

*This Appendix contains a summary of PRC company and securities laws and regulations, certain material differences between the Company Law and Hong Kong company law, additional regulatory provisions introduced by the Stock Exchange in relation to PRC joint stock limited companies and our Articles of Association. The principal objective is to provide potential investors with an overview of the rights and obligations of our shareholders and the principal legal and regulatory provisions applicable to the Company. As the information contained below is a summary form, it does not contain all the information that may be important to potential investors.*

## 1. PRC LEGAL AND REGULATORY PROVISIONS

### (A) Company Law

On 29th December, 1993, the Standing Committee of the eighth National People's Congress the PRC adopted the Company Law which came into effect on 1st July, 1994 and was amended on 25th December, 1999. Companies established under laws, administrative regulations, local regulations and the Standard Opinion for Limited Liability Companies, and the Standard Opinion for Joint Stock Limited Companies formulated by the relevant departments of the State Council before the implementation of the Company Law will not be affected by the Company Law and shall continue to be recognised. Those companies which have not wholly complied with the provisions of the Company Law must comply with the relevant requirements and apply for registration before 31st December, 1996.

Set out below is a summary of the major provisions of the Company Law, the Special Regulations and the Mandatory Provisions. On 4th July, 1994, the Special Regulations were passed at the Twenty-second Standing Committee Meeting of the State Council, and they were promulgated and implemented on 4th August, 1994. The Special Regulations are formulated according to the provisions of Sections 85 and 155 of the Company Law in respect of the overseas share subscription and listing of joint stock limited companies. The Mandatory Provisions were issued jointly by the Securities Commission of the State Council and the State Restructuring Commission (the "Securities Commission") on 27th August, 1994, prescribing provisions which must be incorporated into the articles of association of joint stock limited companies to be listed overseas. Accordingly, the Mandatory Provisions have been incorporated in the Articles of Association. References to a "company" are to a joint stock limited company established under the Company Law with H Shares. Copies of the Chinese text of the Company Law, Special Regulations and the Mandatory Provisions together with copies of an unofficial English translations thereof are available for inspection as mentioned in the paragraph headed "Documents delivered to the Registrar of Companies" in Appendix VIII.

#### **General**

A "joint stock limited company" is a corporate legal person incorporated under the Company Law, whose registered capital is divided into shares of equal par value. The liability of its shareholders is limited to the extent of the shares held by them, and the liability of the company is limited to the full amount of all the assets owned by it. A

State-owned enterprise that is restructured into a company must comply with the conditions and requirements specified by law and administrative regulations, for the modification of its operation mechanisms, the systematic handling and evaluation of the company's assets and liabilities and the establishment of internal management organs.

A company must conduct its business in accordance with the laws and professional ethics and promote the development of a socialist market economy. A company may invest in other limited liability companies and joint stock companies. However, apart from investment companies and holding companies specified by the State Council, the amount of the aggregate investment of a company in other companies may not exceed 50% of its net assets and liabilities of the company with respect to such invested companies are limited to the amount invested.

### **Incorporation**

A company may be incorporated by promotion or public subscription.

A company may be incorporated by a minimum of five promoters, but at least half of the promoters must reside within the PRC. According to the Special Regulations, State-owned enterprises or enterprises with the majority of their assets owned by the PRC Government can be restructured in accordance with the relevant regulations to become joint stock limited companies which may issue shares to overseas investors. These companies if incorporated by promotion may have less than five promoters and can issue new shares once incorporated. Companies incorporated by promotion are companies the entire registered capital of which is subscribed for by the promoters. Where companies are incorporated by public subscription, not less than 35% of their total shares must be subscribed for by the promoters and the remainder of their shares shall be offered to the public.

The registered capital of a company is the amount of its total paid up capital as registered with the relevant administration bureau for industry and commerce. The minimum registered capital of a company is RMB10 million. The total capital of a company which proposes to apply for its shares to be listed on a stock exchange must not be less than RMB50 million.

The establishment of a company must be approved by the department authorised by the State Council or by the provincial level people's government. The promoters must convene an inaugural meeting within 30 days after the issued shares have been fully paid up, and shall give notice to all subscribers or make an announcement of the date of the inaugural meeting 15 days before the meeting. The inaugural meeting may be convened only with the presence of subscribers holding shares representing more than 50% of the voting rights in the company. At the inaugural meeting, matters including the adoption of draft articles of association proposed by the promoter(s) and the election of the board of directors and the supervisory committee of the company will be dealt with. All resolutions of the meeting require the approval of subscribers with at least half of the voting rights present at the meeting.

Within 30 days after the conclusion of the inaugural meeting, the board of directors must apply to the registration authority for registration of the establishment of the company. A company is formally established and has the status of a legal person after the approval of registration has been given by the relevant administration bureau for industry and commerce and a business licence has been issued. Companies established by the public subscription method shall file a report on the offer of shares with the securities administration department of the State Council for record.

The promoters of a company are liable for:

- (i) the payment of all expenses and liabilities incurred in the incorporation process individually and collectively if the company cannot be incorporated;
- (ii) the repayment of subscription monies to the subscribers together with interest at bank rates for a deposit of the same term individually and collectively if the company cannot be incorporated; and
- (iii) damages suffered by the company as a result of the default of the promoters in the course of incorporation of the company. According to the Provisional Regulations Concerning the Issue and Trading of Shares promulgated by the State Council on 22nd April, 1993 (which is only applicable to issue and trading of shares in the PRC and their related activities), if a company is established by means of subscription, the promoters of such 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 misleading or false statement or omit any material information.

### **Share capital**

The promoters may make capital contribution in cash, or in kind or by way of injection of assets, industrial property rights, non-patented technology or land use rights based on their appraised value. The amount of investment made in the form of industrial property rights and non-patented technology may not exceed 20% of the registered capital of the company.

If a capital contribution is made other than in cash, a valuation and verification of the property contributed must be carried out and converted into shares. A company may issue registered or bearer share certificates. However, shares issued to promoters, state-authorised investment organisations and PRC legal persons shall be in the form of registered share certificates, and may not be registered under a different name or in the name of an agent. The Special Regulations and the Mandatory Provisions provide that shares issued to foreign investors and listed overseas be issued in registered form and shall be 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 known as H shares, and those shares issued to investors within the PRC other than the territories specified above are known as domestic shares.

A company may offer its shares to the public overseas with approval by the securities administration department of the State Council. Detailed measures must be specifically formulated by the State Council. Under the Special Regulations, upon approval of the Securities Commission, a company may agree, in the underwriting agreement in respect of an issue of H shares, to retain not more than 15% of the aggregate number of H Shares proposed to be issued after accounting for the number of underwritten shares. The share offering price may be equal to or greater than the par value, but may not be less than par value.

According to PRC Securities Law (the “Securities Law”) which came into effect on 1st July, 1999, a shareholder who owns 5% of the issued shares of a listed company is required to make a written report to the securities regulatory authorities and the relevant stock exchange, as well as to inform the listed company, and to issue a public announcement within three days after the occurrence of such event. Additional requirement is mandated by the Securities Law if the share ownership further increases.

Transfers of shares may not be entered in the register of shareholders within 30 days before the date of a shareholders’ meeting or within five days before the record date set for the purpose of distribution of dividends.

### **Increase in capital**

Under the Company Law, an increase in capital in a company by means of an issue of new shares must be approved by shareholders in general meeting and meet the following conditions:

- (i) the previous issue of shares has been fully subscribed for and at least one year has elapsed since that issue, but under the Special Regulations, if a company increases its capital for the issue of H Shares, the time period elapsed since the last issue of shares may be less than 12 months;
- (ii) the company has been continuously profitable for the last three consecutive years and is able to make dividend payments to its shareholders;
- (iii) there has been no false reporting in the financial and accounting documents of the company during the last three years; and
- (iv) the expected profit rate of the company is comparable to the bank deposit rate for the same term.

Once the shareholders in general meeting have passed a resolution to issue new shares, the board of directors must apply to the authorised department of the State Council or to the provincial level people's government for approval. Public offers require the approval of the securities administration department of the State Council. After payment in full for the new shares issued, a company must change its registration with the relevant administration bureau for industry and commerce and issue a public notice accordingly.

### **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 by the Company Law:

- (i) the company shall prepare a balance sheet and a list of its assets;
- (ii) the reduction of registered capital must be approved by shareholders in general meeting;
- (iii) the company shall inform its creditors of the reduction in capital within 10 days and publish an announcement of the reduction in the newspaper at least three times within 30 days after the resolution approving the reduction has been passed;
- (iv) the creditors of the company may within the statutory prescribed time limit require the company to pay its debts or provide guarantees covering the debts; and
- (v) the company must apply to the relevant administration for industry and commerce for registration of the reduction in registered capital.

### **Repurchase of shares**

A company may not purchase its own shares other than for the purpose of reducing its capital by canceling its shares or merging with another company holding its shares or such other purposes permitted by law and administrative regulations. The Mandatory Provisions provide that upon obtaining approvals from shareholders' meeting in accordance with the articles of association of the company and from the relevant supervisory authorities, a company may repurchase its issued shares for the foregoing purposes by way of a general offer to its shareholders or purchase on a stock exchange or an off-market contract.

Under the Company Law, within 10 days following the purchase of a company's own shares, a company must in accordance with applicable law and administrative regulations cancel the repurchased portion of its shares, change its registration and issue a public notice.

**Transfer of shares**

Shares may be transferred in accordance with the 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 after the shareholders endorse their signatures on the back of the share certificates or in any other manner specified by applicable laws and regulations.

Shares issued to promoters may not be transferred within three years after the establishment of the company. Shares held by directors, supervisors and the manager of a company may not be transferred during their term of office with the company. There is no restriction under the Company Law as to the percentage shareholding of a single shareholder of a company.

**Shareholders**

Shareholders have such rights and obligations as set forth in the articles of association of the company. The articles of association of a company are binding on each shareholder. Under the Company Law, the rights of a shareholder include:

- (i) to attend in person or appoint a proxy to attend shareholders' general meetings, and to vote in respect of the number of shares held;
- (ii) to transfer his shares at a legally established stock exchange in accordance with the Company Law and the articles of association of the company;
- (iii) to inspect the company's articles of association, minutes of shareholders' general meetings and financial and accounting reports and to make proposals or enquiries in respect of the company's operations;
- (iv) if a resolution adopted by a shareholders' general meeting or the board of directors violates any law or administrative regulations or infringes the lawful rights and interests of shareholders, to institute an action in the People's Court demanding that the illegal infringing action be stopped;
- (v) to receive dividends in respect of the number of shares held;
- (vi) to receive surplus assets of the company upon its termination in proportion to his or her shareholding; and
- (vii) any other shareholders' rights specified in the company's articles of association.

The obligations of a shareholder include the obligation to abide by the company's articles of association, to pay the subscription monies in respect of the shares subscribed for, to be liable for the company's debts and liabilities to the extent of the amount of subscription monies agreed to be paid in respect of the shares taken up by him and any other shareholders' obligation specified in the company's articles of association.

### **General meetings**

The shareholders' general meeting is the organ of authority of the company, which exercises its powers in accordance with the Company Law.

The shareholders' general meeting exercises the following powers:

- (i) to decide on the company's operational policies and investment plans;
- (ii) to elect and replace the directors and decide on matters relating to the remuneration of directors;
- (iii) to elect and replace the supervisors who are representatives of shareholders and decide on matters relating to the remuneration of supervisors;
- (iv) to examine and approve reports of the board of directors;
- (v) to examine and approve reports of the supervisory committee;
- (vi) to examine and approve the company's proposed annual financial budget and final accounts;
- (vii) to examine and approve the company's proposals for profit distribution and for recovery of losses;
- (viii) to decide on any increase or reduction in the company's registered capital;
- (ix) to decide on the issue of bonds by the company;
- (x) to decide on issues such as merger, division, dissolution and liquidation of the company and other matters; and
- (xi) to amend the articles of association of the company.

Shareholders' annual general meeting is required to be held once every year. An extraordinary shareholders' general meeting is required to be held within two months after the occurrence of any of the following circumstances:

- (i) the number of directors is less than the number provided for in the Company Law or less than two-thirds of the number specified in the company's articles of association;
- (ii) the aggregate losses of the company which are not made up reach one-third of the company's total share capital;
- (iii) a request by shareholders holding 10% or more of the company's shares;
- (iv) when deemed necessary by the board of directors; or
- (v) when the supervisory committee proposes convening it.

Shareholders' general meetings shall be convened by the board of directors, and presided over by the chairman of the board of directors.

Notice of the meeting shall be given to all shareholders 30 days before the meeting under the Company Law and 45 days under the Special Regulations and the Mandatory Provisions, stating the matters to be considered at the meeting. Under the Special Regulations and the Mandatory Provisions, shareholders wishing to attend are required to give to the company written confirmation of their attendance 20 days prior to the meeting. Under the Special Regulations, at an annual general meeting of a company, shareholders holding 5% or more of the voting rights in the company are entitled to propose to the company in writing new resolutions to be considered at that meeting, which if within the powers of a shareholders' general meeting, are required to be added to the agenda of that meeting. Shareholders present at a shareholders' general meeting have one vote for each share they hold.

Resolutions of the shareholders' general meeting must be adopted by more than half of the votes cast by shareholders present in person (including those represented by proxies) at the meeting, with the exception of matters relating to merger, division or dissolution of a company which must be adopted by shareholders with more than two-thirds of the voting rights held by shareholders present (including those represented by proxies) at the meeting. According to the Mandatory Provisions, the increase or reduction of share capital, the issue of any class of shares, warrants or other similar securities or bonds or debentures, the liquidation of a company and any other matters in respect of which the shareholders by ordinary resolution so decide, must be approved by special resolutions which require adoption by shareholders holding more than two-thirds of the voting rights of the shareholders present in the general meeting. Amendments to the articles of association of

a company must be approved by more than two-thirds of the voting rights represented by shareholders present in general meeting. Shareholders may appoint representatives to attend shareholders' general meetings by a written appointment document stating the scope of exercising the voting rights.

There is no specific provision in the Company Law regarding the number of shareholders constituting a quorum in a shareholders' meeting. However, the Special Regulations and the Mandatory Provisions provide that a company's general meeting may be convened when replies to the notice of that meeting from shareholders holding shares representing 50% of the voting rights in the company have been received 20 days before the proposed date, or if that 50% level is not achieved, the company shall within five days of the last day for receipt of the replies notify shareholders by public announcement of the matters to be considered at the meeting and the date and place of the meeting and the general meeting may be held thereafter. The Mandatory Provisions require class meetings to be held in the event of a variation or derogation of the class rights of a class. Holders of domestic shares and holders of H shares are deemed to be different classes of shareholders for this purpose.

### **Directors**

A company shall have a board of directors, which shall consist of five to nineteen members. Under the Company Law, each term of office of a director shall not exceed three years. A director may serve consecutive terms if re-elected.

Meetings of the board of directors shall be convened at least twice a year. Notice of meeting shall be given to all directors at least 10 days before the meeting. The board of directors may provide for a different method of giving notice and notice period for convening an extraordinary meeting of the board of directors.

Under the Company Law, the board of directors exercises the following powers:

- (i) to convene the shareholders' general meeting and report on its work to the shareholders;
- (ii) to implement the resolutions of the shareholders' general meeting;
- (iii) to decide on the company's business plans and investment plans;
- (iv) to formulate the company's proposed annual financial budget and final accounts;
- (v) to formulate the company's proposals for profit distribution and for recovery of losses;
- (vi) to formulate proposals for the increase or reduction of the company's registered capital and the issue of corporate bonds;

- (vii) to prepare plans for the merger, division or dissolution of the company;
- (viii) to decide on the company's internal management structure;
- (ix) to appoint or dismiss the company's general manager, and based on the general manager's recommendation, to appoint or dismiss deputy general managers and financial officers of the company and to decide on their remuneration; and
- (x) to formulate the company's basic management system.

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

Meetings of the board of directors shall be held only if more than half of the directors are present. Resolutions of the board of directors require the approval of more than half of all directors. If a director is unable to attend a board meeting, he may appoint another director by a written power of attorney specifying the scope of the authorisation to attend the meeting on his behalf.

If a resolution of the board of directors violates the laws, administrative regulations or the company's articles of association as a result of which the company sustains serious losses, the directors participating in the resolution are liable to compensate the company. However, if it can be proven that a director expressly objected to the resolution when the resolution was voted on, and that such objections were recorded in the minutes of the meeting, such director may be relieved from that liability.

Under the Company Law, the following persons may not serve as directors of a company:

- (i) persons without civil capacity or with restricted civil capacity;
- (ii) persons who have committed the offense of corruption, bribery, taking of property, misappropriation of property or destruction of the social economic order, and have been sentenced to criminal punishment, where less than five years have elapsed since the date of completion of the sentence; or persons who have been deprived of their political rights due to criminal offense, where less than five years have elapsed since the date of the completion of implementation of this deprivation;
- (iii) persons who are former directors, factory managers or managers of a company or enterprise which has become bankrupt and been liquidated due to mismanagement and who are personally liable for the bankruptcy of such company or enterprise, where less than three years have elapsed since the date of the completion of the bankruptcy and liquidation of the company or enterprise;

- (iv) persons who were legal representatives of a company or enterprise which had its business licence revoked due to violation of the law and who are personally liable, where less than three years have elapsed since the date of the revocation of the business licence;
- (v) persons who have a relatively large amount of debt which has become overdue;
- (vi) persons who are State civil servants.

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, a summary of which is set out in Appendix VI).

The board of directors shall appoint a chairman, who is elected with approval of more than half of all the directors. The chairman of the board of directors is the legal representative of the company and exercises, amongst others, the following powers:

- (i) to preside over shareholders' general meetings and convene and preside over meetings of the board of directors;
- (ii) to check on the implementation of the resolutions of the board of directors; and
- (iii) to sign the company's share certificates and bonds.

The Special Regulations provide that a company's directors, supervisors, managers and other officers bear fiduciary duties and the duty to act diligently. They are required to faithfully perform their duties, protect the interests of the company and not to use their positions for their own benefit. The Mandatory Provisions (which have been incorporated into the Articles of Association, a summary of which is set out in Appendix VI) contains further elaboration of such duties.

### **Supervisors**

A company shall have a supervisory committee composed of not less than three members. Each term of office of a supervisor is three years and he or she may serve consecutive terms if re-elected. The supervisory committee is made up of representatives of the shareholders and an appropriate proportion of representatives of the company's staff and workers. Directors, managers and financial officers may not act concurrently as supervisors.

The supervisory committee exercises the following powers:

- (i) to review the company's financial position;

- (ii) to supervise the directors and managers in their performance of their duties and to ascertain whether or not they have violated laws, regulations or the articles of association of the company;
- (iii) when the acts of a director or manager are harmful to the company's interests, to require correction of those acts;
- (iv) to propose the convening of extraordinary shareholders' general meetings; and
- (v) other powers specified in the company's articles of association.

The circumstances under which a person is disqualified from being a director of a company described above apply mutatis mutandis to supervisors of a company.

As mentioned above, the Special Regulations provide that a company's supervisors, among other persons, shall bear fiduciary duties. They are required to faithfully perform their duties, protect the interests of the company and not to use their positions for their own benefit. Supervisors may also attend board meetings.

### **Managers and officers**

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

- (i) supervise the production, business and administration of the company and arrange for the implementation of resolutions of the board of directors;
- (ii) arrange for the implementation of the company's annual business and investment plans;
- (iii) formulate plans for the establishment of the company's internal management structure;
- (iv) formulate the basic administration system of the company;
- (v) formulate the company's internal rules;
- (vi) recommend the appointment and dismissal of deputy managers and any financial controller and appoint or dismiss other administration officers (other than those required to be appointed or dismissed by the board of directors);
- (vii) attend board meetings; and

(viii) other powers conferred by the board of directors or the company's articles of association.

The Special Regulations and Mandatory Provisions provide that the senior management of a company includes the financial controller, secretary of the board of directors and other executives as specified in the articles of association of the company.

The circumstances under which a person is disqualified from being a director of a company described above apply mutatis mutandis to managers and senior officers of the company.

The articles of association of a company shall have binding effect on the shareholders, directors, supervisors, managers and other executives of the company. Such persons shall be entitled to exercise their rights, apply for arbitration and issue legal proceedings according to the articles of association of the company. The provisions of the Mandatory Provisions regarding the senior management of a company have been incorporated in the Articles of Association (a summary of which is set out in this prospectus).

### **Duties of directors, supervisors, managers 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 the 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 a director, supervisor, manager and an officer of a company owe fiduciary duties to the company and are required to perform their duties faithfully and to protect the interests of the company and not to make use of their positions in the company for their own benefit.

### **Finance and accounting**

A company shall establish its financial and accounting systems according to laws, administrative regulations and the regulations of the relevant government authority and at the end of each financial year prepare a financial report which shall be audited and verified as provided by law. A company shall deposit its financial statements at the company for the inspection by the shareholders at least 20 days before the convening of the annual general meeting of shareholders. A company established by the public subscription method must publish

its financial statements. When distributing each year's after-tax profits, the company shall set aside 10% of its after-tax profits for the company's statutory common reserve fund (except where the fund has reached 50% of the company's registered capital) and 5% to 10% of its after-tax profit for the company's statutory public welfare fund.

When the company's statutory common reserve fund is not sufficient to make up for the company's losses of the previous year, current year profits shall be used to make good the losses before allocations are set aside for the statutory common reserve fund or the statutory common welfare fund. The company's statutory common welfare fund is used for the collective welfare of the company's staff and workers. The shareholders in general meeting may resolve to transfer any amount from the after-tax profit of the company to the discretionary common reserve after transferring the requisite amount to the statutory common reserve fund.

After the company has made good its losses and made allocations to its statutory common reserve fund and statutory common welfare fund, the remaining profits are distributed in proportion to the number of shares held by the shareholders.

The common reserve of a company comprises the statutory common reserve, discretionary common reserve and the capital common reserve. The capital common reserve of a company is made up of the premium over the nominal value of the shares of the company on issue and other amounts required by the relevant governmental authority to be treated as the capital common reserve. The common reserve of a company shall be applied for the following purposes:

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

### **Appointment and retirement of auditors**

The Special Regulations require a company to employ an independent qualified firm of accountants to audit the company's annual report and review and check other financial reports. The auditors are to be appointed for a term commencing from the close of an annual general meeting and ending at the close of the next following annual general meeting.

If a company removes or ceases to continue to appoint the 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. The appointment, removal or non re-appointment of auditors shall be decided by the shareholders and shall be registered with the CSRC.

**Distribution of profits**

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

**Amendments to articles of association**

Any amendments to the company's articles of association must be made in accordance with laws, administrative regulations and the procedures set forth in the company's articles of association. Any amendment of provisions incorporated in the articles of association in accordance with the Mandatory Provisions will only be effective after approval by the companies approval department authorised by the State Council and the Securities Commission. In relation to matters involving the company's registration, its registration with the companies registration authority must also be changed.

**Termination and liquidation**

A company may apply for the declaration of insolvency by reason of its inability to pay debts as they fall due. After the People's Court has made a declaration of the company's insolvency, the shareholders, the relevant authorities and the relevant professionals shall be arranged by the People's Court to form a liquidation committee to conduct the liquidation of the company.

Under the Company Law, a company shall be dissolved in any of the following events:

- (i) the term of its operations set down in the company's articles of association has expired or events of dissolution specified in the company's articles of association have occurred;
- (ii) the shareholders in general meeting have resolved to dissolve the company; or
- (iii) the company is dissolved by reason of its merger or demerger.

Where the company is dissolved in the circumstances described in (i) or (ii) above, a liquidation committee must be established within 15 days. Members of the liquidation committee shall be appointed by the shareholders in the general meeting.

If a liquidation committee is not established within the stipulated period, the company's creditors can apply to the People's Court for its establishment. The liquidation committee shall notify the company's creditors within 10 days after its establishment, and issue at least 3 public notices in the newspapers within 60 days. A creditor shall lodge his claim with the liquidation committee within 30 days after receiving notification, or within 90 days of the first public notice if he did not receive any notification.

The liquidation committee shall exercise the following powers during the liquidation period:

- (i) to handle the company's assets and to prepare a balance sheet and an inventory of the assets;
- (ii) to notify creditors or issue public notices;
- (iii) to deal with and settle any unfinished business of the company;
- (iv) to pay any tax overdue;
- (v) to settle the company's financial claims and liabilities;
- (vi) to handle the surplus assets of the company after its debts have been paid off; and
- (vii) to represent the company in civil lawsuits.

If the company's assets are sufficient to meet its liabilities, they shall be applied towards the payment of the liquidation expenses, wages owed to the employees and labour insurance expenses, tax overdue and debts of the company. Any surplus assets shall be distributed to the shareholders of the company in proportion to the number of shares held by them.

A company shall not engage in new business operations during the liquidation period. If the liquidation committee becomes aware that the company does not have sufficient assets to meet its liabilities, it must immediately apply to the People's Court for a declaration for bankruptcy. Following such declaration, the liquidation committee shall hand over all affairs of the liquidation to the People's Court.

Upon completion of the liquidation, the liquidation committee shall submit a liquidation report to the shareholders' general meeting or the relevant supervisory department for verification. Thereafter, the report shall be submitted to the companies registration authority in order to cancel the company's registration, and a public notice of its termination shall be issued. Members of the liquidation committee are required to discharge their duties honestly and in compliance with relevant 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.

### **Overseas listing**

The shares of a company shall only be listed overseas after obtaining approval from the securities regulatory authority of the State Council and the listing must be arranged in accordance with procedures specified by the State Council.

According to the Special Regulations, a company's plan to issue H Shares and Domestic Shares which has been approved by the Securities Commission may be implemented by the board of directors of the company by way of separate issues, within 15 months after approval is obtained from the Securities Commission.

### **Loss of share certificates**

A shareholder may apply, in accordance with the relevant provisions set out in the PRC Civil Procedure Law, to a People's Court in the event that share certificates in registered form are either stolen or lost, 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.

The Mandatory Provisions provide for a separate procedure regarding loss of H Share certificates (which has been incorporated in the Articles of Association, a summary of which is set out in Appendix VI).

### **Suspension and termination of listing**

The trading of shares of a company on a stock exchange may be suspended if so decided by the securities administration department of the State Council under one of the following circumstances:

- (i) the registered capital or shareholding distribution no longer comply with the necessary requirements for a listed company;
- (ii) the company failed to make public its financial position in accordance with the requirements or there is false information in the company's financial report;
- (iii) the company has committed a material breach of the law;
- (iv) the company has incurred losses for each of the preceding three years.

Under the circumstances referred to in (ii) and (iii) above, an investigation has revealed that the consequences are serious, or under the circumstances referred to in (i) and (iv) above, the situation has not been rectified within the time stipulated, the securities administration department of the State Council may decide to terminate the listing of a company's shares.

The securities administration department of the State Council may also terminate the listing of a company's shares in the event that the company resolves to cease operation or is so instructed by its government supervisory body, or the company is declared bankrupt.

**Merger and demerger**

The merger or demerger of a company is to be decided by the shareholders in general meeting subject to the approval of departments authorised by the State Council or the approval of the provincial government. Companies may merge through merger by absorption or through the establishment of a newly merged entity. In the case of merger by absorption, the company which is absorbed shall be dissolved. In the case of merger by forming a new corporation, both companies will be dissolved. A merger agreement must be signed in the case of a merger of companies and the relevant companies shall draw up their respective balance sheets and inventory of property.

The companies should within 10 days of the resolution of the merger inform their respective creditors and publish a notice to the creditors in newspapers at least 3 times, within 30 days of the resolution to merge. Those creditors who had not received written notice may within 90 days of the first published notice, or within 30 days after receiving written notice, request the company to satisfy any unpaid debt or provide equivalent guarantees in cases of guarantees. Companies unable to repay such debts or provide alternative guarantees will not be allowed to merge. Newly merged or reserved entities shall be responsible for the debts and obligations of the companies involved in the merger.

When a company demerges into two companies, their respective assets must be separated and separate financial accounts and the inventory of property must be drawn up. When a company's shareholders approve the demerger of the company, the company should notify all its creditors within 10 days of such resolution being passed and advertise the same at least three times in newspapers within 30 days. A creditor may within 30 days after receiving written notice or, a creditor who has not received such notice may within 90 days from the first public advertisement, demand that the company repay any outstanding debts or to provide an appropriate guarantee. Changes in registrable particulars of the companies caused by merger or demerger must be registered in accordance with applicable laws.

**(B) Securities Law and Supervision**

Since 1992, the PRC has promulgated a number of regulations in relation to the issue of and trading in securities and disclosure of information. In early 1993, the State Council established the Securities Commission and the CSRC. The Securities Commission is responsible for coordinating 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. The CSRC is the regulatory arm of the Securities Commission and is responsible for the drafting of regulatory provisions governing securities markets, supervising securities companies, regulating public offers of securities by PRC companies in the PRC or overseas, regulating the trading of securities, compiling securities-related statistics and undertaking research and analysis.

In early 1998, the State Council dissolved the Securities Commission, and the former functions of the Securities Commission were assumed by the CSRC. On 22nd April, 1993, the

State Council promulgated the Provisional Regulations Concerning the Issue and Trading of Shares. These regulations deal with the application and approval procedures for public offerings of equity securities, trading in equity securities, the acquisition of listed companies, deposit, settlement, 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 separate provisions 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 these regulations in respect of its issue of Renminbi-denominated ordinary shares; (ii) if a PRC company proposes to offer shares directly or indirectly outside the PRC, it will require the approval of the Securities Commission; and (iii) provisions of these regulations in relation to acquisitions of listed companies and disclosure of information are expressed to apply to listed companies in general without being confined to listed companies on any particular stock exchange. Hence it is possible that such provisions may be applicable to joint stock limited companies with shares listed on a stock exchange outside the PRC including, for instance, joint stock limited companies with shares listed on the Stock Exchange, such as the Company.

On 12th June, 1993, pursuant to the Provisional Regulations Concerning the Issue and Trading of Shares, the CSRC promulgated the Implementation Measures (Provisional) on Disclosure of Information. Pursuant to these measures, the CSRC is responsible for supervising the disclosure of information by companies which have offered shares to the public. These measures contain provisions regarding prospectuses and listing reports to be issued in connection with a public offering of shares in the PRC, publication of interim and final reports and announcement of material transactions or matters by companies which have offered shares to the public. Material transactions or matters are those the occurrence of which may have a material effect on the share price of a company. They include changes to a company's articles of association or registered capital, removal of auditors, mortgage or disposal of major operating assets or writing down the value of such assets where the amount being written down exceeds 30% of the total value of such assets, revocation by a court of any resolution passed by the shareholders or the supervisors of a company and the merger or demerger of a company. These measures also contain disclosure provisions in relation to acquisition of listed companies which supplement the requirements contained in the Provisional Regulations Concerning the Issue and Trading of Shares.

On 2nd September, 1993, the Securities Commission promulgated the Provisional Measures Prohibiting Fraudulent Conduct relating to Securities. 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 the 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 and in respect of which there is any material omission. Penalties imposed for contravening any of the provisions of the measures include

warnings, fines, confiscation of profits and suspension or cancellation of trading qualifications and revocation of securities business license. In serious cases, criminal liability may be imposed. On 4th August, 1994, the State Council promulgated the Special Regulations. These provisions deal mainly with the issue, subscription, trading and declaration of dividends and other distributions of foreign capital stock listed abroad and disclosure of information, articles of association of joint stock limited companies having foreign capital stock listed abroad.

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. These regulations deal mainly with the issue, subscription and trading of, and declaration of dividends and other distributions on, domestic listed foreign shares and disclosures of information by joint stock limited companies having domestic listed foreign shares. On 29th December, 1998, the Standing Committee of the National People's Congress promulgated the Securities Law of the PRC. This is the first national securities law in the PRC and is the fundamental law comprehensively regulating activities in the PRC securities market. The Securities Law became effective on 1st July, 1999.

The Securities Law is applicable to the issuance and trading in the PRC of shares, company bonds and other securities designated by the State Council according to law. Where the Securities Law does not apply, the provisions of the Company Law and other applicable laws and administrative regulations will apply.

On 29th March, 1999, the State Economic and Trade Commission and the CSRC promulgated the Opinion on the Further Promotion of the Regular Operation and In-Depth Reform of Companies Listed Overseas (the "Opinion"), which is aimed at regulating the internal operation and management of PRC companies listed overseas. The Company will be subject to the Opinion upon listing of the H Shares on the Stock Exchange. The Opinion regulates, amongst others, the appointments and functions of external directors and independent directors in the board of directors; and the appointment and functions of external supervisors in the supervisory committee.

### **(C) The Arbitration Law**

The Arbitration Law of the PRC (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 involving foreign parties where the parties have entered into a written agreement to refer the matter to arbitration before an arbitration committee constituted in accordance with the Arbitration Law. Under the Arbitration Law, an arbitration committee may, before the promulgation by the PRC Arbitration Association of arbitration regulations, formulate interim arbitration rules in accordance with the Arbitration Law and the PRC Civil Procedure Law. Where the parties have by agreement provided arbitration as a method for dispute resolution, the parties are not permitted to institute legal proceedings in a People's Court except when the arbitration agreement is not valid.

The Listing Rules and the Mandatory Provisions require an arbitration clause to be included in the articles of association of a company listed in Hong Kong and in the case of the Listing Rules, also in a contract between the company and each director and supervisor, to the effect that whenever any dispute or claim arises from any rights or obligations provided in the articles of association, the Company Law and other relevant laws and administrative regulations concerning the affairs of a company between (i) a holder of overseas listed foreign shares and the company; (ii) a holder of overseas listed foreign shares and a holder of domestic shares; and (iii) a holder of overseas listed foreign shares and the directors, supervisors or other senior officers of the company, unless otherwise specified in the articles of association, such parties shall submit that dispute or claim to arbitration before either the China International Economic and Trade Arbitration Commission (“CIETAC”) or the Hong Kong International Arbitration Centre (“HKIAC”) for arbitration. If the party seeking arbitration elects to arbitrate the dispute or claim at the HKIAC, then either party may apply to have such arbitration conducted in Shenzhen according to the securities arbitration rules of the HKIAC.

CIETAC is an economic and trade affairs arbitration organ in the PRC. Pursuant to the China International Economic and Trade Arbitration Commission Arbitration Rules, effective on 1st October, 2000 CIETAC’s jurisdiction covers disputes relating to the Hong Kong. CIETAC is located in Beijing with branches in Shenzhen and Shanghai.

Under the Arbitration 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 commission if there are certain procedural or membership irregularities or the award exceeds the scope of the arbitration agreement or is outside the jurisdiction of the arbitration commission.

A party seeking to enforce an arbitral award of a foreign affairs arbitration organ of the PRC against a party who or whose property is not within the PRC may apply to a foreign court with jurisdiction over the case for enforcement. Similarly, an arbitral award made by a foreign arbitration body may be recognised and enforced by the PRC courts in accordance with the principles of reciprocity or any international treaty concluded or acceded to by the PRC. The PRC acceded to the 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 by 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 will only recognise and enforce foreign arbitral awards on the principle of reciprocity and (2) the New York Convention shall only be applicable to the disputes arising out of contractual or non-contractual commercial and/or legal relations determined in accordance with PRC Law. On 21st June, 1999, an arrangement was made between Hong Kong and the PRC for the reciprocal enforcement of arbitral awards. This new arrangement was approved by the Supreme People’s Court of the PRC and the Hong Kong Legislative

Council, and became effective on 1st February, 2000. The new arrangement is made in accordance with the spirit of the New York Convention. Under the arrangement, awards made by arbitral authorities in the PRC can be enforced in the Hong Kong. Hong Kong arbitration awards are also enforceable in the PRC.

#### (D) Foreign Exchange Control

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

On 28th December, 1993, the PBOC, with the authorisation of the State Council, issued 中國人民銀行關於進一步改革外匯管理體制的公告 (the Notice on Further Reform of the Foreign Exchange Control System) which came into effect on 1st January, 1994. Other new regulations and implementation measures include 結匯、售匯及付匯管理暫行規定 (the Provisional Regulations on the Foreign Exchange Settlement, Sale and Payments) which were promulgated on 20th June, 1996 and took effect on 1st July, 1996 and which contain detailed provisions regulating the settlement, sale and payment of foreign exchange by enterprises, individuals, foreign organisations and visitors in the PRC. Under these new regulations, the previous dual exchange rate system for Renminbi was abolished and a unified floating exchange rate system based on largely supply and demand was introduced. The PBOC publishes the Renminbi exchange rate against the U.S. dollar daily. Such rate is to be set by reference to the Renminbi/U.S. dollar trading price on the previous day on the inter-bank foreign exchange market.

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, but may need to be kept in foreign exchange bank accounts of designated banks. At present, control of purchase of foreign exchange is relaxed. Enterprises within the PRC which require foreign exchange for their ordinary trading and non-trading activities, import activities and repayment of foreign debts may purchase foreign exchange from designated banks if the application is supported by relevant documents. Furthermore, enterprises with foreign investment may distribute profit to their foreign investors with funds in their foreign exchange bank accounts kept with designated banks. Should such foreign exchange be insufficient, enterprises may apply to the relevant governmental department for permission to purchase foreign exchange from designated banks. When conducting foreign exchange transactions, the designated banks may, based on the exchange rate published by the PBOC and subject to certain limits, freely determine the applicable exchange rate. Foreign exchange quota of the relevant entities under the old system will be gradually phased out. Remaining foreign exchange quota may be converted into foreign exchange through designated foreign exchange banks.

中國外匯交易中心 (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 and settle their foreign currencies. 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.

關於境外上市企業外匯管理若干問題的通知 (The Notice Concerning Some Issues Relating to Exchange Control of Overseas Listed Enterprises) (“The Notice”) was jointly issued by CSRC and SAFE on 13th January, 1994. The Notice provides that:

- (i) upon the approval of SAFE, an overseas listed enterprise may open a foreign exchange account at a bank within the PRC to retain foreign currency proceeds received from overseas share offers;
- (ii) within 10 days after receiving the foreign currency proceeds of the share offer, the enterprise should transfer such proceeds into a PRC bank account;
- (iii) upon 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 purpose of payment of dividends or other profit distribution; and
- (iv) if 25.0% or more of the share capital of the enterprise is held by foreign investors, such enterprise may apply to MOFTEC for foreign investment enterprises status, and upon approval of MOFTEC, the foreign exchange matters of such enterprises shall be handled in accordance with foreign exchange regulations governing foreign investment enterprises.

## 2. HONG KONG LEGAL AND REGULATORY PROVISIONS

### (A) Hong Kong company law and its comparison with the PRC law applicable to a joint stock limited company incorporated under the Company Law

Hong Kong company law is primarily set out in the Companies Ordinance and supplemented by common law. There are material differences between Hong Kong company law and PRC law applicable to a joint stock limited company incorporated under the Company Law, to which the Company is and will be subject, particularly in the area of investor protection. Certain of the material differences between the Company Law and Hong Kong company law are summarised below. This summary, however, is not intended to be an exhaustive comparison. It should also be noted that the summary relates only to joint stock limited companies incorporated under the Company Law.

**Derivative action by minority shareholders**

Hong Kong law allows minority shareholders to start a derivative action on behalf of the general body of shareholders in cases where, for example, one or more of the directors are in breach of duty and where their actions are shielded by the majority shareholders. The PRC Civil Procedure Law does not provide for such a procedure. Although the Company Law gives (a) shareholder(s) of a company the right to initiate proceedings in the People's Court to restrain any resolution adopted by shareholders in general meeting or at a meeting of the board of directors which is in violation of any law or infringes the lawful rights and interests of the shareholder(s), there is no form of proceedings which is the same as a derivative action under the Company Law. However, each of the Directors and Supervisors (as required by the Listing Rules) has given a written undertaking to the Company (acting as agent for each shareholder) to observe and comply with his obligations to shareholders stipulated in the Articles of Association. This allows minority shareholders to commence actions directly against defaulting Directors.

**Remedies of the Company**

Under the Company Law, if a director, supervisor or manager in carrying out his duties infringes any law or administrative regulation or the articles of association of a company, resulting in damage to the company, that director, supervisor or manager should be responsible to the company for such damages. In addition, in compliance with the Listing Rules, the Articles of Association set out remedies of the Company similar to those available under Hong Kong law (including rescission of the relevant contract and recovery of profits made by a Director, Supervisor or officer).

**Directors, officers and supervisors**

The Company Law provides for the disqualification of directors, supervisors and managers in circumstances where they enter into business contracts with the Company, and for prohibitions of certain unauthorised benefits, but contain no provision restricting the authority of the directors to make major dispositions or prohibiting payment to them for loss of office without shareholders' approval. However, the Mandatory Provisions contain certain restrictions on major dispositions and specify the circumstances under which a director may receive compensation for loss of office, all of which provisions have been incorporated in the Articles of Association, a summary of which is set out in Appendix VI.

Under Hong Kong company law, there is no concept of a supervisory committee for a company in addition to its board of directors, but a PRC joint stock limited company must have supervisors whose main duties include ensuring compliance with laws and regulations, and the articles of association of the company, by its directors and managers.

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

**Minority protection**

There is no specific provision in the Company Law to guard against oppression by the majority shareholders of minority shareholders but the Company, as required by the Mandatory Provisions and the Listing Rules, has adopted in the Articles of Association minority protection provisions similar to (though not as comprehensive as) those available under Hong Kong law, to the effect that a controlling shareholder may not exercise its voting rights in a manner prejudicial to the interests of other shareholders to achieve certain objectives.

**Receiving agent**

Under both PRC and Hong Kong law, dividends once declared become debts payable to shareholders, but the limitation of action period is two years in the PRC as opposed to six years in Hong Kong. In accordance with the requirements of the Mandatory Provisions and the Listing Rules, the Articles of Association provide for the appointment of an agent in Hong Kong, which is a trust corporation registered under the Trustee Ordinance (Chapter 29 of the Laws of Hong Kong) in Hong Kong to receive all dividends and all other monies payable to H Share holders on behalf of such shareholders as required by the Listing Rules.

**Variation of class rights**

The Company Law makes no specific provision relating to variation of class rights.

However, the Company Law states that the State Council can promulgate regulations relating to other kinds of shares. The Mandatory Provisions contain elaborate provisions relating to the circumstances which are deemed to be variations of class rights and the approval procedures required to be followed in respect thereof. These provisions have been incorporated in the Articles of Association, which are summarised in Appendix VI. Under the Companies Ordinance, no rights attached to any class of shares can be varied except with the approval of a special resolution of the holders of the relevant class at a separate meeting or the consent in writing of the holders of three fourths in nominal value of the issued shares of the class in question. The Company (as required by the Listing Rules and the Mandatory Provisions) has adopted in the Articles of Association provisions protecting class rights in a similar manner to those found in Hong Kong law. Holders of H Shares and Domestic Shares are defined in the Articles of Association as different classes, except where the Company issues (i) once every 12 months pursuant to a shareholders' mandate (obtained by way of a special resolution in general meeting), not more than 20% of each of the issued H Shares and the Domestic Shares existing as at the date of the shareholders' mandate; or (ii) H Shares and Domestic Shares in accordance with the Company's plan at the time of establishment as approved by the State Council Securities Committee and which is completed within 15 months from the date of such approval.

**Share capital**

For a joint stock limited company formed under the Company Law, the registered share capital and the issued share capital are the same. For a Hong Kong company, the authorised share capital may be larger than the issued share capital. Hence, the directors of a Hong Kong company may, with the prior approval of the shareholders if required, cause the company to issue new shares. In the case of a PRC company, any increase of the registered capital must be approved by the shareholders in general meeting and the relevant PRC Government and regulatory authorities. After completion of an approved new issue, the company has to register the increase in share capital with the relevant administration for industry and commerce bureau.

The minimum registered capital of a company which has applied for the listing of its shares on a stock exchange is RMB50 million under the Company Law. Hong Kong law does not prescribe any minimum capital requirements for a Hong Kong company. Under the Company Law, the shares subscribed for in the form of intangible assets (excluding land use rights) may not exceed 20% of a joint stock limited company's registered capital if the concerned joint stock limited company is not one of those hi-tech companies specified by the State Council. There is no such restriction under Hong Kong law on a Hong Kong company.

**Restriction on shareholding and transfer of shares**

The Company Law makes no reference to the class of shares which may be subscribed for or traded by overseas investors but has provisions that shares of a company to be listed overseas must comply with the Special Regulations. The Special Regulations and the Mandatory Provisions provide, among other things, that H shares must be in registered form and include other matters some of which are referred to below. There is no restriction under Hong Kong law on a person's ability to deal in shares in a Hong Kong company on the basis of his residence or nationality.

Under the Company Law, shares in a joint stock limited company held by its promoters, directors or managers may not be transferred within certain periods of time. There is no such restriction under Hong Kong law.

**Notice of meetings**

Under the Company Law, shareholders of a joint stock limited company must be given 30 days' notice of a general meeting or, in the case of bearer shares, such notice should be published 45 days before the meeting. Under the Special Regulations and the Mandatory Provisions (which apply to the Company) written notice of 45 days must be given to all shareholders, and shareholders wishing to attend the meeting must reply in writing to reach the Company 20 days before the date of the meeting. For a Hong Kong limited company,

the minimum period of notice of a general meeting where convened for the purpose of considering ordinary resolutions is 14 days and where convened for the purpose of considering special resolutions 21 days. The notice period for an annual general meeting is also 21 days.

**Quorum**

Under Hong Kong company law, any two shareholders personally present will constitute a quorum for a general meeting, unless the articles of association provide otherwise. The Company Law makes no specific provision as to when a quorum is regarded as being present but the Special Regulations, the Mandatory Provisions and the Articles of Association provide that a company's annual general meeting can be convened when replies to the notice of that meeting have been received from shareholders whose Shares represent 50% of the voting rights in the Company at least 20 days before the proposed date, or if that 50% level is not achieved, that the Company shall within five days notify shareholders in a public announcement and the annual general meeting may be held thereafter.

**Voting**

Under Hong Kong company law, ordinary resolutions are passed by more than one half of the votes cast by those shareholders voting in person or by proxy at a general meeting and special resolutions are passed by not less than three quarters of such votes. Under the Company Law, the passing of any resolution requires the passing by more than half of the votes of the shareholders attending and voting except in cases of proposed amendment to the articles of association, merger, division or dissolution of a company where the approval of a two-thirds majority is required.

**Dividends**

The Articles of Association empower the Company to withhold, and pay to the relevant tax authorities, any tax payable under PRC law on any dividends or other distributions payable to a shareholder. Under 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.

**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, statement of changes in financial situation 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 has to be verified by registered accountants. The Companies Ordinance requires a company to send to every shareholder a copy of its balance sheet, auditors' report and directors' report which are to be laid before the company in its annual general meeting not less than 21 days before such meeting.

Under the Articles of Association (as required by the Listing Rules and the Mandatory Provisions), in addition to preparing accounts according to PRC accounting standards, the Company must have its accounts prepared and audited in accordance with international accounting standards or Hong Kong accounting standards. The Company is further required to publish its interim and annual accounts within 60 days from the end of the first six months of a financial year and within 120 days from the end of a financial year respectively.

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.

### **Information on directors and shareholders**

The Company Law gives shareholders the right to inspect the Company's Articles of Association, minutes of the shareholders' general meetings and financial and accounting reports. Under the Articles of Association, shareholders have the right to inspect and copy (at reasonable charges) certain information on shareholders and on Directors similar to that available to shareholders of Hong Kong companies under Hong Kong law.

### **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.

### **Arbitration of disputes**

In Hong Kong, disputes between shareholders and a company or its directors, managers and other senior officers can be resolved through the courts. The Articles of Association provide that disputes between a holder of H Shares and the Company and its directors, supervisors, managers or other senior officers or a holder of Domestic Shares, arising from the Articles of Association, the Company Law or other relevant law or

administrative regulation which concerns the affairs of the Company must, with certain exceptions, be referred to arbitration at either the HKIAC or CIETAC. Such arbitration is final and conclusive.

### **Mandatory deductions**

Under the Company Law, after tax profits of a company are subject to deductions of contributions to the statutory common reserve fund and the statutory public welfare fund of the company before they can be distributed to shareholders. There are prescribed limits under the Company Law for such deductions. There are no corresponding provisions under the Companies Ordinance.

### **Fiduciary duties**

In Hong Kong, there is the common law concept of the fiduciary duty of directors. Under the Company Law and the Special Regulations, directors and managers owe a fiduciary duty towards their company and are not permitted to engage in any activities which compete with or damage the interests of their company.

## **(B) Other Legal and Regulatory Provisions**

Upon the listing of the Company on the Stock Exchange, the provisions of the SFO, 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.

## **(C) Securities Arbitration Rules**

The Articles of Association provide that certain claims arising under the Articles of Association or the Company Law shall be arbitrated at either the CIETAC or the HKIAC in accordance with their respective rules. The Securities Arbitration Rules of the Hong Kong International Arbitration Centre contain provisions allowing an arbitral tribunal to conduct a hearing in Shenzhen for cases involving disputes concerning the affairs of companies listed by Stock Exchange and incorporated in the PRC (other than Hong Kong, Macau and Taiwan) 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 conditionally upon all parties including witnesses and the arbitrators being permitted to enter Shenzhen for the purpose of the hearing. Where a party (other than a PRC party) or any of its witnesses or any arbitrator is not permitted to enter Shenzhen, then the tribunal shall order that the hearing be conducted in any practicable manner, including the use of electronic media. For the purpose of the Securities Arbitration Rules, a PRC party means a party domiciled in the PRC other than the territories of Hong Kong, Macau and Taiwan.

**(D) Listing Rules**

The Listing Rules contain certain provisions specifically relating to the primary listing of equity securities of companies incorporated or otherwise established in the PRC. Set out below is a summary of the major provisions which apply to the Company:

**Sponsor**

The Company is required to retain, for at least one year following its listing or such shorter period as the Stock Exchange may permit, the services of its sponsor 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 its listing agreement, and to act at all times as the Company's principal channel of communication with the Stock Exchange, in addition to the two authorised representatives of the Company appointed pursuant to the Listing Rules. The Company must ensure that its sponsor has access at all times to its authorised representatives, Directors and other officers and is given such information and assistance as it may request in connection with the performance of its duties. The Company must not terminate the services of its sponsor until a replacement acceptable to the Stock Exchange is appointed.

If the Stock Exchange is not satisfied that the sponsor is fulfilling its responsibilities adequately, it may require the Company to terminate the sponsor's appointment and appoint a replacement as soon as possible. The sponsor must be satisfied that the Directors and the Supervisors appreciate the nature of their responsibilities and can be expected to honour their obligations under and understand what is required of them under their respective undertakings, the Listing Rules, the listing agreement and applicable laws and regulations. The sponsor must keep the Company informed on a timely basis of changes in the Listing Rules and any new or amended law, regulation or code in Hong Kong applicable to the Company. It must act as the Company's principal channel of communication with the Stock Exchange if the authorised representatives of the Company are expected to be frequently outside Hong Kong.

**Accountants' reports**

An accountants' report will not normally be regarded as acceptable by the Stock Exchange unless the relevant accounts have been audited to a standard comparable to that required in Hong Kong which means that it must conform with either Hong Kong accounting standards or IAS.

**Process agent**

The Company must appoint and maintain throughout the period its securities are listed on the Stock Exchange the appointment of a person authorised to accept service of process and notices on its behalf in Hong Kong and must notify the Stock Exchange of his or her appointment and any termination of his or her appointment and his or her contact particulars.

**Restrictions on purchase and subscription**

The Company may purchase its own Shares on the Stock Exchange in accordance with the Listing Rules. Shareholders' approvals must first be obtained prior to carrying out a share repurchase, by way of a special resolution of shareholders in general meeting and of the holders of Domestic Shares and the holders of H Shares at separate class meetings, in accordance with the procedures prescribed by the Articles of Association. When seeking shareholders' approval to make purchases of securities on the Stock Exchange or when reporting such purchases, the Company should provide information to its shareholders on the proposed or actual purchase of any or all of its equity securities, whether or not listed or traded on the Stock Exchange. There should also be a statement as to the consequences of any purchases which will arise under either or both of the Hong Kong Code on Takeovers and Mergers and the Hong Kong Code on Share Repurchases and any similar PRC law of which the Directors are aware, if any. Any special approval or general mandate given to the Directors to repurchase H Shares on the Stock Exchange must not exceed 10% of the total amount of existing issued H Shares.

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 VI.

**Closure of register of shareholders**

The Listing Rules require that the register of shareholders of a company must not generally be closed for the registration of transfers of shares for more than 30 days in a year, whereas the Company's Articles of Association provide, as required by the Company Law, that share transfers may not be registered after 30 days before the date of a shareholders' meeting or after five days before the record date set for the purpose of distribution of dividends.

**Listing agreement**

The Company's listing agreement with the Stock Exchange is in substantially the same form as the listing agreement for an overseas company seeking a listing on the Stock Exchange, subject to certain modifications and additional requirements which may be summarised as follows:

**(1) 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.

(2) *Pre-emptive rights*

Except in the circumstances mentioned below, the Directors must obtain the approval by special resolution of shareholders of the Company in general meeting and the approvals by special resolutions of holders of Domestic Shares and holders of 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:

- (a) authorising, allotting, issuing or granting;
  - (i) shares;
  - (ii) securities convertible into shares; or
  - (iii) options, warrants or similar rights to subscribe for any shares or such convertible securities.
- (b) a 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 in the case of authorising, allotting or issuing shares if, but only to the extent that, the existing shareholders of the Company have by special resolution in general meeting given a general mandate to the Directors, either unconditionally or subject to such terms and conditions as may be specified in the resolution, to authorise, allot or issue either separately or concurrently once every 12 months, not more than 20% each of the existing Domestic Shares and H Shares as at the date of the passing of the relevant special resolution or such shares as are part of the Company's plan at the time of its establishment to issue Domestic Shares and H Shares and which plan is implemented within fifteen months from the date of approval by the State Council Securities Committee.

(3) *Changes to Articles of Association*

The Company may not at any time permit or cause any amendment to be made to its Articles of Association which would cause them to cease to comply with the Mandatory Provisions or the Listing Rules relating to such Articles of Association.

(4) *Documents for inspection*

The Company must 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) a complete duplicate register of shareholders;

- (b) a report showing the state of the issued share capital of the Company;
- (c) the Company's latest audited financial statements and the Directors', auditors and (if any) Supervisors' reports thereon;
- (d) special resolutions of the Company;
- (e) 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 H Shares);
- (f) a copy of the latest annual return filed with the PRC State Administration for Industry and Commerce or other competent PRC authority; and
- (g) for shareholders only, copies of the minutes of meetings of shareholders.

(5) *Appointment of receiving agents*

The Company must appoint one or more receiving agents in Hong Kong to receive on behalf of the shareholders dividends declared and other moneys owing by the Company in respect of H Shares listed on the Stock Exchange to be held, pending payments, in trust for holders of the H Shares.

(6) *Statements to be made on acquisition shares*

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

- (a) 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.
- (b) the acquirer of shares agrees with the Company, each shareholder, Director, Supervisor, manager and officer of the Company and the Company acting for itself and for each Director, Supervisor, manager and 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.

- (c) The acquirer of shares agrees with the Company and each shareholder of the Company that H Shares in the Company are freely transferable by the holder thereof.
- (d) The acquirer of shares authorises the Company to enter into a contract on his behalf with each Director and officer whereby such Directors and officers undertake to observe and comply with their obligations to shareholders stipulated in the Articles of Association.

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

The Company must observe and comply with the Company Law, the Special Regulations and the Articles of Association.

(8) *Contract between the Company and every Director and officer*

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

- (a) 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 Code on Takeovers and Mergers and the Code on Share Repurchases and an agreement that the Company will have the remedies provided in the Articles of Association and that neither the contract nor his office is capable of assignment;
- (b) an undertaking by the Director or officer to the Company acting as agent for each shareholder to observe and comply with his obligations to shareholders stipulated in the Articles of Association; and
- (c) an arbitration clause which provides that whenever any differences or claims arise from the listing agreement, the Articles of Association or any rights or obligations conferred or imposed by the laws and administrative regulations concerning the affairs of the Company between (1) the Company and its Directors, Supervisors or officers or (2) a holder of H Shares and a Director, Supervisor, or officer of the Company, such differences or claims will be referred to arbitration at either the China International Economic and Trade Arbitration Commission in accordance with its rules or the Hong Kong International Arbitration Centre in accordance with its securities arbitration rules, at the

election of the party seeking arbitration. The entire dispute or claim shall be resolved through that arbitration; all persons who have a cause of action based on the same facts giving rise to the dispute or claim or whose participation is necessary for the resolution of such dispute or claim, if they are shareholders, Directors, Supervisors, managers or other officers of the Company or the Company, shall submit to arbitration.

Once the party seeking arbitration submits a dispute or claim to arbitration, the other party must submit to the arbitral body selected by the party seeking the arbitration. If the party seeking arbitration elects to arbitrate the dispute or claim at the Hong Kong International Arbitration Centre, then either party may apply to have such arbitration conducted in Shenzhen according to the Securities Arbitration Rules of the Hong Kong International Arbitration Centre. 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. Disputes over who is a shareholder and over the share register do not have to be resolved through arbitration.

(9) *Contract between the Company and every Supervisor*

The Company must enter into a contract in writing with every Supervisor containing at least the following provisions:

- (a) an undertaking by the Supervisor to the Company to observe and comply with the Company Law, the Special Regulations and the Articles of Association and an agreement that the Company will have the remedies provided in the Articles of Association and that neither the contract nor his office is capable of assignment;
- (b) an undertaking by the Supervisor to the Company acting as agent for each shareholder to observe and comply with his obligations to shareholders stipulated in the Articles of Association; and
- (c) the arbitration clause in terms set out in paragraph (8) above subject to necessary modifications.

(10) *Subsequent listing*

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

**3. PRC LEGAL MATTERS**

Fuzhou Zenith Law Firm, our legal adviser on PRC law, has sent to us a letter dated 11th December, 2003 confirming that it has reviewed the summaries of PRC company and securities regulations and the summaries of certain material differences between the Hong Kong company law and the PRC Company Law in so far as they relate to PRC law as contained in this Appendix and that, in its opinion, such summaries are correct summaries of relevant PRC laws and regulations. This letter is available for inspection as referred to in the paragraph headed “Documents Available for Inspection” in Appendix VIII.

Any person wishing to have detailed advice on PRC law and the laws of any jurisdiction with which he is more familiar is recommended to seek independent legal advice.