors and investors from the territories of Hong Kong, Macau and Taiwan and listed overseas are called overseas listed foreign shares, and shares issued to investors within the PRC other than the territories specified above are called domestic shares.

A company may offer its shares to the public overseas with the approval of the securities administration department of the State Council. The State Council is empowered to prescribe detailed measures in connection with any such offer. Under the Special Regulations, a company may, with the prior approval of the securities regulatory authorities, agree in its underwriting agreement to set aside shares of up to 15 per cent. of the total number of overseas listed foreign shares as part of the total number of shares to be offered in addition to the shares under written.

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

A company is required to record 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 relevant requirements of the PRC Securities Law, a company may issue new shares subject to the following conditions being fulfilled:

- (1) the company has a sound and well operated organization structure;
- (2) the company has sustainable profitability and a healthy financial position;
- (3) the financial and accounting statements of the company in the three financial years immediately preceding the new issue of shares not containing any false information and there are not other material breach of law;
- (4) satisfies other conditions required by the securities administration department of the State Council as approved by the State Council.

The issuance of new shares by listed companies non-publicly should satisfy other conditions required by the securities administration department of the State Council as approved by the State Council and be approved by the securities administration department of the State Council.

An issue of shares must be approved by shareholders in general meeting. If a company issues shares by way of an offer to the public, the approval from the securities administration department of the State Council must also be obtained. Following the completion of the subscription of new shares, the company is required to register the increase in registered capital with the relevant administrative bureau for industry and commerce.

**(vii) Reduction of share capital**

Subject to the minimum registered capital requirements, a company may reduce its registered capital in accordance with the following procedures prescribed under the Company Law:

- (1) the company shall prepare a balance sheet and financial statement;
- (2) the reduction of registered capital must be approved by shareholders in general meeting;
- (3) the company shall inform its creditors of the reduction in capital within 10 days and publish an announcement of the reduction in the newspaper within 30 days after the resolution approving the reduction has been passed;
- (4) the creditors of the company may within the statutory prescribed time limit require the company to pay its debts or provide guarantees to the extent of the amount of its debts; and
- (5) the company must apply to the relevant administrative bureau for industry and commerce for registration of the reduction in registered capital.

**(viii) Repurchase of shares**

A company may not acquire its own shares except due to a reduction in registered capital or a merger with another company which holds shares in the company or grant of shares to employees of the company as bonus, or the demand of repurchasing by the shareholders holding different opinion on resolutions on the company's merger and division in general meetings. 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, a 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 Company Law, within 10 days following a repurchase of a company's own shares, a company must in accordance with the applicable laws and regulations cancel the amount of shares repurchased, change its registration particulars and issue a public notice.

**(ix) Transfer of shares**

Shares may be transferred in accordance with relevant laws 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 by the holder of the shares endorsing his signature on the back of the certificate(s) for the shares or in any other manner as specified by the applicable law and regulations.

Shares of the company held by promoters may not be transferred within one year after the establishment of the company. Shares issued by the company before the public offer may not be transferred within one year from the date of commencement of trading of the shares of the company on a stock exchange. Directors, supervisors and senior officers of the company may not transfer more than 25% of the total shares of the company held by them during their tenure each year, and the shares held by them may not be transferred within one year from the date of listing and trading of the shares on a stock exchange and within the period of six months after they leave their positions in the company.

For securities transactions made through the stock exchange, if an investor holds or, by way of agreement or other arrangements, collectively hold 30% of the issued shares of a listed company with other persons, the investor(s) must proceed with the acquisition and made an acquisition offer to the shareholders of the listed company in respects of the part or all of the shares of that listed company in accordance with the relevant laws and regulations.

**(x) Shareholders**

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

- (1) the right to attend and vote in person and to appoint a proxy to attend and vote on his behalf at general meetings of the company;
- (2) the right to inspect the articles of association of the company, the minutes of shareholders' meetings and the financial reports of the company and to put forward proposals and make enquiries relating to the operations of the company;
- (3) the right to transfer the shares held by the shareholder in accordance with law on a stock exchange established in accordance with relevant laws;
- (4) the right to receive surplus assets of the company upon its winding up in proportion to its shareholding; and
- (5) the right to apply to the people's court for commencing a litigation on ceasing the acts of violation or infringement if a resolution passed at a shareholders' meeting or directors' meeting violates any law or administrative regulations or infringes any legitimate interests of the shareholders.

A shareholder is liable to the company to the extent of the amount payable, paid or credited as paid on the shares subscribed by them.

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 and replace directors and supervisors who are not acted by staff representatives and fix the remuneration of directors and supervisors;
- (3) to consider and approve the reports of directors and supervisors;
- (4) to consider and approve the annual financial budget and final reports;
- (5) to consider and approve the profit distribution plan and plans for making up accrued losses;
- (6) to approve the increase or reduction in the share capital of the company;
- (7) to approve the issue of bonds by the company;
- (8) to approve the merger, demerger, corporate restructuring, change in the form of the company, dissolution, liquidation of and other issues relating to the company;
- (9) to approve amendments to the company's articles of association; and
- (10) other rights provided under the company's articles of association.

(bb) *Annual general meetings and extraordinary general meetings*

Shareholders' general meetings are divided into annual general meetings and extraordinary general meetings. Annual general meetings must be held once every year. Extraordinary 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 fewer than two thirds of the number required under the Company Law or the company's articles of association;
- (2) the company's accumulated losses amount to one-third of its paid-up share capital;
- (3) upon the requisition of shareholders, individually or collectively, holding over 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 is required to be convened by the board of directors and presided over by the chairman of the board of directors. The vice-chairman will preside over the meeting in case of inability of performance or non-performance of duties by the chairman; over half of the directors will collectively nominate a director to preside over the meeting in case of inability of performance or non-performance of duties by the vice-chairman. If the board of directors is unable to or does not perform the duty of convening general meetings, the supervisor committee should duly convene and preside over the general meeting. If the supervisor committee does not convene or preside over a general meeting, shareholder(s) who individually or collectively hold(s) 10% or more of the shares of the company for over 90 days can convene and preside over a general meeting themselves. Under the Company Law, the time, place of the general meeting and matters to be considered should be notified to all shareholders 20 days prior to the meeting. Special general meetings should be notified to all shareholders 15 days prior to the meeting. For a company which has bearer shares in issue, the time, place of the meeting and matters to be considered should be publicly announced 30 days prior to the meeting. Shareholder(s) who individually or collectively hold(s) 3% or more of the shares of the company may propose temporary resolutions and submit such written resolutions to the board of directors 10 days prior to the general meeting; the board of directors should notify other shareholders within 2 days after receiving such resolutions and submit the temporary resolutions for consideration at the general meeting. The content of the temporary resolutions should be among the terms of reference of the general meetings, with a clear subject and specific matters to be resolved.

Under the Special Regulations and the Mandatory Provisions, 45 days' notice of 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 Special Regulations and Mandatory Provisions, shareholders who intend to attend a general meeting are required to provide the company with a written confirmation of their attendance 20 days prior to the meeting. Shareholders holding five percent or more of the voting rights of a company are entitled, under the 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 general meeting in the agenda for that meeting.

The Company Law does not specify any quorum requirement for a general meeting. The Special Regulations and the Mandatory Provisions provide that a 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 general meeting may be held if the company shall within five 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 general meeting is entitled to one vote for every share held by him. Resolutions proposed at a general meeting must be passed by more than half of the votes cast by shareholders present in person at the meeting except that amendments to the company's articles of association; the increase and reduction of registered capital of the company and the merger, demerger or dissolution of the company or change in the form of the company should be approved by more than two thirds of the votes cast by shareholders entitled to vote. Shareholders may appoint proxies to attend general meetings and the proxies should submit shareholders' proxy forms to the company and exercise their voting rights within the scope of authorisation.

An extraordinary general meeting shall not decide on any matters which are not set out in the notice convening that meeting.

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 company is required to consist of between 5 and 19 directors. The term of office of a director shall be prescribed by the company's articles of association, but a term of office 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 rights:

- (1) to convene general meetings and to report on their work to shareholders;
- (2) to implement resolutions passed by shareholders;
- (3) to decide on the company's business plans and investment plans;
- (4) to formulate annual budgets and final reports;
- (5) to formulate profit distribution plans and plans for making up accrued losses;
- (6) to formulate plans for the increase and reduction in registered capital and plans for the issue of bonds;
- (7) to formulate plans for the merger, demerger 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 establish the company's basic management system.

In addition, the Mandatory Provisions provide that the board of directors is also responsible for preparing proposals for amendment of the articles of association of a 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 subject to such notice period as may be set out in the articles of association.

A quorum of board meeting shall be constituted by more than half of the directors. A director may attend a board meeting personally or may appoint other director as his alternate to attend on his behalf. All board resolutions must be passed by the affirmative votes of more than half of the directors. All resolutions passed at a board meeting are required to be recorded in the minutes of the relevant meeting and the minutes are required to 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) will be personally liable to the company.

(cc) *Chairman and vice-chairman of the board of directors*

The board of directors has a chairman and may appoint a vice-chairman. The appointment of the chairman and vice-chairman is required to be elected by more than half of all the directors. The chairman is the legal representative of the company and may exercise the following powers:

- (1) to preside over general meetings and meetings of the board of directors; and
- (2) to examine the implementation of resolutions of the board of directors.

The role of the vice-chairman is to assist the chairman in carrying out his duties. In the event of the chairman being unable to carry out his duties, the vice-chairman designated by him shall exercise the powers of the chairman.

(dd) *Qualification of directors*

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

- (1) any person who is unable or has limited ability to undertake any civil liabilities;
- (2) any person who has been convicted of offences relating to bribery, corruption, trespass to assets, misappropriation of assets, or of causing social economic disorder, where less than five years have elapsed since the completion of the sentence; and any person who has been deprived of his political rights as a result of him having committed an offence, and less than five years have elapsed since the completion of the term of such deprivation;
- (3) any 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, and less than three years have elapsed since the date of completion of the bankruptcy or liquidation of the company or enterprise;
- (4) any person who has been a legal representative of a company or an enterprise the business licence of which has been revoked due to that company or enterprise having contravened any law and the person is personally responsible for such revocation, where less than three years have elapsed since the date of such revocation; or
- (5) any person who is liable for a relatively large amount of indebtedness which has not been repaid when due.

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



**(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 the senior officer of the company to ensure that they carry out their duties in compliance with relevant laws and regulations and the company's articles of association;
- (3) requiring the directors and the senior officer to rectify any action which adversely affects the interests of the company;
- (4) proposing the convening of general meetings and to convene and preside over general meetings when the board of directors does not perform the duties of convening and presiding over general meetings as required by the Company Law;
- (5) propose resolutions to the general meetings;
- (6) take legal actions against directors and senior management in accordance to Rule 152 of the Company Law; and
- (7) carrying out other duties specified in the company's articles of association.

A supervisor may attend board meetings and make enquiry or suggestions on matters to be resolved at board meetings.

Under the Company Law, resolutions of a supervisory committee are required to be passed by the affirmative votes of over half of the supervisors.

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.

A supervisory committee is required to comprise shareholders' representatives and staff representatives in an appropriate proportion with not more than one-third of them being staff representative and the specific proportion should be specified in the company's articles of association. A director, manager or financial controller of the company may not become a supervisor. The term of office of a supervision is three years and a supervisor is eligible for re-election. The requirements of the Company Law on the qualifications of a director of the company apply to supervisors of the company.

**(xiv) Manager and officers**

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

- (1) to take charge of the production, operations and management 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 management system of the company;
- (5) to formulate the company's internal rules;

- (6) to recommend the appointment and dismissal of deputy managers and financial controller and to appoint or dismiss other officers (other than those required to be appointed or dismissed by the board of directors);
- (7) to attend board meetings; and
- (8) other rights conferred by the board of directors or the company's articles of association.

The 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 requirements of the Company Law on the qualifications of a director of the company apply to managers and senior management of the company.

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

A director, supervisor, manager and an officer of a company are required under the 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. 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 any secret information of the company save as permitted by the relevant laws and regulations or by the shareholders.

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

The Special Regulations and the Mandatory Provisions provide that directors, supervisors, managers and officers of a company owe fiduciary duties to the company and are required to perform their duties faithfully, protect the interests of the company and not to make use of their positions in the company for their own benefit.

**(xvi) *Finance and accounting***

A company is required to establish a financial and accounting system in accordance with the relevant laws and regulations.

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 are required to be made available for inspection by the shareholders of the company 20 days prior to the annual general meeting of the company. A company established by the public subscription method must publish its financial statements.

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) a transfer of 10 per cent. of its after tax profit to the statutory surplus reserve of the company provided that no further transfer is required to be made if the accumulated statutory surplus reserve exceeds 50 per cent. of the registered capital of the company;
- (2) subject to the approval of the general meeting, any amount from the after tax profit of the company to the discretionary surplus reserve; and
- (3) any balance of the after tax profit subsequent to making up accrued losses and transfers to the surplus reserve shall be distributed to the shareholders in proportion to their respective shareholdings in the company, except those prescribed by articles of association not distributed in proportion to shareholdings.

When a company's statutory surplus reserve is insufficient to make up the company's accrued losses from the previous year, the profits of the company for the current year shall be applied to make up such losses before making allocations to the statutory surplus reserve pursuant to the requirements described above.

A company which has made a transfer to its statutory common reserve from its after tax profits may, with the approval of its shareholders in general meeting, make appropriations to its discretionary 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 finance department of the State Council to be treated as the capital common reserve.

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

- (1) to make up the company's accumulated losses, but the capital common reserve can not be used to make up the company's accumulated losses;
- (2) to expand the business operations of the company; and
- (3) to convert into registered capital of the company; provided that if the statutory surplus reserve is converted into registered capital, the balance of the statutory surplus reserve after such conversion shall not be less than 25 per cent. of the registered capital of the company before such conversion.

**(xvii) *Appointment and retirement of auditors***

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

Auditors are required to be appointed for a term commencing from the close of an annual general meeting to the close of the next annual general meeting.

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

**(xviii) *Distribution of profits***

The Special Resolutions 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 is required to be made through a receiving agent.

**(xix) *Amendments to articles of association***

Amendments to a company's articles of association must be approved by two thirds or more of the votes cast by shareholders present at a general meeting. Any amendment of the provisions incorporated in a company's articles of association in accordance with the Mandatory Provisions will only be effective after the approval of the companies approval department authorised by the State Council and the Securities Commission of the State Council have been 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 is required to be approved by the shareholders in general meeting.

The merger and demerger required by laws and regulations shall be approved by relevant authorities. The merger of a company may be effected either by way of absorption followed by the dissolution of the company being absorbed or the establishment of a new entity followed by the dissolution of the entities being merged.

All parties to a merger are required to sign a merger agreement and to prepare their respective balance sheets and inventory of assets. Each party to a merger shall notify the creditors of the merger within 10 days and make an announcement within 30 days on newspaper after the resolution approving the merger has been passed.

The creditors may within the statutory prescribed time limit request the company to repay any outstanding indebtedness or provide guarantees covering such indebtedness.

A company is required to prepare its balance sheet and inventory of assets prior to its demerger. As in the case of a merger, a company seeking a demerger is required to issue notices of the demerger to creditors, to publish notices of the demerger and to make repayment of or provide guarantees to creditors.

Any change in the registration particulars of the companies resulting from merger or demerger must be registered in accordance with the applicable laws and regulations.

**(xxi) *Dissolution and liquidation***

A company which is unable to pay its debts as they fall due may be declared insolvent in accordance with the relevant laws and regulations. Once a company is declared insolvent, the people's court shall, in accordance with relevant laws, establish a liquidation committee comprising the shareholders of the company and the relevant governmental authorities and professionals to conduct the liquidation of the company.

Under the Company Law, a company is required to be dissolved upon occurrence of any of the following events:

- (1) upon the expiry of the term of operations stipulated in the company's articles of association or on the occurrence of a dissolution event specified in the company's articles of association;
- (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 business license being revoked, or the company being closed and dissolved according to laws;  
or
- (5) the people's court give an order to dissolve the company according to Rule 183 of the Company Law.

Where a company is dissolved in any of the circumstances referred to in (1), (2), (4) or (5) above, the shareholders in general meeting shall within 15 days of the occurrence of the event appoint the members of the liquidation committee. The liquidation committee shall be composed of the directors or the persons appointed by the general meeting. 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.

A liquidation committee is 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 the discharge of all its indebtedness and representing the company in all civil litigation.

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

A company's assets are required to be applied to pay off all expenses incurred in connection with the liquidation, employees' wages, social insurance premium, statutory compensation, tax has been due and the indebtedness of the company. Any surplus assets after the discharge of the company's liabilities are required to be distributed to the shareholders in proportion to their respective shareholdings in the company. If the assets of the company are inadequate to pay off its indebtedness, the liquidation committee shall apply to the people's court for an insolvency order and shall transfer the liquidation proceedings to the people's court.

During the liquidation, a company may not engage in any operating activities unrelated to the liquidation.

Upon completion of the liquidation process, the liquidation committee is required to submit a liquidation report to the shareholders in general meeting or the relevant administrative department for confirmation. The liquidation committee is also required to apply to the relevant administrative bureau for industry and commerce 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 relevant securities regulatory authority and the listing must be arranged in accordance with procedures specified by the Special Regulations.

Under the Special Regulations and the Mandatory Provisions, where a company proposes to issue overseas listed foreign shares and domestic shares which has been approved by the Securities Commission, then, subject to the further approval of the Securities Commission being obtained, the overseas listed foreign shares and the domestic shares may be issued separately within 15 months of such further approval and the share issues may be implemented by the board of directors of the company concerned.

**(xxiii) *Loss of share 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 obtained, the shareholder may apply to the company for the issue of replacement certificates. A separate procedure regarding loss of share certificates is provided in the Mandatory Provisions and which has been incorporated into the Articles of Association, a summary of which is set out in appendix IV to this document.

**(xxiv) *Suspension and termination of listing***

The new Company Law does not involve regulations regarding to the suspension and termination of listing of a listed company. The relevant regulations are now stated by the new PRC Securities Law.

Under the new PRC Securities Law, a listed company may have its listing suspended by the stock exchange if any of the following events shall occur:

- (1) the total share capital and the distribution of share ownership have been altered to make the company no longer satisfy the requirements necessary for listing;
- (2) the company has failed to make public its financial situation in compliance with the legal provisions or has falsified its financial accounting statements which lead to misleading to the shareholders;
- (3) the company is involved in major illegal acts;
- (4) the company has incurred losses for the past three consecutive years; or

- (5) any other events prescribed in the listing rules of the stock exchange.

Under the new PRC Securities Law, a listed company may have its listing terminated by the stock exchange if any of the following events shall occur:

- (1) the total share capital and the distribution of share ownership have been altered to make the company no longer satisfy the requirements necessary for listing, and failure to fulfil the requirements within the prescribed time of the stock exchange;
- (2) the company has failed to make public its financial situation in compliance with the legal provisions or has falsified its financial accounting statements and rejected to make correction;
- (3) the company has incurred losses for the past three consecutive years and failed to make profit in the subsequent year;
- (4) the dissolution or declaration of the bankruptcy of the company according to law; or
- (5) any other events prescribed in the listing rules of the stock exchange.

**(g) Securities Law and Regulations**

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

In early 1993, the State Council established the Securities Commission of the State Council and the CSRC. At the time of its establishment, the Securities Commission was responsible for co-ordinating the drafting of securities regulations, formulating securities related policies, planning the development of securities markets, directing, coordinating and supervising all securities-related institutions in the PRC and administering the CSRC. At that time, the CSRC was the regulatory arm of the Securities Commission and was responsible for the drafting of regulatory provisions of securities markets, supervising securities companies, regulating public offerings of securities by PRC companies in the PRC and overseas, regulating the trading of securities, compiling securities-related statistics and undertaking research and analysis. In early 1998, the State Council dissolved the Securities Commission and the functions formerly undertaken by the Securities Commission more assumed by the CSRC.

On 22nd April, 1993, the State Council promulgated the Provisional Regulations Governing the Issue and Trading of Share (股票發行與交易管理暫行條例) (the “Securities Provisional Regulations”) with the application and approval procedures for public offerings of equity securities, trading in equity securities, the acquisition of listed companies, deposit, settlement, and transfer of listed equity securities, the disclosure of information with respect to a listed company, enforcement and penalties and dispute settlement. These regulations specifically provide that the offer of shares by a PRC company directly and indirectly outside the PRC require the approval of the Securities Commission 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 the 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 the shares of which are listed on a stock exchange outside the PRC including, for instance, joint stock limited companies whose shares are listed on the Stock Exchange.

On 12th June, 1993, the CSRC promulgated the Implementation Measures (Provisional) on Disclosure of Information by Companies making Public Offerings of Shares (公開發行股票公司信息披露實施細則(試行)) 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 annual 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 alterations to a company’s articles of association or

registered capital, removal of auditors, mortgage or disposal of major operating assets or the writing down of 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 the acquisition of listed companies.

On 2nd September, 1993, the Securities Commission promulgated the Provisional Measures on 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. The PRC Securities Law imposes similar prohibitions on insider in possession of insider information or other person who illegally obtains insider information from dealing in securities, divulge such insider information or counselling another person to deal in securities.

The PRC Securities Law also prohibits certain dealings activities which are manipulative of the market price and/or the trading volume of securities.

The Special Regulations promulgated on 4th August, 1994 also contain regulations which 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 the 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 the disclosure of information by joint stock limited companies having domestic listed foreign shares.

On 29th December, 1998, the PRC Securities Law (中華人民共和國證券法) was passed by the Standing Committee of the NPC. The PRC Securities Law took effect on 1st July, 1999. The amendment by the 18th session of the Standing Committee of the 10th NPC on 27th October 2005 was effected on 1st January 2006. The amended PRC Securities Law regulates, among other things, the issue and trading of securities, takeovers of listed companies, continuing disclosure obligations of issues of equities and bonds, prohibitions on certain securities trading activities, securities exchanges, securities companies, securities clearing institutions and the duties and functions of the State Council's securities regulatory authorities. The PRC Securities Law provides, among other matters, that (i) enterprises in the PRC which intend to issue directly or indirectly securities outside the PRC or to list their securities outside the PRC must obtain prior approval from the State Council's securities supervisory authorities, and (ii) specific measures in respect of shares of PRC domestic companies which are to be subscribed and traded in foreign currencies by persons and organizations outside the PRC will be formulated by the State Council separately. Where the Securities Law does not apply, the provisions of the Company Law and other applicable laws and administrative regulations will apply. Currently, the issue and trading of shares subscribed and traded in foreign currencies (including H Shares and B shares) are still mainly governed by the rules and regulations promulgated by the State Council and the CSRC.

On 29th March, 1999, the State Economic and Trade Commission and the CSRC jointly issued the Opinion Regarding Further Conformity in Operations and Reform of Companies Listed outside the PRC (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 "Conformity Opinion"). The Conformity Opinion sets out measures recommended to be adopted by companies whose securities are listed outside the PRC ("Overseas Listed Companies") in order to encourage these companies to comply with the applicable domestic and foreign laws and regulations, to perform their continuing obligations towards investors and to establish a good corporate image in capital markets whether in or outside the PRC. These measures include generally segregating certain functions and activities of the Overseas Listed Companies from their respective controlling entities (and for purpose of the Conformity Opinion, a "controlling entity" refers to any company, enterprise or institution having a legal person status and which has a controlling interest in an Overseas Listed Company), establishing a clear decision making process and enhancing

directors' responsibilities, strengthening the composition of the board of directors and supervisors and segregating the administrative affiliation between government departments and the Overseas Listed Companies. Specific recommendations, among others, contained in the Conformity Opinion include that: (i) the board of directors, the management and the financial and marketing departments of an Overseas Listed Company should be independent from those of its controlling entities; (ii) no more than two senior officers from the controlling entity (whether the chairman, vice-chairman or executive directors) may concurrently hold the position of senior administrative officer in the Overseas Listed Company; (iii) a State-owned controlling entity whose principal business and assets have been assumed by an Overseas Limited Company is required to reduce its connected transactions with the Overseas Limited Company and avoid competing with the Overseas Listed Company in the same industry; (iv) the directors of an Overseas Listed Company owe a fiduciary obligation and a duty of due diligence to the company. A director is required to express unequivocal opinions on matters discussed at board meetings; (v) an Overseas Listed Company is required to increase the proportion of external directors so that external directors shall make up of one half or more of the board and there shall be two or more independent directors; (vi) an Overseas Listed Company is required to increase the proportion of external supervisors (who do not hold any position in the Overseas Limited Company) so that the external supervisors shall make up of one half or more of the supervisory committee and there shall be two or more independent supervisors.

On 21st September, 1999, CSRC promulgated the Examination, Approval and Supervision of Enterprises in China Applying to List on the Hong Kong Growth Enterprise Market Guidelines (境內企業申請到香港創業板上上市審批與監管指引) (the "Guidelines") which set out the approval procedures with respect to the listing of PRC enterprises on the Stock Exchange. Under the Guidelines, any State-owned or private enterprise may, through its sponsor acting on its behalf, apply to CSRC for approval to list on the Stock Exchange, such application to be accompanied by documents set out in the Guidelines. One pre-condition for such application being that the applicant must be a company limited by shares and approved by a provincial level people's government or the State Economic and Trade Commission (國際經濟貿易委員會). CSRC will determine whether to grant the approval within 10 days of receipt of the specified documents unless objections are received by any one of the Ministry of Foreign Trade and Economic Cooperation (對外貿易經濟委員會), the SAFE, and, if State-owned shares are involved, the Ministry of Finance (財政部).

#### (h) Legal opinion

Rayyin & Partners, the Company's legal advisers on the 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, the 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 the paragraph headed "Documents available for inspection" in Appendix VI to this document. Any person wishing to have detailed advice on the PRC laws is recommended to seek independent legal advice.

#### *Compliance with laws and regulations of the PRC*

According to the Directors and the PRC legal adviser to the Company, the Group has complied with all applicable laws and regulations of the PRC since commencement of the Track Record Period.

According to the Directors and the PRC legal adviser to the Company, the Group has obtained all licences, approvals and permits or certificates necessary to conduct its operations from the relevant government bodies in the PRC.

## 2. HONG KONG LAWS AND REGULATIONS

#### (a) Company law

The Hong Kong law applicable to a company having a 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 a decision adopted at the 24th Session of the Standing Committee of the 8th NPC on 23rd February, 1997 on treatment of the laws previously in force in Hong Kong in accordance with Article 160 of the Basic Law of Hong Kong.

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



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

(i) *Corporate existence*

Under Hong Kong company law, a company having a 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 Hong Kong Companies Ordinance to contain certain pre-emptive provisions. Any company which does not contain such provisions in its articles of association is a public company.

Under the Company Law, a 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 public offer to the public and a company may only issue further shares after a year has elapsed since its last share issue. The Special Regulations permit a state owned enterprise to be converted into a joint stock limited company by the promotion method and to offer new shares to the public on its establishment.

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

(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 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.

The directors of a Hong Kong company may, with the prior approval of the shareholders in general meeting if required, cause the company to issue new shares. The Company Law does not recognise 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 of the registered capital must be approved by the shareholders in general meeting and the relevant PRC governmental and regulatory authorities. After completion of an approved new issue, the company has to register the increase in share capital with the relevant regulatory authority for industry and commerce.

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

Under the PRC law, the domestic shares (“domestic shares”) in the share capital of a joint stock limited company which are denominated and subscribed for in Renminbi may only be subscribed or traded by the State, PRC legal 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 or territory outside the PRC.

Under the Company Law, shares in a joint stock limited company held by its promoters may not be transferred within one year after the date of establishment of the company. Shares issued by the company before the public offer may not be transferred within one year from the date of commencement of trading of the shares of the company on a stock exchange. Directors, supervisors and senior officers of a company may not transfer more than 25% of the total shares of the company held by them during their tenure each year, and the shares held by them may not be transferred within one year from the date of listing and trading of the shares on a stock exchange and within the period of six months after they leave their positions in the company.

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

(iv) *Financial assistance for acquisition of shares*

The Company Law does not contain any provision prohibiting or restricting a joint stock limited company or its subsidiaries from providing financial assistance for the purposes 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 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 or more of the votes cast by shareholders of the affected class present in person or by proxy at a separate class meeting. For the purposes 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 in any 12 month period 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 approved by the Securities Commission of the State Council and which are completed within 15 months following the establishment of the company. The Mandatory Provisions contain detailed provisions relating to circumstances which are deemed to constitute a variation of class rights.

(vi) *Directors*

The 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 to Hong Kong incorporated companies.

(vii) *Supervisory committee*

Under the Company Law, the board of directors 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 reasonably prudent person would exercise in comparable circumstances.

(viii) *Derivative action by minority shareholders*

Hong Kong law permits minority shareholders to commence a derivative action on behalf of all shareholders against directors who have been guilty 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 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 for remedies of 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 Stock Exchange is required to give an undertaking in favour of the company to comply with the company's articles of association. This allows minority shareholders to bring action 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 either to wind up the company or to make an appropriate order regulating the affairs of the company. In addition, the Financial Secretary of the Hong Kong Government may on the application of a specified number of members, and the Securities and Futures Commission may in prescribed circumstances, appoint inspectors who are given extensive statutory powers to investigate the affairs of a company incorporated in Hong Kong. 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 director 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 Company Law, notice of a general meeting must be given not less than 20 days before the meeting or, in the case of a company having bearer shares, public announcement of a 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 shareholders' meetings*

Under Hong Kong law, the quorum for general meeting is provided by the articles of association of the company which may not in any event be fewer than two members. The Company Law does not specify any quorum requirement for general meeting but the Special Regulations and the Mandatory Provisions provide that a company's general meeting may be held 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 five days notify shareholders by public announcement and the 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 Company Law, the passing of any resolution requires more than half of votes cast by shareholders present in person or by proxy at a general meeting except in cases of proposed amendment to the articles of association, increase or reduction of the registered capital, merger, demerger, dissolution or change in the form of a joint stock limited company which require two thirds of votes cast by shareholders present in person or by proxy at a general meeting.

(xiii) *Dividends*

The Articles of Association empower the Company to withhold, and pay to the relevant tax authorities, any tax payable under the PRC Law on any dividends or other distributions payable to a shareholders. Under the Hong Kong law, the limitation period for an action to recover a debt (including the recovery of dividends) is six

years. Whereas under PRC laws, the relevant limitation period is two years. The Company shall not exercise its powers to forfeit any unclaimed dividend in respect of H Shares until after the expiry of the applicable limitation period.

(xiv) *Financial disclosure*

A joint stock limited company is required under the 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 Company Law must publish its financial statements. The annual balance sheet of a PRC joint stock limited company is required 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.

The Special Regulations require that there should not be any inconsistency between the information disclosed within and outside the PRC and that, to the extent that there are differences in the information disclosed in accordance with the relevant PRC and overseas laws, regulations and requirements of the relevant stock exchanges, such differences should also be disclosed simultaneously.

(xv) *Information on directors and shareholders*

Under the Mandatory Provisions, shareholders have the right to inspect and copy (at reasonable charges) certain information about the shareholders and directors of a PRC joint stock limited company similar to that available under Hong Kong law to shareholders of a company incorporated in Hong Kong.

(xvi) *Receiving agent*

Under both the PRC and Hong Kong law, dividends once declared become debts payable to shareholders (except in relation to interim dividends of Hong Kong companies, which do not constitute debts until the time they are paid generally). The limitation period for debt recovery action under Hong Kong law is six years while that under the PRC law 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.

(xvii) *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.

(xviii) *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 be referred to arbitration at the claimant's election at either the Hong Kong International Arbitration Centre or CIETAC.

(xix) *Mandatory transfers*

Under the 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. There are no such requirements under Hong Kong law.

**(b) 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 Stock Exchange. Set out below is a summary of such principal additional requirements which apply to the Company:

(i) *Sponsor*

The Company is required to retain for at least the remainder of the financial year during which the listing occurs and two financial years thereafter the services of the sponsor for its listing, or other financial adviser or professional firm which is acceptable to the Stock Exchange, to provide the Company with professional advice on continuous compliance with the Listing Rules, and to act at all times, in addition to the two authorized representatives of the Company, as the Company's principal channel of communication with the Stock Exchange on behalf of the Company. The appointment of the sponsor may not be terminated unless in exceptional circumstance where the sponsor is no longer able satisfactorily to perform the role, and only after first notifying the Stock Exchange of the intended termination and the reasons therefor.

(ii) *Accountants' reports*

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 accounting standards or the International Accounting Standards.

(iii) *Process agent*

The Company is required to appoint and maintain the appointment of 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 Stock Exchange and must notify the Stock Exchange of his appointment, the termination of his appointment and his contact particulars.

(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 the 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 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 share 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 Stock Exchange. The Directors must also state the consequences which the Directors are aware, if any, of any purchases which will arise under either or both of the Hong Kong Code on Takeovers and Mergers and any PRC law of a similar nature. Any general mandate given to the Directors to repurchase H Shares may not relate to exceed 10 per cent. of the total amount of existing issued H Shares.

(vi) *Mandatory Provisions*

With a view to increasing the level of protection afforded to investors, the Stock Exchange requires the incorporation, in the articles of association of a PRC company whose primary listing is on the Stock Exchange, of the Mandatory Provisions and provisions relating to the change, removal and resignation of auditors, class meetings and the conduct of the supervisory committee of the Company. Such provisions have been incorporated into the Articles of Association, a summary of which is set out in Appendix IV to this document.

(vii) *Redeemable shares*

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

(viii) *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 (1) 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 (2) any major subsidiary 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, Domestic Shares and H Shares subject to a restriction that in any 12 month period (commencing on the date on which Shareholders pass such special resolution) the aggregate number of Domestic Shares allotted or agreed to be allotted must not exceed the aggregate of 20 per cent. of the issued domestic share capital of the Company and the aggregate number of H Shares allotted or agreed to be allotted must not exceed the aggregate of 20 per cent. of the issued H share capital of the Company, in each case as at the date of the passing of the relevant special resolution.

(ix) *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 Listing Rules relating to such Articles of Association.

(x) *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 (if any) of the Directors, auditors and Supervisors 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 domestic Shares and foreign Shares);
- a copy of the latest annual return filed with the SAIC or other relevant PRC authority; and
- for Shareholders only, copies of minutes of meetings of Shareholders.

(xi) *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 by the Company in respect of the H Shares listed on the Stock Exchange to be held, pending payment, in trust for the holders of such H Shares.

(xii) *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 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 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 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 Directors and officers under take to observe and comply with their obligations to shareholders stipulated in the Articles of Association.

(xiii) *Compliance with the Company Law, the Special Regulations and the Articles of Association*

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

(xiv) *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 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;
- 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 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 CIETAC in accordance with its rules or Hong Kong International Arbitration Centre (“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;
- if the party seeking arbitration elects to arbitrate the dispute or claim at HKIAC, then either party may apply to have such arbitration conducted in Shenzhen according to the Securities Arbitration Rules of HKIAC;
- PRC laws shall govern the arbitration of disputes or claims referred to above, unless otherwise provided by law or administrative regulations;
- the award of the arbitral body is final and shall be binding on the parties thereto;
- the agreement to arbitrate is made by the Director or officer with the Company on its own behalf and on behalf of each Shareholder; and
- any reference to arbitration shall be deemed to authorise the arbitral tribunal to conduct hearings in open session and to publish its award.

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

(xv) *Subsequent listing*

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

(xvi) *English translation*

All notices or other documents required under Chapter 19A of the Listing Rules to be sent by the Company to the Stock Exchange or to holders of H Shares are required to be in the English language, or accompanied by a certified English translation.



(xvii) *General*

If any change 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 Stock Exchange may impose additional requirements or make listing of the equity securities of a PRC issuer, including the Company, subject to such special conditions as the Stock Exchange considers appropriate. Whether or not any such changes in the PRC law or market practices occur, the 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 Main Board, the provisions of the Securities and Futures Ordinance (Chapter 571 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 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 Company Law shall be arbitrated at either CIETAC or 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 established in the PRC and listed on the 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 purposes 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**(i) *Dividends*

Under current practice, no tax is payable in Hong Kong in respect of dividends paid by the Company.

(ii) *Profits tax*

No tax is imposed in Hong Kong in respect of capital gains from the sale of property (such as the H Shares). 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 who make 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 17.5 per cent. of their assessable profits. Profits tax for individuals is levied on a standard rate of 15.5 per cent.

(iii) *Stamp duty*

The sale and purchase of shares are 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. Stamp duty is usually shared between the buyer and the seller equally in respect of transactions on the 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*

The Revenue (Abolition of Estate Duty) Ordinance 2005 abolished estate duty in respect of death occurring on or after 11 February 2006.