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## APPENDIX V — TAXATION AND FOREIGN EXCHANGE

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The following discussion is a summary of certain anticipated tax consequences of the operations of the Group and of an investment in the Shares under Hong Kong tax laws, the BVI tax laws, and the PRC income tax laws. The discussion does not deal with all possible tax consequences relating to our operations or to an investment in the Shares. In particular, the discussion does not address the tax consequences under state, local and other (e.g. non-Hong Kong, non-BVI and non-Chinese) tax laws. Accordingly, each prospective investor should consult his or her tax adviser regarding the tax consequences of an investment in the Shares. The discussion is based upon law and relevant interpretations thereof in effect as of the Latest Practicable Date, all of which are subject to change.

### TAXATION OF OUR SHAREHOLDERS

#### *Taxation of Dividends*

##### **Hong Kong**

Under the current practice of the Hong Kong Inland Revenue Department, no tax is imposed in Hong Kong in respect of dividends our Company pays to the Shareholders. Dividends paid to the Shareholders are free of withholding taxes in Hong Kong.

##### **BVI**

The BVI currently levy no taxes on persons who are not persons resident in the BVI based upon profits or income.

##### **PRC**

As the Company is not incorporated in the PRC, your investment in the Shares is largely exempted from the PRC tax laws, except as disclosed in the section headed “Risk Factors — Risks Relating to Doing Business in the PRC — We may be deemed a PRC resident enterprise under the PRC EIT Law and may be subject to the PRC taxation on our worldwide income and dividends payable by us to our foreign investors and gains on the sale of Shares may become subject to withholding taxes under the current PRC tax laws” in this prospectus. However, as some of our business operations are in the PRC and we carry out these business operations through operating subsidiaries organised under the PRC law, our PRC operations and our operating subsidiaries in the PRC are subject to the PRC tax laws and regulations, which indirectly affect your investment in the Shares.

##### **Dividends We Pay to You**

The distribution of dividends to the Company’s overseas investors is not subject to the PRC tax. The PRC Enterprise Income Tax Law 《中華人民共和國企業所得稅法》 and its implementation rules that became effective on 1 January 2008 (the “**PRC EIT Law**”), however, imposes a withholding income tax (“**WIT**”) at the rate of 10% on dividends paid to overseas investors if the Company is considered as a PRC resident enterprise. The WIT rate may be reduced by tax treaty. It is not clear whether you will be subject to such the PRC WIT as a result. Due to these provisions in the PRC tax law, despite many uncertainties with respect to their actual intentions and practical effects, if we are considered a PRC resident enterprise, the dividends we pay to the overseas investors (with no establishments or place of business in the PRC that is connected to this dividend income) with respect to the Shares may be treated as income derived from sources within the PRC and be subject to the PRC WIT.

### *Capital Gains and Profits Tax*

#### **Hong Kong**

No tax is imposed in Hong Kong in respect of capital gains from the sale of the Shares. However, trading gains from the sale of shares by persons carrying on a trade, profession or business in Hong Kong where such gains are sourced in Hong Kong and arise from such trade, profession or business will be chargeable to Hong Kong profits tax.

Trading gains from sales of shares effected on the Hong Kong Stock Exchange will be considered to be sourced in Hong Kong. Thus, trading gains from sales of the Shares effected on the Hong Kong Stock Exchange realised by persons carrying on a business of trading or dealing in securities in Hong Kong will be chargeable to Hong Kong profits tax.

#### **BVI**

The BVI currently levy no taxes on persons who are not persons resident in the BVI based upon capital gains or appreciations.

#### **PRC**

As the Company is not incorporated in the PRC, any transfer or disposition of the Shares by an overseas investor should not trigger the PRC tax liabilities. The PRC EIT Law, however, could invoke the General Anti-Avoidance Rule if the Company is deemed to be set up merely to avoid the PRC tax. Under such circumstances, the PRC tax authorities could impose a WIT at the rate of 10% on capital gains realised by these overseas investors from the disposition of the Shares. It is not clear whether you will be subject to such the PRC WIT as a result. There are still many uncertainties with respect to the actual intentions and practical effects of these provisions in the PRC tax law.

### *Stamp Duty*

#### **Hong Kong**

Hong Kong stamp duty will be payable by the purchaser on every purchase, and by the seller on every sale, of the Shares. The duty is charged at the ad valorem rate of 0.1% of the consideration for, or (if greater) the value of, the Shares transferred on each sale and purchase. In other words, a total of 0.2% of stamp duty is currently payable on a typical sale and purchase transaction of the Shares. In addition, any instrument of transfer (if required) will be subject to a flat rate of stamp duty of HK\$5.

#### **BVI**

No stamp duty is payable in the BVI on the transfers of the shares by persons who are not persons resident in the BVI.

### *Estate Duty*

#### **Hong Kong**

The Revenue (Abolition of Estate Duty) Ordinance 2005 came into effect on 11 February 2006 in Hong Kong. No Hong Kong estate duty is payable and no estate duty clearance papers are needed for an application for a grant of representation in respect of holders of the Shares whose deaths occur on or after 11 February 2006.

## BVI

There is no taxation in the nature of inheritance tax or estate duty payable in the BVI by persons who are not persons resident in the BVI.

## TAXATION OF THE GROUP

### *Taxation of the Group in the PRC*

#### **PRC Enterprise Income Tax**

The PRC enterprise income tax is calculated based on taxable income determined under the PRC accounting principles. In accordance with the former Income Tax Law of the PRC for Foreign Invested Enterprises and Foreign Enterprises (the “**Former Income Tax Law**”) (中華人民共和國外商投資企業和外國企業所得稅法) and its implementing rules which were annulled as of 1 January 2008, foreign invested enterprises incorporated in the PRC were generally subject to an enterprise income tax rate of 33.0% (30.0% of state income tax plus 3.0% local income tax) prior to 1 January 2008. The Former Income Tax Law and the related implementing rules provide certain favourable tax treatments to foreign invested enterprises. Production-oriented foreign invested enterprises, which are scheduled to operate for a period of ten years or more, are entitled to exemption from income tax for two years commencing from the first profit-making year and 50% reduction of income tax for the subsequent three years. In certain special areas such as coastal open economic areas, special economic zones and economic and technology development zones, foreign invested enterprises were entitled to reduced tax rates, namely: (1) in coastal open economic zones, the tax rate applicable to production-oriented foreign invested enterprises was 24%; (2) in special economic zones, the rate was 15%; and (3) the tax rate applicable to certified high and new technology enterprises incorporated and operated in economic and technology development zones determined by the State Council was 15%.

On 16 March 2007, the National People’s Congress adopted the Income Tax Law (中華人民共和國企業所得稅法). The implementing rules for the Income Tax Law were issued by the State Council on 6 December 2007. The implementing rules and the Income Tax Law became effective on 1 January 2008. The Income Tax Law adopts a uniform tax rate of 25% for all enterprises (including foreign invested enterprises) and revokes the former tax exemption, reduction and preferential treatments applicable to foreign invested enterprises. The Income Tax Law also provides for transitional measures for enterprises established prior to the promulgation of the Income Tax Law and eligible for lower tax rate preferential treatment in accordance with the then prevailing tax laws, and administrative regulations. These enterprises will gradually become subject to the unified tax rate over a five-year period from 1 January 2008; enterprises eligible for regular tax reductions or exemptions may continue to enjoy tax preferential treatments after the implementation of the Income Tax Law and until their preferential treatments expire. The preferential treatment period for enterprises which have not enjoyed any preferential treatments for the reason of not having made any profits, however, shall be deemed as starting from 1 January 2008. In addition, under the Income Tax Law, the exemption to the 20% withholding tax on dividends distributed by foreign invested enterprises to their foreign investors under the former tax laws may no longer be available. Generally, if a foreign company has no institution or establishment inside China, or if its income has no actual connection to its institution or establishment inside the territory of China, it shall pay tax on the incomes derived from inside China at a tax rate of 10%.

The State Council issued a Notice on Implementing Transitional Measures for Enterprise Income Tax (國務院關於實施企業所得稅過渡優惠政策的通知) (the “**Notice**”) on 26 December 2007. The

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Notice sets out the detailed implementing rules for Article 57 of the Income Tax Law. In accordance with the Notice, the enterprises that have been approved to enjoy a low tax rate prior to the promulgation of the Income Tax Law will be eligible for a five-year transition period beginning 1 January 2008, during which the tax rate will be increased incrementally to the 25% unified tax rate set out in the Income Tax Law. From 1 January 2008, for the enterprises whose applicable tax rate was 15% before the promulgation of the Income Tax Law, their tax rate will be increased to 18% for the year 2008, 20% for 2009, 22% for 2010, 24% for 2011 and 25% for 2012. For the enterprises whose applicable tax rate was 24%, their tax rate will be changed to 25% from 1 January 2008.

### **The PRC VAT**

Pursuant to the Provisional Regulation of the PRC on VAT (中華人民共和國增值稅暫行條例) and its implementing rules, all entities and individuals that are engaged in the sale of goods, the provision of repairs and replacement services and the importation of goods in China are generally required to pay VAT at a rate of 17% of the gross sales proceeds received except for certain designated goods with VAT at a rate of 13%, less any deductible VAT already paid or borne by the taxpayer. Furthermore, when exporting goods, the exporter is entitled to refund all of VAT that it has already paid or borne.

### **Business Tax**

Under the Provisional Regulations on Business Tax of the PRC (中華人民共和國營業稅暫行條例) which took effect on 1 January 1994 and have been amended on 10 November 2008 and the provisional implementation rules (中華人民共和國營業稅暫行條例實施細則) which took effect on 25 December 1993 and annulled on 1 January 1997, and promulgated on 18 December 2008 with effectiveness as of 1 January 2009, business tax is levied on all enterprises that provide “taxable services”. These include the assignment or transfer of intangible assets, the sale of immovable property and leasing of immovable properties in the PRC. The rates range from 3% to 20% depending on the type of services provided. The assignment of intangible assets, the sale of buildings and other attachments to the land and leasing of property attract a tax rate of 5% of gross revenue generated from the relevant transactions of the enterprise. Enterprises are required to pay the business tax to the relevant local tax authorities where the enterprises derived their taxable income.

### **Dividends From Our PRC Operations**

Under the PRC Income Tax Law for Foreign-Invested Enterprises and Foreign Enterprises effective prior to 1 January 2008, dividends paid by our PRC subsidiaries to us were exempt from the PRC income tax. However, pursuant to the PRC EIT Law, dividends payable by foreign invested enterprises, such as subsidiaries in the PRC out of their post-2007 retained earning, to their foreign investors are subject to a PRC WIT at 10% unless any lower tax treaty rate is applicable. The profits earned by foreign-invested enterprises after 1 January 2008 that are distributed to foreign investors shall be subject to enterprise income tax pursuant to the PRC EIT Law.

Under the PRC EIT Law, enterprises established under the laws of foreign jurisdictions but whose “de facto management body” is located in the PRC are treated as “resident enterprises” for the PRC tax purposes, and will be subject to the PRC income tax on their worldwide income. For such the PRC tax purposes, dividends from the PRC subsidiaries to their foreign shareholders, if deemed as the PRC resident enterprises are exempt from the WIT. However, the dividends paid by these foreign shareholders to their foreign investors could be subject to 10% WIT unless reduced by tax treaty. Under the implementation rules of the PRC EIT Law, “de facto management bodies” is defined as the bodies that have material and overall management control over the business, personnel, accounts and

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properties of an enterprise. There is uncertainty as to how the PRC EIT Law and its implementation rules will be interpreted or implemented by relevant tax bureaus.

### **Arrangement for avoidance of double taxation between mainland and Hong Kong**

We are subject to the Arrangement for Avoidance of Double Taxation with respect to Hong Kong taxes from the year of assessment beginning on or after 1 April 2007 and with respect to the PRC taxes from the taxable year beginning on or after 1 January 2007. Dividends we receive from our operating subsidiaries in the PRC could be subject to a 5% withholding tax rate under the Avoidance of Double Taxation Arrangement so long as we hold at least 25% of equity interests in our PRC operating entities and upon the PRC tax authority approving our application required under the Tentative Administrative Measures on Tax Convention Treatments for Non-Residents 《非居民享受稅收協定待遇管理辦法（試行）》 (“**Circular 124**”).

Interest payments we receive from our bona fide loans to our operating subsidiaries or other entities in the PRC will be subject to a 7% withholding tax rate under the Avoidance of Double Taxation Arrangement, provided that we meet the conditions under Circular of the State Administration of Taxation on How to Understand and Determine “Beneficial Owners” under Tax Conventions 《關於如何理解和認定稅收協定中“受益所有人”的通知》 (“**Circular 601**”) and Circular 124. Royalty payments we receive from licensing of our intellectual properties to our operating subsidiaries or other entities in the PRC will also be subject to 7% withholding tax rate under the Avoidance of Double Taxation Arrangement, subject to Circular 601 and Circular 124 as mentioned above.

### **Taxation of the Group in the BVI**

The Company is not liable to pay any form of taxation in the BVI and all dividends, interests, rents, royalties, compensations and other amounts paid by the Company to persons who are not persons resident in the BVI are exempt from all forms of taxation in the BVI and any capital gains realised with respect to any shares, debt obligations, or other securities of the Company by persons who are not persons resident in the BVI are exempt from all forms of taxation in the BVI.

No estate, inheritance, succession or gift tax, rate, duty, levy or other charge is payable by persons who are not persons resident in the BVI with respect to any shares, debt obligation or other securities of the Company.

Subject to the payment of stamp duty on the acquisition of property in the BVI by the Company, all instruments relating to transfers of property to or by the Company and all instruments relating to transactions in respect of the shares, debt obligations or other securities of the Company and all instruments relating to other transactions relating to the business of the Company are exempt from payment of stamp duty in the BVI.

There are currently no withholding taxes or exchange control regulations in the BVI applicable to the Company.

### **PRC LAWS AND REGULATIONS CONCERNING FOREIGN EXCHANGE CONTROL**

The foreign exchange control system of China has experienced a number of reforms and the current system contains three major regulatory laws and regulations since 1993.

The PBOC, as authorised by the State Council, promulgated the Announcement Concerning Further Reforming the Foreign Exchange Control System (中國人民銀行關於進一步改革外匯管理體制的公告) on 28 December 1993, which was brought into force on

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1 January 1994. The Regulations of the People's Republic of China on the Management of Foreign Exchanges (中華人民共和國外匯管理條例) promulgated by the State Council, implemented on 1 April 1996 and currently amended on 5 August 2008, apply to the receipts, payments or business activities in China that are transacted in foreign currencies by domestic institutions, individuals, foreign representative offices and individuals visiting China. The Regulation on Control of Foreign Exchange Settlements, Sales and Payments (結匯、售匯及付匯管理規定) issued by PBOC on 20 June 1996 and implemented on 1 July 1996 governs the foreign exchange settlements, purchases, foreign exchange account openings and payments to foreign countries that are incurred in China by domestic institutions, individual residents, foreign representative offices in China and individuals visiting China.

PBOC publicises the exchange rates between RMB and other major foreign currencies on each business day. The exchange rates are determined by reference to the preceding day's trading prices of RMB against major foreign currencies on the inter-bank foreign exchange market. In general and unless special immunity is obtained, all organisations and individuals in China shall sell their exchange income to designated banks, but foreign-funded enterprises are permitted to retain a certain percentage of their exchange income, to be deposited in a foreign exchange bank account opened in designated banks. In addition, exchange income arising from loans from foreign institutions or from issuance of shares or bonds valued in foreign currencies need not be sold to designated banks but shall be deposited in designated foreign exchange accounts with designated banks. Capital foreign exchange must be deposited in foreign exchange accounts opened with designated banks.

At present, the PRC Government is gradually loosening its control over foreign exchange purchases. Any Chinese enterprise in need of foreign currencies in their day-to-day business activities, trade and non-trade operations, import business and payment of foreign debts may purchase foreign currencies from designated banks, provided that they submit the required appropriate supporting documents.

In addition, if foreign-funded enterprises are in need of foreign currencies for distributing dividends, capital bonuses or profits to foreign investors, the amount so needed after payment of the appropriate dividend tax may be drawn from the enterprises' foreign exchange accounts maintained with designated banks. If the foreign currency in such an account is insufficient, the foreign-funded enterprise may apply to the government authority in charge for purchasing the necessary amount of foreign currency from a designated bank to cover the deficiency.

Although the foreign exchange control over transactions under current accounts has decreased, enterprises shall obtain approval from the SAFE before they accept foreign-currency loans, provide foreign currency guarantees, make investments in foreign countries or carry out any other capital account transactions involving the purchase of foreign currencies.

In foreign exchange transactions, designated banks may freely determine applicable exchange rates based on the rates publicised by PBOC and subject to certain governmental restrictions.

On 21 October 2005, the SAFE issued the SAFE Notice No. 75, which became effective as of 1 November 2005. According to the SAFE Notice No. 75, prior registration with the local SAFE branch is required for the PRC residents to establish or to control an offshore company for the purposes of financing that offshore company with assets or equity interests in an onshore enterprise located in the PRC. An amendment to registration or filing with the local SAFE branch by such the PRC resident is also required for the injection of equity interests or assets of an onshore enterprise in the offshore company or overseas funds raised by such offshore company, or any other material change involving a change in the capital of the offshore company.

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Moreover, the SAFE Notice No. 75 applies retroactively. As a result, the PRC residents who have established or acquired control of offshore companies that have made onshore investments in the PRC in the past are required to complete the relevant registration procedures with the local SAFE branch by 31 March 2006. Under the relevant rules, failure to comply with the registration procedures set forth in the SAFE Notice No. 75 may result in restrictions being imposed on the foreign exchange activities of the relevant onshore company, including the increase of its registered capital, the payment of dividends and other distributions to its offshore parent or affiliate and the capital inflow from the offshore entity, and may also subject relevant PRC residents to penalties under the PRC foreign exchange administration regulations. The PRC residents who control the Group from time to time are required to register with the SAFE in connection with their investments in us.