

## Company Information Sheet

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**Company Name (stock code): GDS Holdings Limited (9698)**

**Stock Short Name: GDS-SW / 萬國數據-SW**

This information sheet is provided for the purpose of giving information to the public about GDS Holdings Limited (the “**Company**”) as at the dates specified. The information does not purport to be a complete summary of information about the Company and/or its securities.

Unless the context requires otherwise, capitalized terms used herein shall have the meanings given to them in the Company’s prospectus (the “**Prospectus**”) dated October 21, 2020 and references to sections of the Prospectus shall be construed accordingly.

### Responsibility Statement

The directors of the Company as at the date hereof hereby collectively and individually accept full responsibility for the accuracy of the information contained in this information sheet and confirm, having made all reasonable inquiries, that to the best of their knowledge and belief the information is accurate and complete in all material respects and not misleading or deceptive and that there are no other matters the omission of which would make any Information inaccurate or misleading.

The directors also collectively and individually undertake to publish a revised Company Information Sheet when there are changes to the information since the last publication.

### Summary Content

<b>Document Type</b>	<b>Date</b>
<b>A. Waivers and Exemptions</b>	
A1. Latest version . . . . .	October 21, 2020
<b>B. Foreign Laws and Regulations</b>	
B1. Latest version . . . . .	October 21, 2020
<b>C. Constitutional Documents</b>	
C1. Latest version . . . . .	October 18, 2016
<b>D. Deposit Agreement</b>	
D1. Latest version . . . . .	November 1, 2016

Date of this information sheet: October 30, 2020

## A. WAIVERS AND EXEMPTIONS

The following waivers and exemptions have been applied for and granted by the Hong Kong Stock Exchange and/or the SFC:

<b>Relevant rule(s) waived</b>	<b>Subject matter</b>
Section 4.1 of the Introduction to the Takeovers Codes	Determination of whether a company is a “public company in Hong Kong”
Part XV of the SFO	Disclosure of interests
Paragraphs 41(4) and 45 of Appendix 1A to the Hong Kong Listing Rules and Practice Note 5 of the Hong Kong Listing Rules	Disclosure of interests information
Rule 19C.07(3) and Rule 19C.07(7) of the Hong Kong Listing Rules	Shareholder protection requirements in relation to approval, removal and remuneration of auditor and requisition of extraordinary general meeting by shareholders
Rule 4.04(2) and Rule 4.04(4)(a) of the Hong Kong Listing Rules	Investments and acquisitions after the Track Record Period
Rule 4.04(3)(a), Rule 4.05 and Rule 4.13 of the Hong Kong Listing Rules and Paragraph 31(3)(b) of the Third Schedule to Companies (WUMP) Ordinance	Disclosure requirements under the Accountants’ Report
Paragraphs 33(2), 33(3), 46(2), 46(3) of Appendix 1A to the Hong Kong Listing Rules	Prospectus disclosure requirements under the Hong Kong Listing Rules and Companies (WUMP) Ordinance in respect of directors’ and five highest individuals’ emoluments
Paragraphs 13, 26, 27 and 29(1) of Appendix 1A to the Hong Kong Listing Rules and Paragraphs 10, 11, 14, 25 and 29 of the Third Schedule to Companies (WUMP) Ordinance	Other prospectus disclosure requirements under the Hong Kong Listing Rules and Companies (WUMP) Ordinance
Rule 12.04(3), Rule 12.07 and Rule 12.11 of the Hong Kong Listing Rules	Availability of copies of the prospectus in printed form
Rule 2.07A of the Hong Kong Listing Rules	Corporate communications

<b>Relevant rule(s) waived</b>	<b>Subject matter</b>
Rule 13.25B of the Hong Kong Listing Rules	Monthly returns
Practice Note 15 of the Hong Kong Listing Rules	Rules related to spin-off listings
Paragraph 15(2)(c) of Appendix 1A to the Hong Kong Listing Rules	Disclosure of Offer Price
Paragraph 28(1)(b)(i) to (v) of Appendix 1A to the Hong Kong Listing Rules	Disclosure requirements in respect of suppliers and customers
Rule 9.09(b) of the Hong Kong Listing Rules	Dealings in the Shares prior to Listing
Rule 10.04 and Paragraph 5(2) of Appendix 6 to the Hong Kong Listing Rules	Subscription for Shares by existing shareholders
Paragraph 4.2 of Practice Note 18 of the Hong Kong Listing Rules	Clawback mechanism

### **Not a Public Company in Hong Kong**

Section 4.1 of the Introduction to the Takeovers Codes provides that the Takeovers Codes applies to takeovers, mergers and share buy-backs affecting public companies in Hong Kong, companies with a primary listing of their equity interests in Hong Kong. According to the Note to Section 4.2 of the Introduction to the Takeovers Codes, a Grandfathered Greater China Issuer within the meaning of Rule 19C.01 of the Hong Kong Listing Rules with a secondary listing on the Hong Kong Stock Exchange will not normally be regarded as a public company in Hong Kong under Section 4.2 of the Introduction to the Takeovers Codes.

We have applied for, and the SFC has granted, a ruling that we are not a “public company in Hong Kong” for the purposes of the Takeovers Codes. Therefore, the Takeovers Codes does not apply to us. In the event that the bulk of trading in our Shares migrates to Hong Kong such that we would be treated as having a dual-primary listing pursuant to Rule 19C.13 of the Hong Kong Listing Rules, the Takeover Codes will apply to us.

## **Disclosure of Interests under Part XV of the SFO**

Part XV of the SFO imposes duties of disclosure of interests in Shares. Under the U.S. Exchange Act, which we are subject to, any person (including directors and officers of the company concerned) who acquires beneficial ownership, as determined in accordance with the rules and regulations of the SEC and which includes the power to direct the voting or the disposition of the securities, of more than 5% of a class of equity securities registered under Section 12 of the U.S. Exchange Act must file beneficial owner reports with the SEC, and such person must promptly report any material change in the information provided (including any acquisition or disposition of 1% or more of the class of equity securities concerned), unless exceptions apply. Therefore, compliance with Part XV of the SFO would subject our corporate insiders to a second level of reporting, which would be unduly burdensome to them, would result in additional costs and would not be meaningful, since the statutory disclosure of interest obligations under the U.S. Exchange Act that apply to us and our corporate insiders would provide our investors with sufficient information relating to the shareholding interests of our significant shareholders.

We have applied for, and the SFC has granted, a relevant partial exemption under section 309(2) of the SFO to us, our Substantial Shareholders, directors and chief executives from strict compliance with the provisions of Part XV of the SFO (other than Divisions 5, 11 and 12 of Part XV of the SFO), on the conditions that (i) the bulk of trading in the Shares is not considered to have migrated to Hong Kong on a permanent basis in accordance with Rule 19C.13 of the Hong Kong Listing Rules; (ii) all disclosures of interests filed with the SEC are also filed with the Hong Kong Stock Exchange as soon as practicable, which will then publish such disclosures in the same manner as disclosures made under Part XV of the SFO; and (iii) we will advise the SFC if there is any material change to any of the information which has been provided to the SFC, including any significant changes to the disclosure requirements in the U.S. and any significant changes in the volume of our worldwide share turnover that takes place on the Hong Kong Stock Exchange. This exemption may be reconsidered by the SFC in the event there is a material change in information provided to the SFC.

## **Disclosure of Interests Information**

Part XV of the SFO imposes duties of disclosure of interests in Shares. Practice Note 5, paragraphs 41(4) and 45 of Appendix 1A to the Hong Kong Listing Rules require the disclosure of interests information in respect of shareholders' and directors' interests to be included in this prospectus.

We have applied for, and the SFC has granted a partial exemption from strict compliance with Part XV of the SFO (other than Divisions 5, 11 and 12 of Part XV of the SFO) as set out above under sub-section headed "Disclosure of Interests under Part XV of SFO." The U.S. Exchange Act and the rules and regulations promulgated thereunder require disclosure of interests by shareholders that are broadly equivalent to Part XV of the SFO. Relevant disclosure in respect of the substantial shareholder 's interests can be found in the section headed "Major Shareholders" in this prospectus.

We undertake to file with the Hong Kong Stock Exchange, as soon as practicable, any declaration of shareholding and securities transactions filed with the SEC. We further undertake to disclose in present and future listing documents in the same manner any shareholding interests as disclosed in an SEC filing and the relationship between our directors, officers, members of committees and their relationship to any controlling shareholder.

On the basis above, we have applied for, and the Hong Kong Stock Exchange has granted us, a waiver from the requirements under Practice Note 5, paragraphs 41(4) and 45 of Appendix 1A to the Hong Kong Listing Rules.

### **Shareholder Protection**

For an overseas issuer seeking a secondary listing on the Hong Kong Stock Exchange, Rule 19.30(1)(b) of the Hong Kong Listing Rules requires the overseas issuer 's primary listing is or is to be on an exchange where the standards of shareholder protection are at least equivalent to those provided in Hong Kong. Rule 19C.06 of the Hong Kong Listing Rules provides that Appendix 3 and Appendix 13 to the Hong Kong Listing Rules do not apply to an overseas issuer that is a Non-Greater China Issuer (as defined in the Hong Kong Listing Rules) or a Grandfathered Greater China Issuer (as defined in the Hong Kong Listing Rules) seeking a secondary listing under Chapter 19C of the Hong Kong Listing Rules. Rule 19C.07 of the Hong Kong Listing Rules provides that the Hong Kong Stock Exchange will consider that a Non-Greater China Issuer or a Grandfathered Greater China Issuer seeking a secondary listing has met the requirements of Rule 19.30(1)(b) of the Hong Kong Listing Rules if it has met the shareholder protection standards by reference to eight criteria set out in Rule 19C.07 of the Hong Kong Listing Rules. We are a Grandfathered Greater China Issuer under Chapter 19C of the Hong Kong Listing Rules.

### ***Approval, removal and remuneration of auditors***

Rule 19C.07(3) of the Hong Kong Listing Rules requires the appointment, removal and remuneration of auditors must be approved by a majority of the Qualifying Issuer 's members or other body that is independent of the issuer 's board of directors and the note to Rule 19C.07(3) of the Hong Kong Listing Rules provides that an example of such an independent body is the supervisory board in systems that have a two tier board structure (the "**Auditors Provision**"). However, our Articles of Association do not contain an equivalent Auditors Provision. We have applied for, and the Hong Kong Stock Exchange has granted us, a waiver from the strict compliance with Rule 19C.07(3) of the Hong Kong Listing Rules on the following conditions and basis:

- While our Articles of Association do not contain an equivalent Auditors Provision, Article 153 of our Articles of Association provides that our board shall appoint an auditor of our Company who shall hold office until the board appoints another auditor

and may fix their remuneration. The Board has formally delegated this function to the Audit Committee, and such function is entrenched in the charter of our Audit Committee.

- The charter of our Audit Committee provides that it is directly responsible for the appointment, compensation, retention and oversight of the work of the independent auditor, which is in accordance with the requirements of the applicable U.S. securities laws and Nasdaq Listing Rules requirement. Rule 10A-3(b)(2) under the U.S. Securities Act and Rule 5605(c) of the Nasdaq Stock Market Rules requires that the audit committee of each listed issuer must be directly responsible for the appointment, compensation, retention and oversight of any registered public accounting firm engaged for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the listed issuer.
- The Audit Committee is an independent body of our board on the basis of the independence requirements as set out in applicable U.S. federal securities laws and the Nasdaq Listing Rules. Our Audit Committee comprises of three members, all of whom are independent directors as required by the U.S. Sarbanes-Oxley Act and applicable Nasdaq Listing Rules. Section 5605(c)(2) of the Nasdaq Listing Rules and Item 16A of Form 20-F require that at least one member of the Audit Committee must meet the Nasdaq standard for audit committee financial expert. At present, all three members of our Audit Committee meets this standard.
- We and our auditors are also subject to important safeguards with respect to auditor qualifications and independence:
  - (a) we adhere to the SEC's Regulations S-X, which addresses qualifications of auditors, including independence requirements;
  - (b) KPMG Huazhen LLP, who have performed audits of our consolidated financial statements, and audits of our internal control over financial reporting thereof, is subject to the International Ethics Standards Board of Accountants Code of Ethics and the SEC's independence rules. Partners providing audit services to us are also subject to Partner Rotation Requirements under the International Ethics Standards Board of Accountants Code of Ethics; and
  - (c) To ensure that auditors are independent of their audit clients, Rule 10A-3 promulgated under the U.S. Exchange Act mandates that the audit committee, whose voting members must consist entirely of independent directors, be directly responsible for the appointment, compensation, retention and oversight of the work of any registered public accounting firm engaged (including resolution of disagreements between management and the auditor regarding financial reporting). We believe that this rule effectively prohibits our board from revoking the power delegated to our Audit Committee relating to the operation of the Auditors Provision.

- Since our listing on the Nasdaq in 2016, we have adopted the practice of putting forward a resolution at each annual general meeting for shareholders to confirm the appointment of the auditors. The resolution in each year has been passed in favor and approved.
- We are seeking a listing on the Hong Kong Stock Exchange under Chapter 19C of the Hong Kong Listing Rules.
- The disclosure of the basis of the waiver is set out in this prospectus.

***Requisition of extraordinary general meeting by shareholders***

Rule 19C.07(7) of the Hong Kong Listing Rules requires that members holding a minority stake in the Qualifying Issuer 's total number of issued shares must be able to requisition an extraordinary general meeting and add resolutions to a meeting agenda. The minimum stake required to do so must not be higher than 10% of the voting rights, on a one vote per share basis, in the share capital of the Qualifying Issuer.

Article 58(2) of our Articles of Association provides for the requisition of shareholders' meetings, including the following provisions:

- (a) for so long as STT GDC has the right to appoint any director pursuant to the Articles of Association, any one or more shareholders (other than STT GDC or any affiliate of STT GDC controlled by STT GDC) holding not less than one-third of the issued Class A ordinary shares of our Company (excluding any Class A ordinary shares beneficially owned by STT GDC or any affiliate of STT GDC controlled by STT GDC) shall have the right to requisition an extraordinary general meeting; and
- (b) for so long as STT GDC ceases to have the right to appoint any director pursuant to our Articles of Association, any one or more shareholders (including STT GDC or any affiliate of STT GDC controlled by STT GDC) holding not less than one-third of the issued Class A ordinary shares of our Company shall have the right to requisition an extraordinary general meeting.

In addition, Article 61(2) of our Articles of Association provides that at any general meeting of our Company, two (2) members entitled to vote and present in person or by proxy or (in the case of a member being a corporation) by its duly authorised representative representing not less than one-third in nominal value of the total issued voting shares in our Company throughout the meeting shall form a quorum for all purposes.

We will amend the Articles of Association after the Listing to comply with Rule 19C.07(7) of the Hong Kong Listing Rules. However, it would be unduly burdensome for us to have to specially convene a meeting of our shareholders for the purpose of amending the Articles of Association given that we are already listed on another exchange.



We have applied for, and the Hong Kong Stock Exchange has granted, a waiver from strict compliance with Rule 19C.07(7) of the Hong Kong Listing Rules, subject to the condition that:

- (a) we will put forth resolutions at or before the next annual general meeting of our Company in 2021 after the Listing to revise the Articles of Association, so that (i) in addition to the existing provisions of Article 58(2), a provision will be added to provide that the minimum stake required for any shareholder(s) to requisition an extraordinary general meeting and the addition of resolutions to the general meeting will be 10% of the voting rights, on a one vote per share basis, in the share capital of our Company; and (ii) the quorum for a general meeting of our Company pursuant to the amended provision in (i) above will be 10% of the aggregate voting power of our Company on a one vote per share basis;
- (b) we have obtained irrevocable undertakings from Mr. Huang, STT GDC and EDC Group Limited prior to the Listing to vote in favor of the aforementioned proposed resolutions with a view to ensuring that there may be adequate votes in favor of such resolutions;
- (c) our board and directors undertake to convene general meetings at the request of shareholders holding not less than 10% of the voting rights, on a one vote per share basis, from Listing until the next annual general meeting is convened or if the shareholders do not approve the above proposed amendments to the Articles of Association. In addition, we will continue to put forth a resolution for the proposed amendment at the following annual general meeting each year until such resolution is passed; and
- (d) disclosure of the basis of this waiver is set out in this prospectus.

### **Investments and Acquisitions after the Track Record Period**

Rules 4.04(2) and 4.04(4)(a) of the Hong Kong Listing Rules require that, among other things, the accountants' report to be included in a listing document includes the results and balance sheet of any business or subsidiary acquired, agreed to be acquired or proposed to be acquired since the date to which the latest audited financial statements of the issuer have been made in respect of each of the three financial years immediately preceding the issue of this prospectus.

Pursuant to note 4 of Rule 4.04(4)(b) of the Hong Kong Listing Rules, the Hong Kong Stock Exchange may consider granting a waiver of the requirements under Rules 4.04(2) and 4.04(4) of the Hong Kong Listing Rules on a case-by-case basis, and having regard to all relevant facts and circumstances and subject to certain conditions set out thereunder.



From time to time, we make strategic investments in the ordinary and usual course of business to further our business objectives.

***Ordinary course Investment since June 30, 2020***

Since June 30, 2020 and up to the Latest Practicable Date, we have made a minority investment in a company (the “**Investment**”). Details of the Investment is set out below:

<u>Investment<sup>(1)</sup></u>	<u>Consideration</u> (approximately RMB million)	<u>Percentage of shareholding/ equity interest</u>	<u>Principal business activities</u>
Company A . . . . .	4.5	25%	Provision of cloud-related services

*Note:*

(1) None of the core connected persons at the level of our Company is a controlling shareholder of the Investment.

We confirm that the investment amount for the Investment is the result of commercial arm’s length negotiations, based on factors including market dynamics and a mutually agreed valuation.

***Conditions for granting the waiver and its scope in respect of the Investment***

We have applied to the Hong Kong Stock Exchange for, and the Hong Kong Stock Exchange has granted, a waiver from strict compliance with Rules 4.04(2) and 4.04(4)(a) of the Hong Kong Listing Rules in respect of the Investment on the following grounds:

*Ordinary and usual course of business*

We make strategic equity investments in business activities relating to our business as part of our ordinary and usual course of business. We have a history of making investments and have conducted a substantial number of investments during the Track Record Period.

*The percentage ratios of the Investment are all less than 5% by reference to the most recent fiscal year of the Track Record Period*

The asset ratio, revenue ratio, consideration ratio and gross profit ratio (as an alternative test) calculated in accordance with Rule 14.07 of the Hong Kong Listing Rules for the Investment are all less than 5% by reference to the most recent fiscal year of the Track Record Period. As our Company recorded net loss for the year ended December 31, 2019, the calculation of profit ratio in accordance with Rule 14.13 of the Hong Kong Listing Rules would produce an anomalous result. Gross profit ratio is used as an alternative test in respect profit test as suggested under FAQ Series 1, FAQ No. 53.

Accordingly, we believe that the Investment has not resulted in any significant change to our financial position since June 30, 2020, and all information that is reasonably necessary for potential investors to make an informed assessment of our activities or financial position has been included in this prospectus. As such, a waiver from compliance with the requirements under Rules 4.04(2) and 4.04(4)(a) of the Hong Kong Listing Rules would not prejudice the interests of the investing public.

*We are neither able to exercise any control, nor have any significant influence, over the underlying company or business*

We only hold and/or will only hold a minority equity interest in the Investment and do not control its board of directors; and we currently expect this to remain the case for any subsequent investments. We are not involved in the day to day management of the Investment and we only enjoy minority strategic shareholder rights. The minority rights given to us are generally commensurate to our status as a minority shareholder and are for the protection of our interests as a minority stakeholder in the Investment. These rights are neither intended, nor are they sufficient to compel or require them to prepare or to disclose in this prospectus audited financial statements for the purposes of compliance with the relevant requirements under Rules 4.04(2) and 4.04(4) (a) of the Hong Kong Listing Rules. These disclosures are also not required pursuant to applicable rules of the SEC. It could be prejudicial and potentially harmful to our portfolio relationships and commercial interests to do so. In addition, as the portfolio company is private, disclosing this information could harm its interests and bring it into an unfavorable competitive position. As we do not expect the Investment to result in any material changes to our financial position after the Track Record Period, we do not believe the non-disclosure of the required information pursuant to Rules 4.04(2) and 4.04(4) of the Hong Kong Listing Rules would prejudice the interest of the investors to assess us.

### *Alternative disclosure of the Investment in this prospectus*

We have provided alternative information in connection with the Investment in this prospectus. Such information includes that which would be required for a discloseable transaction under Chapter 14 of the Hong Kong Listing Rules that our directors consider to be material, including, for example, descriptions of the principal business activities, the investment amount, and a statement that none of the core connected persons at the level of our Company is a controlling shareholder of the Investment. For the avoidance of doubt, we have excluded disclosure on the name of the Investment in this prospectus because (i) we have entered into confidentiality agreements with the Investment and do not have consent for such disclosure and/or (ii) given the competitive nature of the industries in which we operate, disclosure of the name of the relevant company in this prospectus is commercially sensitive and may jeopardize our ability to consummate the Investment; and/or (iii) it is commercially sensitive to disclose the identities of the companies the Company invested in or propose to invest in to avoid its competitors anticipating the strategy. Since the relevant percentage ratio of the Investment is less than 5% by reference to the most recent fiscal year of our Track Record Period, the current disclosure is adequate for potential investors to form an informed assessment of us. We do not expect to use any proceeds from the Listing to fund such Investment.

### ***Acquisitions since June 30, 2020***

Since June 30, 2020 and up to the Latest Practicable Date, we have made or proposed to make a number of acquisitions, and we expect to continue to enter into further acquisitions subsequent to the Latest Practicable Date and prior to the date of this prospectus, collectively, the Acquisitions. Details of the Acquisitions up to the Latest Practicable Date include:

<b><u>Targets<sup>(1) (2)</sup></u></b>	<b><u>Equity consideration</u></b> <b>(approximately RMB million)</b>	<b><u>Percentage of shareholding/ equity interest</u></b>	<b><u>Principal business activities</u></b>
Company B . . . . .	15.0	100%	Data center project company
Company C <sup>(3)</sup> . . . . .	580.0	82%	Data center project company
Company D <sup>(4)</sup> . . . . .	160.0	88%	Investment company holding property for the data center project
Company E . . . . .	8.5	100%	Engineering and renovation company
Company F . . . . .	2.5	100%	Company holding assets in a data center project
Company G . . . . .	90.0	100%	Investment company holding a data center project company

<b>Targets<sup>(1) (2)</sup></b>	<b>Equity consideration (approximately RMB million)</b>	<b>Percentage of shareholding/ equity interest</b>	<b>Principal business activities</b>
Beijing Ruiwei Cloud Computing Science & Technology Co. Ltd. . . .	797.3	100%	Data center project company
Company H. . . . .	5.1	100%	Data center project company
Company I and Company J <sup>(5)</sup> . . . . .	3,200.0	100%	Data center project companies

*Notes:*

- (1) Given that the completion of some of the above Acquisitions is subject to conditions including capital contribution in phases according to the negotiation with the counterparties, and the equity consideration is subject to adjustment pursuant to the definitive transaction documents, the information set out above might be subject to further changes.
- (2) None of the core connected persons at the level of our Company is a controlling shareholder of the Target.
- (3) Company C is acquired through purchase of equity and capital increase by our Company through a joint venture owned as to 58% by the Company and as to 42% by an independent third party.
- (4) Company D is acquired by our Company through capital increase through non-wholly owned subsidiaries owned by our Company and independent third parties.
- (5) We have made a binding offer for the acquisition of Company I and Company J which has been accepted by the shareholders of these companies. However, we have not yet entered into definitive agreements.

The acquisition amounts for the Acquisitions are the result of commercial arm's length negotiations, based on factors including stock price (for public companies), market dynamics, a mutually agreed valuation, and/or capital required for the target company's operations.

***Conditions to the waiver granted by the Hong Kong Stock Exchange***

We have applied to the Hong Kong Stock Exchange for, and the Hong Kong Stock Exchange has granted, a waiver from strict compliance with Rules 4.04(2) and 4.04(4) of the Hong Kong Listing Rules in respect of the Acquisitions on the following grounds:

*The percentage ratios of the acquisition of Company F and Company G aggregated together, and each of the remaining Acquisitions are all less than 5% by reference to the most recent fiscal year of our Track Record Period*

The transactions for the acquisition of Company F and Company G were entered into with the same counterparty and were aggregated for the purpose of calculation of the percentage ratios under Rule 14.07 of the Hong Kong Listing Rules. The asset ratio, revenue ratio, consideration ratio and gross profit ratio (as an alternative test) calculated in accordance with Rule 14.07 of the Hong Kong Listing Rules for the acquisition of Company F and Company G aggregated together, and for each of the remaining Acquisitions are all less than 5% by reference to the most recent fiscal year of the Track Record Period. As our Company recorded net loss for the year ended December 31, 2019, the calculation of profit ratio in accordance with Rule 14.13 of the Hong Kong Listing Rules would produce an anomalous result. Gross profit ratio is used as an alternative test in respect profit test as suggested under FAQ Series 1, FAQ No. 53.

To the best of our knowledge, other than the transactions for the acquisition of Company F and Company G, which were entered into with the same counterparty, the remaining Acquisitions are not subject to aggregation under Rule 14.22 of the Hong Kong Listing Rules. None of the remaining Acquisitions should be aggregated because (i) each of those Acquisitions involves the acquisition of interests in a different target company; and (ii) they were entered into, or are expected to be entered into, with different counterparties.

Accordingly, the Acquisitions have not resulted in any significant change to our financial position since June 30, 2020, and all information that is reasonably necessary for the potential investors to make an informed assessment of our activities or financial position has been included in this prospectus. As such, a waiver from compliance with the requirements under Rules 4.04(2) and 4.04(4)(a) of the Hong Kong Listing Rules would not prejudice the interests of the investing public.

*The historical financial information of the Targets is not available and would be unduly burdensome to obtain or prepare*

The Targets do not have historical financial information which is readily available for disclosure in this prospectus in accordance with the Hong Kong Listing Rules. In addition, it will require considerable time and resources for us and our reporting accountants to fully familiarize ourselves with the management accounting policies of the Targets and compile necessary financial information and supporting documents for disclosure in this prospectus. As such, it would be impractical and unduly burdensome for us to disclose the audited financial information of the Targets as required under Rules 4.04(2) and 4.04(4) of the Hong Kong Listing Rules.

In addition, having considered the Acquisitions are immaterial and that we do not expect the Acquisitions to have any material effect on our business, financial condition or operations, it would not be meaningful and would be unduly burdensome for us to prepare and include the financial information of the Targets during the Track Record Period in this prospectus. As we do not expect the Acquisitions to result in any material changes to our financial position after the Track Record Period, we do not believe the non-disclosure of the required information pursuant to Rules 4.04(2) and 4.04(4) of the Hong Kong Listing Rules would prejudice the interest of the investors to assess us.

#### *Alternative disclosure of the Acquisitions in this prospectus*

We have provided alternative information in this section in connection with the Acquisitions. Such information includes that which would be required for a discloseable transaction under Chapter 14 of the Hong Kong Listing Rules that our directors consider to be material, including, for example, descriptions of the principal business activities, the consideration and a statement that none of the core connected persons at the level of our Company is a controlling shareholder of any of the Targets. For the avoidance of doubt, the names of some of the Targets are not disclosed in this prospectus because (i) we have entered into confidentiality agreements with these companies and do not have consent from them for such disclosure and/or (ii) given the competitive nature of the industries in which we operate, disclosure of the names of the relevant companies in this prospectus is commercially sensitive and may jeopardize our ability to consummate the proposed Acquisitions; and/or (iii) it is commercially sensitive to disclose the identities of the companies we invested in or propose to invest in to avoid our competitors anticipating our strategy. Since the relevant percentage ratio of each Acquisition is less than 5% by reference to the most recent fiscal year of our Track Record Period, the current disclosure is adequate for potential investors to form an informed assessment of us. We do not expect to use any proceeds from the Listing to fund such Acquisitions.

#### **Accountants' Report**

Rules 4.04(3)(a), 4.05 and 4.13 of the Hong Kong Listing Rules and paragraph 31(3)(b) of the Third Schedule to the Companies (WUMP) Ordinance set out certain content requirements in respect of an accountants' report included in a listing document.

Rule 4.04(3)(a) of the Hong Kong Listing Rules requires the accountants' report appended to the prospectus to include, among others, the statement of financial position of the issuer and, if the issuer is itself a holding company, the consolidated statement of financial position of the issuer and its subsidiaries in each case as of the end of each of the three financial years to which the latest audited financial statements of the issuer have been made up.

Rule 4.05 of the Hong Kong Listing Rules states that the report on results and financial position under Rules 4.04(1) to 4.04(4) of the Hong Kong Listing Rules must include the disclosures required under the relevant accounting standards adopted and disclose separately, among others, an aging analysis of accounts receivable and an aging analysis of accounts payable.

Rule 4.13 of the Hong Kong Listing Rules states that the relevant standards will normally be those current in relation to the last financial year reported on and, wherever possible, appropriate adjustments must be made to show profits for all periods in accordance with such standards.

Paragraph 31(3)(b) of the Third Schedule to the Companies (WUMP) Ordinance requires the accountants' report of the issuer include, among other things, the issuer 's (other than its subsidiaries') assets and liabilities.

Certain historical financial information required to be disclosed under the Hong Kong requirements and the Third Schedule to the Companies (WUMP) Ordinance are not required to be disclosed under the applicable standards of the U.S. GAAP or SEC regulatory framework, in particular,

- (i) the following specific detail concerning financial information set out in Rules 4.04(3)(a), 4.05 and 4.13 of the Hong Kong Listing Rules:
  - balance sheets at a company level;
  - aging analysis of accounts receivables;
  - aging analysis of accounts payables; and
  - adjustments made to show profits of all periods in accordance with the relevant accounting standards in relation to the last fiscal year reported on; and
- (ii) balance sheets at a company level required under paragraph 31(3)(b) of the Third Schedule to the Companies (WUMP) Ordinance.

In accordance with U.S. GAAP, we have applied the modified retrospective method or prospective method to account for the impact of the adoption of certain new accounting standards in the Track Record Period. Under the modified retrospective method and prospective method adopted by us, comparative periods in the latest consolidated financial statements are not retrospectively adjusted.



During the Track Record Period, we adopted, among other new accounting standards that did not have a material impact on our consolidated financial statements, Accounting Standards Update 2014-09 “Revenue from Contracts with Customers” and related amendments and implementation guidance, or Accounting Standards Codification (“ASC”) 606 and Accounting Standards Update 2016-02 “Lease”, including certain transitional guidance and subsequent amendments, or ASC 842. The relevant accounting policies upon the adoption of these new accounting standards are disclosed in the Accountants’ Report in Appendix I to this prospectus.

ASC 606 was adopted on January 1, 2018 using cumulative effect method – i.e. by recognizing the cumulative effect of initially applying ASC 606 as an adjustment to the opening balance of accumulated deficit as of January 1, 2018. We elect to apply this guidance retrospectively only to contracts that are not completed contracts as of January 1, 2018. The comparative information has not been adjusted and continues to be reported under ASC 605

Revenue Recognition. We made an immaterial adjustment to decrease the opening balance of accumulated deficit by RMB0.7 million as of January 1, 2018.

ASC 842 was adopted on January 1, 2019 using the modified retrospective transition method by applying the new lease standard to all leases existing as of January 1, 2019, the date of initial application, and no adjustments were made to the comparative periods financial information. We have elected the package of the transition practical expedients, including (1) not to reassess whether any expired or existing contracts, including land easements that were not previously accounted for as leases, are or contain leases, (2) not to reassess the lease classification for any expired or existing leases, and (3) not to reassess initial direct costs for any existing leases. As a practical expedient, we have elected that for all leases, where it is the lessee, not to separate non-lease components from lease components and instead to account for all lease and non-lease components associated with each lease as a single lease component. We did not elect the practical expedient to use hindsight for leases existing at the adoption date. Adoption of the standard had a significant impact on our financial results, including the (1) recognition of new right-of-use (“ROU”) assets and liabilities for operating leases; (2) reclassification of intangible assets for favorable leases for operating leases to ROU assets; and (3) de-recognition of other financing obligations and construction in progress for assets under construction in build-to-suit lease arrangements. The adoption of ASC 842 does not have impact to the accumulated deficit as of January 1, 2019.

The following alternative disclosures with respect to certain items identified above which are relevant to us have been included in this prospectus:

- disclosure of the accounting policy for accounts receivable and allowance for doubtful accounts in the Accountants’ Report in Appendix I to this prospectus;
- accounting policies as a result of the adoption of ASC 606, which came into effect on January 1, 2018 and was applied retrospectively by our Company as set out in Appendix I to this prospectus;

- accounting policies adopted prior to and upon the adoption of ASC 842 as well as the impact of adoption, if any, to the consolidated balance sheet as of the initial application date of January 1, 2019 as set out in Appendix I to this prospectus;
- disclosure of the relevant accounting policies adopted for the Track Record Period in the Accountants' Report in Appendix I to this prospectus.

As this prospectus has included the above alternative disclosures and the disclosure in this prospectus contains all information which is necessary for the investing public to make an informed assessment of the business, asset and liability, financial position, trading position, management and prospect of our Group, we believe that it would be of no material value to Hong Kong investing public for the Accountants' Report in Appendix I to this prospectus to include certain required information pursuant to Rules 4.04(3), 4.05(2) and 4.13 of the Hong Kong Listing Rules and paragraph 31(3)(b) of the Third Schedule to the Companies (WUMP) Ordinance and the non-disclosure of such information is not material and will not prejudice the interests of the investing public.

On the basis of the matters set out above and on the ground that it would be unduly burdensome to us to include certain disclosures as required under Rules 4.04(3), 4.05(2) and 4.13 of the Hong Kong Listing Rules and Paragraph 31(3)(b) of the Third Schedule to the Companies (WUMP) Ordinance, we have applied for, and the Hong Kong Stock Exchange has granted, a waiver from strict compliance with Rules 4.04(3)(a), 4.05 and 4.13 of the Hong Kong Listing Rules, and we have applied for an exemption from strict compliance with Paragraph 31(3)(b) of the Third Schedule to the Companies (WUMP) Ordinance. The SFC has granted an exemption referred to above on the conditions that: (i) the particulars of such exemption are set out in this prospectus; and (ii) this prospectus will be issued on or before Wednesday, October 21, 2020.

### **Prospectus Disclosure Requirements under the Hong Kong Listing Rules in Respect of Directors' and Five Highest Individuals' Emoluments**

Paragraph 33(2) of Appendix 1A to the Hong Kong Listing Rules requires the listing document to include information in respect of directors' emoluments during the three financial years ended December 31, 2017, 2018 and 2019 and the six months ended June 30, 2020, Paragraph 46(2) of Appendix 1A to the Hong Kong Listing Rules requires the listing document to include the aggregate of the remuneration paid and benefits in kind granted to the directors of the issuer in respect of the last completed financial year, and Paragraph 46(3) of Appendix 1A to the Hong Kong Listing Rules requires information in relation to an estimate of the aggregate remuneration and benefits in kind payable to directors in respect of the current financial year to be set out in the listing document.

Paragraph 33(3) of Appendix 1A to the Hong Kong Listing Rules requires the listing document to include information with respect to the five individuals whose emoluments were highest in us for the year if one or more individuals whose emoluments were the highest have not been included under paragraph 33(2) of Appendix 1A to the Hong Kong Listing Rules.

We have applied to the Hong Kong Stock Exchange for, and the Hong Kong Stock Exchange has granted, a waiver from strict compliance with paragraphs 33(2), 33(3), 46(2) and 46(3) of Appendix 1A to the Hong Kong Listing Rules. In compliance with our annual reporting requirements with the SEC, we are required to report the aggregate amount of compensation paid, and benefits in kind granted, to our directors and members of our administrative, supervisory or management body (unless individual disclosure is required by the Cayman Islands, our jurisdiction of incorporation or otherwise made public). We provide aggregate compensation disclosure in our annual report on Form 20-F. As such, the additional disclosure would not provide additional meaningful disclosure for potential Hong Kong investors in relation to the directors' emoluments.

### **The Relevant Requirements under the Hong Kong Listing Rules and the Companies (WUMP) Ordinance in relation to content requirements in respect of this prospectus**

We have applied for, and the Hong Kong Stock Exchange (in respect of the Hong Kong Listing Rules) and the SFC (in respect of the Companies (WUMP) Ordinance) have granted, waivers and exemptions from strict compliance with certain content requirements in respect of this prospectus as follows:

- ***Alterations to share capital and particulars of any commissions, discounts and brokerages:*** Paragraphs 13 and 26 of Part A of Appendix 1 to the Hong Kong Listing Rules and paragraphs 11 and 14 of the Third Schedule of the Companies (WUMP) Ordinance require the listing document to include the particulars of any alterations of our capital within two years immediately preceding the issue of the listing document and the particulars of any commissions, discounts, brokerages or other special terms granted within two years immediately preceding the issue of the listing document in connection with the issue or sale of any of our capital. We have approximately 180 subsidiaries and consolidated affiliated entities. It would be unduly burdensome for us to procure this information in respect of non-Major Subsidiaries as we would have to incur additional costs and devote additional resources in compiling and verifying the relevant information for such disclosure, which would not be material or meaningful to investors. We have identified 36 entities that we consider to be the Major Subsidiaries that are primarily responsible for our track record results. The Major Subsidiaries are selected taking into account the strategic and operational significance of such entities (including all the VIEs that hold our Group's internet data center licenses), and the financial contribution (in terms of revenue and total assets of such entities to our Group). By way of illustration, (i) the aggregated revenue of the Major Subsidiaries accounted for more than 90% (after elimination of inter-company transactions) of the

revenue of the Company for the year ended December 31, 2019; and (ii) the aggregated total assets of the Major Subsidiaries accounted for more than 60% and more than 55% (after elimination of inter-company transactions) of the total assets of the Company as of December 31, 2019 and as of June 30, 2020, respectively. Accordingly, our remaining subsidiaries and consolidated affiliated entities are individually insignificant to our overall results. For further details, see “History and Corporate Structure – Our Major Subsidiaries and Operating Entities.” As such, we have disclosed the particulars of the changes in our share capital and the Major Subsidiaries in the section headed “Statutory and General Information – Further Information about Us” in Appendix IV to this prospectus and particulars of the commissions, discounts and brokerage fee in respect of our Major Subsidiaries and us are set out in the section headed “Statutory and General Information – Other Information – Miscellaneous” of Appendix IV to this prospectus.

- ***Particulars of our capital or debentures of any member of our Group which is under option:*** Paragraph 27 of Part A of Appendix 1 to the Hong Kong Listing Rules requires us to set out in the prospectus particulars of any capital of any of member of our Group that is under option, or agreed conditionally or unconditionally to be put under option, including the consideration for which the option was or will be granted and the price and duration of the option, and the name and address of the grantee. Paragraph 10 of Part 1 of Third Schedule to the Companies (WUMP) Ordinance further requires us to set out in the prospectus, among other things, details of the number, description and amount of any of our shares or debentures which any person has, or is entitled to be given, an option to subscribe for, together with the certain particulars of the option, namely the period during which it is exercisable, the price to be paid for shares or debentures subscribed for under it, the consideration given or to be given (if any) and the names and addresses of the persons to whom it was given.

In relation to our Company, the only options over the capital or debentures are those issued under a share incentive plan adopted in 2014 (the “**2014 Plan**”) and a share incentive plan adopted in 2016 (the “**2016 Plan**”), which are not subject to Chapter 17 of the Hong Kong Listing Rules pursuant to Rule 19C.11 of the Hong Kong Listing Rules. The Share Incentive Plans provide for the granting of options, restricted shares and share appreciation rights. The waiver and exemption therefore only relates to the options that are granted under the Share Incentive Plans. As of June 30, 2020, (i) the number of shares which may be issued pursuant to all outstanding options under the 2014 Plan is 669,000, which only accounted for approximately 0.05% of our total outstanding Shares as of June 30, 2020; and (ii) the number of shares that may be issued pursuant to all outstanding restricted shares units under the 2016 Plan is 29,189,248, which only accounted for approximately 2.28% of our total outstanding Shares as of June 30, 2020.

Details of the Share Incentive Plans, including outstanding restricted share units, options and other rights held by our directors and executive officers, are set out in the section headed “Directors, Senior Management and Employees – Compensation – Share Incentive Plans,” with details as required by applicable U.S. rules and regulations. However, the details with respect to options are not in strict compliance with the requirements of paragraph 27 of Appendix 1A to the Hong Kong Listing Rules and paragraph 10 of Part 1 of Third Schedule to the Companies (WUMP) Ordinance. In addition, the Share Incentive Plans are not subject to Chapter 17 of the Hong Kong Listing Rules, as it is not applicable pursuant to Rule 19C.11 of the Hong Kong Listing Rules.

Having considered the background that (a) the SFC has granted a partial exemption from strict compliance with Part XV of the SFO (other than Divisions 5, 11 and 12 of Part XV of the SFO) in respect of disclosure of shareholders’ interests; (b) the current disclosure in this prospectus (including options granted to directors) as set out in the section headed “Directors, Senior Management and Employees – Compensation – Share Incentive Plans,” is substantially the same as that set out in our 20-F filings and complies with applicable U.S. laws and regulations; (c) the details of the options have not been disclosed in any of our filings with the U.S. Securities and Futures Commission, and (d) our Share Incentive Plans are not subject to Chapter 17 of the Hong Kong Listing Rules as it is not applicable pursuant to Rule 19C.11 of the Hong Kong Listing Rules, we have applied to the Hong Kong Stock Exchange (in respect of the Hong Kong Listing Rules) and the SFC (in respect of the Companies (WUMP) Ordinance) for a waiver and/or exemption from strict compliance with the above disclosure requirement in relation to the options granted pursuant to the Share Incentive Plans on the grounds that (i) the options account for an immaterial portion of all the outstanding shares of our Company, (ii) strict compliance with the above requirements or condition would be unduly burdensome, unnecessary and/or inappropriate for us, and (iii) such disclosure of information would not be material or meaningful to potential investors.

- ***Particulars of the authorized debentures:*** Paragraph 25 of the Third Schedule of the Companies (WUMP) Ordinance requires particulars of the authorized debentures of us and our subsidiaries in the prospectus. It is unduly burdensome for us to procure this information as we have approximately 180 subsidiaries and consolidated affiliated entities and for the reasons as set out above. As such, only the particulars of debentures in respect of us and our Major Subsidiaries are set out in this prospectus under the section headed “Statutory and General Information – Other Information – Miscellaneous” in Appendix IV to this prospectus.

- ***Information on subsidiaries whose profits or assets make material contribution to us:*** Paragraph 29(1) of Part A of Appendix 1 to the Hong Kong Listing Rules and paragraph 29 of the Third Schedule of the Companies (WUMP) Ordinance require the listing document to include information in relation to the name, date and country of incorporation, the public or private status and the general nature of the business, the issued capital and the proportion thereof held or intended to be held, of every company the whole of the capital of which or a substantial proportion thereof is held or intended to be held by us, or whose profits or assets make, or will make a material contribution to the figures in our auditors’ report or to our next financial statements. It is unduly burdensome for us to procure this information as we have approximately 180 subsidiaries and consolidated affiliated entities and disclosure of such information would not be material or meaningful to potential investors for the reasons as set out above. As such, only the particulars in relation to our Major Subsidiaries are set out in this prospectus under the section headed “Our History and Corporate Structure – Our Major Subsidiaries and Operating Entities” and “Statutory and General Information – Further Information about Us” in Appendix IV to this prospectus, which should be sufficient for the potential investors to make an informed assessment of us in their investment decision.

The exemption from strict compliance with the content requirements in respect of the Companies (WUMP) Ordinance set out above was granted by the SFC on the conditions that:

- (i) the particulars of such exemption are set out in this prospectus; and
- (ii) this prospectus will be issued on or before Wednesday, October 21, 2020.

We confirm that all information necessary for the public to make an informed assessment of business, asset and liability, financial position, trading position, management and prospect of the Group has been disclosed in this prospectus, and that, as such, the granting of the waiver and exemption from strict compliance with the relevant content requirements under the Companies (WUMP) Ordinance and the Hong Kong Listing Rules will not prejudice the interest of the investing public.

#### **Availability of copies of the prospectus in printed form**

Pursuant to Rules 12.04(3), 12.07 and 12.11 of the Hong Kong Listing Rules, we are required to make available copies of the Prospectus in printed form.

We have adopted a fully electronic application process for the Hong Kong Public Offering and we will not provide printed copies of this prospectus or printed copies of any application forms to the public in relation to the Hong Kong Public Offering (“**Paperless Arrangement**”).



We have applied for, and the Hong Kong Stock Exchange has granted to us, a waiver from strict compliance with the requirements under Rule 12.04(3), Rule 12.07 and Rule 12.11 of the Hong Kong Listing Rules in respect of the availability of copies of the prospectus in printed form on the following basis:

- The Paperless Arrangement is in line with the spirit adopted by the regulators in encouraging the adoption of the electronic application means for public offerings from the Guidance for Electronic Public Offering issued by the SFC in 2003 and the consultation paper and conclusion on the adoption of Mixed Media Offer issued by the SFC and the Hong Kong Stock Exchange in April 2008 and November 2010, respectively. More recently, on July 24, 2020, the Hong Kong Stock Exchange published a consultation paper seeking public feedback on proposals to introduce, inter alia, a fully paperless listing and subscription regime, and proposed to amend the Hong Kong Listing Rules to require all listing documents in a new listing to be published solely in an electronic format. The Paperless Arrangement is in line with the proposal made by the Hong Kong Stock Exchange in the consultation.
- The Hong Kong Stock Exchange has been encouraging listed issuers to be more environmentally conscious. This can be demonstrated by the introduction of the “Environmental, Social and Governance (“ESG”) Reporting Guide” as a new Appendix 27 to the Hong Kong Listing Rules in 2016. Last year, the Hong Kong Stock Exchange proposed amendments to the ESG rules to further improve issuers’ governance and disclosure of ESG matters. As the Hong Kong Stock Exchange noted on page 1 of its Consultation Conclusions on Review of the ESG Reporting Guide and Related Listing Rules in December 2019, such amendments relating to ESG matters “echo the increasing international focus on climate change and its impact on business.” The Paperless Arrangement will help mitigate the environmental impact of printing, including, inter alia, the exploitation of precious natural resources such as trees and water, the handling and disposal of hazardous materials and air pollution.
- The provision of printed prospectuses and printed white and yellow application forms may elevate the risk of contagion of virus through printed materials, in particular, in light of the ongoing COVID-19 pandemic. The Paperless Arrangement will reduce the need for prospective investors to gather in public, including branches of the receiving bank(s) and other designated points of collection, in connection with the Hong Kong Public Offering.
- The Hong Kong Share Registrar has implemented enhanced measures to support WHITE Form eIPO service, including increasing its server capacity and making available a telephone hotline to answer investors’ queries in connection with the fully electronic application process. For details of the telephone hotline and the application process, please see the section headed “How to Apply for Hong Kong Offer Shares” in this prospectus.



- The Company will publish a formal notice of the Global Offering on the official websites of the Hong Kong Stock Exchange and the Company and in selected English and Chinese local newspapers describing the fully electronic application process, including the available channels for share subscription and the enhanced support provided by the Hong Kong Share Registrar in relation to the Hong Kong Public Offering, and reminding investors that no printed prospectuses or application forms will be provided. It will also issue a press release to highlight the available electronic channels for share subscription.

## **Corporate Communications**

Rule 2.07A of the Hong Kong Listing Rules provides that a listed issuer may send or otherwise make available to the relevant holders of its securities any corporate communication by electronic means, provided that either the listed issuer has previously received from each of the relevant holders of its securities an express, positive confirmation in writing or the shareholders of the listed issuer have resolved in a general meeting that the listed issuer may send or supply corporate communications to shareholders by making them available on the listed issuer 's own website or the listed issuer 's constitutional documents contain provision to that effect, and certain conditions are satisfied.

The Company's ADSs have been listed on the Nasdaq since 2016. The Company has ADS holders globally and has a diverse shareholder base.

We do not currently produce or send out any corporate communications to our shareholders or holders of ADSs in printed form unless requested or in limited circumstances described below. We publicly file or furnish various corporate communications with the SEC which are posted on the SEC's website. Our annual reports on Form 20-F and periodic reports on Form 6-K and all amendments to these reports, are also available free of charge on our website as soon as reasonably practicable after they are filed with or furnished to the SEC. Further, we post our proxy materials on a publicly accessible website and send a notice including the proxy materials to our shareholders and holders of ADSs. Those documents are also available on our website.

Apart from the Offer Shares that we will offer for subscription in Hong Kong, the Offer Shares will also be placed to professional, institutional, corporate and other investors in Hong Kong and elsewhere in the world. Given our diverse shareholder base and the potential number of countries in which our shareholders are located, it would not be practicable for us to send printed copies of all our corporate communications to all of our shareholders. Further, given the expected liquidity of the trading of the Shares on the Hong Kong Stock Exchange, it would also not be practicable for us to approach our shareholders individually to seek confirmation from them of their wish to receive corporate communications in electronic form, or to provide them with the right to request corporate communication in printed form instead.

In order to maintain regular and effective communication with our shareholders, with effect from the Listing on the Hong Kong Stock Exchange, we have or will make the following arrangements:

- We will issue all future corporate communications as required by the Hong Kong Listing Rules on our own website in English and Chinese, and on the Hong Kong Stock Exchange's website in English and Chinese;
- We will continue to provide printed copies of notice including the proxy materials in English and Chinese to our shareholders at no costs; and
- We will also add to the "Investor Relations" page of our website which will direct investors to all of our future filings with the Hong Kong Stock Exchange.

On the bases of the above, we have applied for, and the Hong Kong Stock Exchange has granted us, a waiver from strict compliance with the corporate communication requirements under Rule 2.07A of the Hong Kong Listing Rules.

### **Monthly Returns**

Rule 13.25B of the Hong Kong Listing Rules requires a listed issuer to publish a monthly return in relation to movements in its equity securities, debt securities and any other securitized instruments, as applicable, during the period to which the monthly return relates. Pursuant to the Joint Policy Statement Regarding the Listing of Overseas Companies, or Joint Policy Statement, companies applying for a secondary listing may seek a waiver from Rule 13.25B subject to satisfying the waiver condition that the SFC has granted a partial exemption from strict compliance with Part XV of the SFO (other than Divisions 5, 11 and 12 of Part XV of the SFO) in respect of disclosure of shareholders' interests. As we have obtained a partial exemption from the SFC, we have applied for, and the Hong Kong Stock Exchange has granted, a waiver from strict compliance with Rule 13.25B of the Hong Kong Listing Rules. We will disclose information about share repurchases, if any, in our quarterly earnings releases and annual reports on Form 20-F which are furnished or filed with the SEC in accordance with applicable U.S. rules and regulations.

### **Three-year Restriction on Spin-offs**

Rule 19C.11 of the Hong Kong Listing Rules provides that, among other things, paragraphs 1 to 3(b) and 3(d) to 5 of Practice Note 15 of the Hong Kong Listing Rules ("Practice Note 15") do not apply to a Qualifying Issuer that has, or is seeking, a secondary listing on the Hong Kong Stock Exchange. Such exception is limited to circumstances where the spun-off assets or businesses are not to be listed on the Hong Kong Stock Exchange's markets and the approval of shareholders of our Company is not required.

Paragraph 3(b) of Practice Note 15 provides that the Listing Committee would not normally consider a spin-off application within three years of the date of listing of our Company, given the original listing of our Company will have been approved on the basis of our Company's portfolio of businesses at the time of listing, and that the expectation of investors at that time would have been that our Company would continue to develop those businesses.

While our Company does not have any specific plans with respect to segregating its current business or any potential acquisition or the timing or details of any potential spin-off listing on the Hong Kong Stock Exchange as of the date of this prospectus, in light of our Company's overall business scale, we may consider spinning off one or more of our mature businesses through a listing on the Hong Kong Stock Exchange (each a "**Potential Spin-off**") within three years after the Listing, if there are clear commercial benefits both to our Company and the businesses to be potentially spun-off and there will be no adverse impact on the interests of shareholders of our Company. As of the Latest Practicable Date, we have not identified any target for a potential spin-off.

We have applied for, and the Hong Kong Stock Exchange has granted a waiver from strict compliance with the requirements in paragraph 3(b) of Practice Note 15 to the Hong Kong Listing Rules, on the following grounds:

- no shareholders' approval with respect to a Potential Spin-off will be required under our Articles of Association under applicable U.S. regulations and Nasdaq Listing Rules. Further, as our Company is a Grandfathered Greater China Issuer and therefore exempt from the requirements under Chapter 14 of the Hong Kong Listing Rules pursuant Rule 19C.11, no shareholders' approval will be required under the Hong Kong Listing Rules as well;
- the effect of a spin-off to the shareholders of our Company should be the same regardless of whether or not the businesses to be potentially spun-off are to be listed on the Hong Kong Stock Exchange (save with respect to any preferential rights to subscribe for shares that are commonly provided in spin-offs on the Hong Kong Stock Exchange). Given the fact that certain spin-offs by Grandfathered Greater China Issuers are allowed within three years after their listing in Hong Kong pursuant to Rule 19C.11 of the Hong Kong Listing Rules, we believe that the three-year restriction on spin-offs on the Hong Kong Stock Exchange should also be waived and shall not apply to a Potential Spin-off by us;
- our Company and any subsidiary in respect of which a Potential Spin-off is contemplated will be subject to compliance with all other applicable requirements under the Hong Kong Listing Rules, including the remaining requirements of Practice Note 15 and (in the case of the company to be spun-off) the listing eligibility requirements of Chapter 8, 8A or 19C of the Hong Kong Listing Rules (as the case may be), unless otherwise waived by the Hong Kong Stock Exchange;

- under U.S. federal securities laws and Nasdaq Listing Rules, we are not subject to any restrictions similar to the three-year restriction under paragraph 3(b) of Practice Note 15 in relation to the spin-offs of our businesses, nor is there any requirement for our Company to disclose any details of our potential spin-off entities when such information is not available because of the absence of any concrete spin-off plan; and
- our directors owe fiduciary duties to our Company, including the duty to act in what they consider in good faith to be in the best interests of our Company; as such they will only pursue a potential spin-off if there are clear commercial benefits both to our Company and the entity or entities to be spun off; and the directors will not direct our Company to conduct any spin-off if they believe it will have an adverse impact on the interests of our shareholders.

The waiver was granted by the Hong Kong Stock Exchange on the following conditions:

- we undertake that prior to any spin-off of our business through a listing on the Hong Kong Stock Exchange within three years after the Listing, we will confirm to the Hong Kong Stock Exchange with basis that the spin-off would not render our Company, excluding the business to be spun off, incapable of fulfilling either the eligibility or suitability requirements under Rules 19C.02 and 19C.05 of the Hong Kong Listing Rules based on the financial information of the entity or entities to be spun-off at the time of our Listing (calculated cumulatively if more than one entity is spun-off);
- we will disclose in this prospectus our intention relating to any potential spin-off within three years after the Listing and the risks relating to the uncertainty and timing of any potential spin-offs;
- any potential spin-offs by us at the Hong Kong Stock Exchange will be subject to the requirements of Practice Note 15 (other than paragraph 3(b) thereof), including that each of our Company and our businesses to be spun off will satisfy the applicable listing eligibility requirements on a standalone basis; and
- this waiver will be disclosed in this prospectus.

We cannot assure that any spin-off will ultimately be consummated, whether within the three-year period after the Listing or otherwise, and any such spin-off will be subject to market conditions at the time and approval by the Listing Committee. In the event that we proceed with a spin-off, our interest in the entity to be spun-off (and its corresponding contribution to the financial results of our Group) will be reduced accordingly.

## **Disclosure of Offer Price**

Paragraph 15(2)(c) of Part A of Appendix 1 to the Hong Kong Listing Rules states that the issue price or offer price of each security must be disclosed in the prospectus.

On the basis set out below, we have applied to the Hong Kong Stock Exchange for, and the Hong Kong Stock Exchange has granted, a waiver from strict compliance with paragraph 15(2)(c) of Appendix 1A to the Hong Kong Listing Rules so that the Company will only disclose the maximum Public Offer Price for the Hong Kong Offer Shares in the Prospectus:

- The Public Offer Price will be determined by reference to, among other factors, the closing price of the ADSs on Nasdaq on the last trading day on or before the Price Determination Date. The market price of the ADSs traded on Nasdaq is subject to various factors and is not within the Company's control;
- Setting a fixed offer price or a price range with a low end may adversely affect the market price of the ADSs and the Hong Kong Offer Shares; and
- Pursuant to paragraph 9 of Part 1 of the Third Schedule to the Companies (WUMP) Ordinance, the amount payable on application on each share shall be specified in the prospectus. Disclosure of a maximum Public Offer Price is in compliance with paragraph 9 of Part 1 of the Third Schedule to the Companies (WUMP) Ordinance, which provides clear indication of the amount a potential investor shall pay on application for each Hong Kong Offer Share.

See "Structure of the Global Offering – Pricing and Allocation – Determining the Offer Price" in this prospectus for the historical prices of our ADS and trading volume on Nasdaq.

## **Disclosure Requirements in respect of Suppliers and Customers**

Paragraphs 28(1)(b)(i) and (ii) of Appendix 1A to the Hong Kong Listing Rules require the listing document to include a statement of the percentage of purchases attributable to the group's largest supplier and a statement of the percentage of purchases attributable to the group's five largest suppliers combined, respectively.

Paragraphs 28(1)(b)(iii) and (iv) of Appendix 1A to the Hong Kong Listing Rules require the listing document to include a statement of the percentage of revenue from sales of goods or rendering of services attributable to the group's largest customer and a statement of the percentage of revenue from sales of goods or rendering of services attributable to the group's five largest customers combined, respectively.

Paragraph 28(1)(b)(v) of Appendix 1A to the Hong Kong Listing Rules requires the listing document to include a statement of the interest of any of the directors, their close associates; or any shareholder (which to the knowledge of the directors owns more than 5% of the number of issued shares of the issuer) in the group's top five suppliers and customers. Sub-paragraph (vi) provides that in the event that the percentage which would fall to be disclosed under sub-paragraphs (ii) above is less than 30, a statement of that fact shall be given and the information required in sub-paragraphs (i), (ii) and (v) (in respect of suppliers) may be omitted. Sub-paragraph (vii) further provides that in the event that the percentage which would fall to be disclosed under sub-paragraph (iv) above is less than 30, a statement of that fact shall be given and the information required in sub-paragraphs (iii), (iv) and (v) (in respect of customers) may be omitted.

Rule 19.36(1) of the Hong Kong Listing Rules provides that certain disclosure requirements under Parts A and B of Appendix 1 to the Hong Kong Listing Rules may be inappropriate and allows such requirements to be appropriately adapted so that equivalent information is given.

***Percentages of our purchases from our largest supplier and from our top five suppliers and percentages of our revenue from our largest customer and from our top five customers***

We believe that the specific percentage figures required to be disclosed by Paragraphs 28(1)(b)(i) to (iv) of Part A of Appendix 1 to the Hong Kong Listing Rules are commercially sensitive and could be exploited by our competitors. We have not publicly disclosed the information strictly required by Paragraphs 28(1)(b)(i) to (iv) of Appendix 1A to the Hong Kong Listing Rules in our SEC filings, nor are we required to do so under U.S. laws and regulations. We have however disclosed that, (a) with respect to our suppliers, that our five largest suppliers accounted for less than 60% of our purchases for each of the three years ended December 31, 2019 and the six months ended June 30, 2020 and none of them individually accounted for more than 30% of our annual purchases over this same period in "Our Business – Our Suppliers"; and (b) with respect to our customers, the percentage of net revenue generated from our customers, end users of the services of our Company which accounted for 10% or more of its total net revenue during the three years ended December 31, 2019 and the six months ended June 30, 2020 in "Our Business – Our Customers." We, taking into account that we are seeking a secondary listing on the Hong Kong Stock Exchange, believe that the current disclosure in this document provides sufficient information to investors to make an informed assessment of our business.

***Statement of interests in our top five suppliers and top five customers***

Our five largest suppliers accounted for less than 60% of our purchases for each of the three years ended December 31, 2017, 2018 and 2019 and the six months ended June 30, 2020; and none of them individually accounted for more than 30% of our annual purchases over this same period. The Group's five largest customers accounted for less than 65% of the Group's revenue for each of the three years ended December 31, 2019 and the six months ended June 30, 2020; and none of



them individually accounted for more than 30% of its annual total revenue over this same period. Several of our top five suppliers and top five customers are public companies whose shares are traded on various stock exchanges.

As a Nasdaq-listed company, we are not in a position to compel our public shareholders who own more than 5% in our issued shares based on public filings to disclose to us (in this case 12 West Capital Management and American Century Investment Management) their shareholding interests in our top five suppliers and top five customers during the Track Record Period. It would also be unduly burdensome for these public shareholders of ours to ascertain their shareholding interests in our top five suppliers and top five customers (especially the companies whose shares are publicly traded), because the disclosure requirements under Paragraph 28(l)(b)(v) of Appendix 1A to the Hong Kong Listing Rules are not subject to any materiality or de minimis exemptions or “safe harbours” provisions. The same difficulties would apply to our directors who are otherwise required to disclose their, and their close associates’, shareholding interests in our top five suppliers and top five customers including the companies whose shares are publicly traded. As of the Latest Practicable Date, based on publicly available information, none of our directors or their close associates (as defined in the Hong Kong Listing Rules) or, our Controlling Shareholder, held a 5% or more shareholding interest in our top five suppliers and top five customers. In addition, we do not believe that the information strictly required by Paragraph 28(l)(b)(v) of Appendix 1A to the Hong Kong Listing Rules would provide any additional meaningful information to investors given that we will not in any event be subject to the connected transaction requirements under Chapter 14A of the Hong Kong Listing Rules, and details of our related party transactions are disclosed in “Related Party Transactions.” For the above reasons, taking into account the alternative disclosures outlined above, we have applied for, and the Hong Kong Stock Exchange has granted us, a waiver from strict compliance with the disclosure requirements under Paragraphs 28(l)(b)(i) to (v) of Appendix 1A to the Hong Kong Listing Rules, to the extent not strictly met by the current disclosure in this document.

### **Dealings in the Shares prior to Listing**

According to Rule 9.09(b) of the Hong Kong Listing Rules, there must be no dealing in the securities of a new applicant for which listing is sought by any core connected person of the issuer from four clear business days before the expected hearing date until listing is granted (the “**Relevant Period**”).

We have approximately 180 subsidiaries and consolidated affiliated entities and our ADSs are widely held, publicly traded and listed on Nasdaq. We are therefore not in a position to control the investment decisions of our shareholders or the investing public in the U.S. Solely based on public filings with the SEC as of the Latest Practicable Date, other than Mr. Huang, our founder, director and chief executive officer, and EDC Group Limited, an entity wholly owned by Solution Leisure Investment Limited which is indirectly wholly owned by a trust of which Mr. Huang’s family is the beneficiary, and STT GDC, there are no shareholders who are entitled to exercise, or control the exercise of more than 10% of the voting power at any general meeting of the Company.



Mr. Huang, EDC Group Limited and STT GDC may from time to time use their Shares as security (including charges and pledges) in connection with their respective financing activities. As of the Latest Practicable Date, Mr. Huang (including his ownership through EDC Group Limited) and STT GDC beneficially owned 52.9% and 16.9% of the aggregate voting rights power in our Company with Class A and Class B ordinary shares voting on a 1:20 basis, respectively (see the section headed “Major Shareholders” for details).

On the basis of the above, we consider that the following categories of persons (collectively, the “**Permitted Persons**”) should not be subject to the dealing restrictions set out in Rule 9.09(b) of the Hong Kong Listing Rules:

- Mr. Huang, our founder, director and chief executive officer, EDC Group Limited and STT GDC, in respect of use of their Shares as security (including, for the avoidance of doubt, using Shares as security in connection with entering into financing transactions during the Relevant Period as well as satisfying any requirements to top-up security under the terms of financing transactions entered into prior to the Relevant Period), provided that there will be no change in the beneficial ownership of the Shares at the time of entering into any such transactions during the Relevant Period (“**Category 1**”);
- our directors other than Mr. Huang, and the directors and chief executives of our Major Subsidiaries, in respect of their respective use of the Shares as security (including, for the avoidance of doubt, using Shares as security in connection with entering into financing transactions during the Relevant Period as well as satisfying any requirements to top-up security under the terms of financing transactions entered into prior to the Relevant Period), provided that there will be no change in the beneficial ownership of the Shares at the time of entering into any such transactions during the Relevant Period (“**Category 2**”);
- directors, chief executives and substantial shareholders of our non-Major Subsidiaries and their close associates (“**Category 3**”); and
- any other person (whether or not an existing Shareholder) who may, as a result of dealings, become our substantial shareholder and who is not our director or chief executive, or a director or chief executive of our subsidiaries, or their close associates (“**Category 4**”).

For the avoidance of doubt,

- as the foreclosure, enforcement or exercise of other rights by the lenders in respect of a security interest over the Shares (including, for the avoidance of doubt, any security interest created pursuant to any top-up of security) will be subject to the terms of the financing transaction underlying such security and not within the control of the pledgor, any change in the beneficial owner of the Shares during the Relevant Period resulting

from the foreclosure, enforcement or exercise of other rights by the lenders in respect of such security interest will not be subject to Rule 9.09(b) of the Hong Kong Listing Rules; and

- persons in Category 1 and Category 2 who use their respective Shares other than as described in this section “Dealings in the Shares prior to Listing” are subject to the restriction under Rule 9.09(b) of the Hong Kong Listing Rules.

We have applied for, and the Hong Kong Stock Exchange has granted, a waiver from strict compliance with the requirements of Rule 9.09(b) of the Hong Kong Listing Rules in respect of any dealing during the Relevant Period by the Permitted Persons subject to the following conditions:

- Where Categories 1 and 2 of the Permitted Persons use the Shares as security, there will be no change in the beneficial ownership of the Shares during the Relevant Period;
- Categories 3 and 4 of the Permitted Persons do not have any influence over the Global Offering and do not possess any of our non-public inside information given that such persons are not in a position with access to information that is considered material to us taken as a whole. Given that we have approximately 180 subsidiaries and consolidated affiliated entities and our ADSs are widely held and actively and publicly traded on Nasdaq, we and our management do not have effective control over the investment decisions of Categories 3 and 4 of the Permitted Persons in our ADSs and we do not have control over investors who may become a Category 4 Permitted Person;
- we will promptly release any inside information to the public in the United States and Hong Kong in accordance with the relevant laws and regulations of the U.S. and Hong Kong. Accordingly, the Permitted Persons (other than Category 1 and Category 2 persons) are not in possession of any non-public inside information of which we are aware;
- we will notify the Hong Kong Stock Exchange of any breaches of the dealing restrictions by any of our core connected persons during the Relevant Period when we become aware of the same other than dealings by the core connected persons who are Permitted Persons within the permitted scopes set out above; and
- prior to the Listing Date, other than within the permitted scopes set out above, our directors and chief executive and the directors and chief executives of our Major Subsidiaries and their close associates will not deal in the Shares or the ADSs during the Relevant Period provided that such prohibited dealing in the Shares shall not include

the granting, vesting, payment or exercise (as applicable) of RSUs, incentive and non-statutory options, restricted shares, dividend equivalents, and share payments under our Group's share incentive plans.

### **Subscription for Shares by existing shareholders**

Rule 10.04 of the Hong Kong Listing Rules requires that existing shareholders may only subscribe for or purchase any securities for which listing is sought that are being marketed by or on behalf of a new applicant either in his or its own name or through nominees if the conditions in Rule 10.03 of the Hong Kong Listing Rules are fulfilled. Paragraph 5(2) of Appendix 6 to the Hong Kong Listing Rules states that, without the prior written consent of the Hong Kong Stock Exchange, no allocations will be permitted to be made to directors, existing shareholders of a listing applicant or their close associates, unless the conditions set out in Rules 10.03 and 10.04 are fulfilled.

As a company listed on Nasdaq, our Company is not in a position to prevent any person or entity from acquiring its listed securities prior to the allocation of shares in connection with the Global Offering. It would therefore be unduly burdensome for our Company to seek the prior consent of the Hong Kong Stock Exchange for each of its existing shareholders or their close associates who subscribe for Shares in the Global Offering. Categories 3 and 4 of the Permitted Persons (as defined in sub-section headed "Dealings in Shares Prior to Listing" above) have no influence over the Global Offering and are not in possession of any inside information in relation to the Listing and are effectively in the same positions as our public investors. Categories 3 and 4 of the Permitted Persons and other public investors who will subscribe or purchase Shares in the Global Offering are referred to as "**Permitted Existing Shareholders**". Prohibition against Permitted Existing Shareholders who may wish to subscribe for Shares under the Global Offering in order to maintain their shareholding may put these shareholders in an unfair position, having considered that they would have no influence over the Global Offering.

As our existing public shareholders include renowned investors who are active players in the equity market, it may not be in the best interests of our Company and its shareholders to prohibit certain public shareholders/active deal participants to subscribe for Shares in the Global Offering since we may not be able to achieve the best allocation and pricing outcome should certain of our existing public shareholders are restricted from subscribing for Shares in the Global Offering.

We have applied for, and the Hong Kong Stock Exchange has granted, a waiver from strict compliance with the requirements of Rule 10.04 and Paragraph 5(2) of Appendix 6 of the Hong Kong Listing Rules in respect of the restriction on Permitted Existing Shareholders to subscribe for or purchase Shares in the Global Offering, subject to the following conditions:

- (a) each Permitted Existing Shareholder is interested in less than 5% of our voting rights immediately before the Listing;

- (b) other than Categories 3 and 4 of the Permitted Persons, each Permitted Existing Shareholder is not a core connected person (as defined under the Hong Kong Listing Rules) of the Company or its close associate (as defined under the Hong Kong Listing Rules);
- (c) the Permitted Existing Shareholders do not have the power to appoint directors or any other special rights in the Company (except for certain Permitted Existing Shareholders who were granted by our Company registration rights to effect a registration, qualification or compliance with respect to Registrable Securities (as defined in the relevant investment agreements) to permit or facilitate the sale and distribution of such Registrable Securities within a specified time after receipt of a written request (the “**Registration Right**”));
- (d) the Registration Right granted to the Permitted Existing Shareholders referred to in paragraph (c) above is a right which entitles each of such Permitted Existing Shareholders (who owns restricted shares of our Company) the ability to require us to register the Shares owned by it, so that it can sell them in the public market. Given that the Shares to be offered to the public shareholders in the Global Offering will be freely tradeable in the open market and the Offer Shares will be regarded as registered shares under the U.S. securities laws (i.e. such Permitted Existing Shareholders do not need to and will not exercise the Registration Right in respect of the Offer Shares to be allocated to them, if any), the Registration Right is not relevant to the Offer Shares and none of the Permitted Existing Shareholders is entitled to any special right in the Global Offering in this regard as compared to other public shareholders in the Global Offering. Further, no preferential treatment has been, nor will be, given to such Permitted Existing Shareholders and their close associates by virtue of their relationship with our Company in any allocation in the Global Offering;
- (e) other than the Registration Right, the Permitted Existing Shareholders referred to in paragraph (c) above do not have any other special rights in our Company;
- (f) the Permitted Existing Shareholders do not have influence over the offering process and will be treated the same as other applicants and placees in the Global Offering;
- (g) the Permitted Existing Shareholders and their close associates will be subject to the same book-building and allocation process as other investors in the Global Offering and no preferential treatment will be given to the Permitted Existing Shareholders in the allocation of Shares under the Global Offering;
- (h) each of us, the Joint Bookrunners and the Joint Sponsors (based on (i) their discussions with us, the Joint Bookrunners and (ii) confirmations to be submitted to the Hong Kong Stock Exchange by us and the Joint Bookrunners) will provide written confirmation to the Hong Kong Stock Exchange in accordance with HKEx-GL85-16 to confirm to the

Hong Kong Stock Exchange in writing that, among others, no preferential treatment has been, nor will be, given to the Permitted Existing Shareholders and their close associates by virtue of the relationship with our Company in any allocation in the Global Offering.

Allocation to the Permitted Existing Shareholders and/or their close associates will not be disclosed in our allotment results announcement (other than to the extent that such Permitted Existing Shareholders or close associates subscribe for shares as cornerstone investors) unless such Permitted Existing Shareholders are interested in 5% or more of the Company's equity securities as disclosed in any public filings with the SEC, as it would be unduly burdensome for us to disclose such information given that there is no requirement to disclose interests in equity securities under the U.S. Exchange Act unless the beneficial ownership of such person (including directors and officers of the company concerned) reaches more than 5% of equity securities registered under Section 12 of the U.S. Exchange Act.

### ***Participation by STT GDC in the Global Offering***

STT GDC, a Controlling Shareholder of the Company, currently holds 33.8% of the aggregate voting power (based on our Company's Class A ordinary shares and Class B ordinary shares voting on a 1:1 basis). Pursuant to the investor rights agreements between the Company and STT GDC, originally dated October 23, 2017 (together with its interim amendments on March 27, 2019 and December 10, 2019) and dated June 26, 2020 (together with its interim amendment on August 4, 2020, the "**Investor Rights Agreement**"), it was agreed that STT GDC shall have pre-emptive rights with respect to future issuances of equity or equity linked securities by the Company any time within 18 months following June 26, 2020, whereby STT GDC has the right to subscribe for up to a 35% pro rata share of any such future issuances of securities. Pursuant to HKEx-LD12-2011, the Investor Rights Agreement will continue to be effective following the Listing.

We have applied for, and the Hong Kong Stock Exchange has granted, a consent under paragraph 5(2) of Appendix 6 to and a waiver from strict compliance with the requirements of Rule 10.04 of the Hong Kong Listing Rules in respect of STT GDC's participation as a placee or a cornerstone investor and to be allocated Offer Shares in or in connection with the International Offering at the International Offer Price by exercising its anti-dilution right under the Investor Rights Agreement, subject to the following conditions:

- full disclosure of the Investor Rights Agreement and STT GDC's ability to exercise of its anti-dilution right pursuant thereto will be made in this prospectus;
- full disclosure of the maximum amount for which STT GDC may subscribe and the fact that any such subscription will be at the International Offer Price will be made in this prospectus;

- any proposed subscription of Offer Shares by STT GDC will be conducted at the International Offer Price and, in any event, will not result in STT GDC increasing the percentage of voting interest held by it in our Company above the percentage interest it held immediately prior to the Global Offering on a one vote per share basis;
- STT GDC has agreed to a lock up period of six months commencing on the date of the Listing; and
- information on the number of Offer Shares allocated to STT GDC will be disclosed in the allotment results announcement and the placees lists to be submitted to the Hong Kong Stock Exchange before the Listing.

### **Clawback Mechanism**

Paragraph 4.2 of Practice Note 18 of the Hong Kong Listing Rules (“**Paragraph 4.2**”) requires a clawback mechanism to be put in place, which would have the effect of increasing the number of Hong Kong Offer Shares to certain percentages of the total number of the Offer Shares offered in the Global Offering if certain prescribed total demand levels are reached.

We have applied to the Hong Kong Stock Exchange for, and the Hong Kong Stock Exchange has granted us, a waiver from strict compliance with Paragraph 4.2 such that in the event of over-subscription, an alternative clawback mechanism shall be applied to the provisions under Paragraph 4.2, following the closing of the application lists on the condition that we will only adopt such alternative clawback mechanism if the final offer size of the Global Offering is HK\$10 billion or more. In accordance with the Guidance Letter HKEX-GL91-18 issued by the Hong Kong Stock Exchange, if such allocation is done other than pursuant to the clawback mechanism above, the maximum total number of Offer Shares that may be allocated to the Hong Kong Public Offering following such reallocation shall be not more than double the initial allocation to the Hong Kong Public Offering (i.e. 16,000,000 Shares, representing 10% of the total number of Offer Shares initially available under the Global Offering).

Please refer to the section headed “Structure of the Global Offering – The Hong Kong Public Offering – Reallocation” for further details of such alternative clawback mechanism.



## **B. FOREIGN LAWS AND REGULATIONS**

Set out below is a summary of certain provisions of the Memorandum and Articles of Association of the Company and of certain aspects of Cayman company law.

The Company was incorporated in the Cayman Islands as an exempted company with limited liability on 1 December 2006 under the Companies Law. The Company's constitutional documents consist of its Amended and Restated Memorandum of Association and its Amended and Restated Articles of Association.

### **1. MEMORANDUM OF ASSOCIATION**

- (a) The Memorandum states, inter alia, that the liability of members of the Company is limited to the amount, if any, for the time being unpaid on the shares respectively held by them and that the objects for which the Company is established are unrestricted (including acting as an investment company), and that the Company shall have and be capable of exercising all the functions of a natural person of full capacity irrespective of any question of corporate benefit, as provided in section 27(2) of the Companies Law and in view of the fact that the Company is an exempted company that the Company will not trade in the Cayman Islands with any person, firm or corporation except in furtherance of the business of the Company carried on outside the Cayman Islands.
- (b) The Company may by special resolution alter its Memorandum with respect to any objects, powers or other matters specified therein.
- (c) The share capital of the Company is US\$100,100 divided into 2,002,000,000 shares of a nominal or par value of US\$0.00005, of which 1,800,000,000 shall be designated as Class A ordinary shares, 200,000,000 shall be designated as Class B ordinary shares and 2,000,000 shall be designated as preferred shares.

### **2. ARTICLES OF ASSOCIATION**

The Articles were conditionally adopted by way of a special resolution passed on 18 October 2016 and to become effective immediately upon the completion of the Company's initial public offering of Class A Ordinary Shares represented by American Depositary Shares on the NASDAQ Global Market, effective on 7 November 2016. The following is a summary of certain provisions of the Articles:

#### **(a) Shares**

##### **(i) *Classes of shares***

The share capital of the Company consists of Class A ordinary shares, Class B ordinary shares and preferred shares.

The Class A ordinary shares and the Class B ordinary shares shall carry equal rights and rank pari passu with one another other than:

***Conversion from Class B ordinary shares to Class A ordinary Shares*** The Class B Ordinary Shares shall be subject to automatic conversion on the first to occur of (i) William Wei Huang ceasing to have beneficial ownership in not less than five per cent. (5%) of the then issued share capital of the Company on an as converted basis; (ii) the consultation draft Foreign Investment Law of the People’s Republic of China published by the Ministry of Commerce of the PRC on January 19, 2015 (the “**FIL**”) in the form implemented not requiring VIE Entities operating the PRC Business to be owned or controlled (as defined in the FIL as officially promulgated by the PRC legislator) by PRC nationals or entities (including without limitation the FIL as officially promulgated by the PRC legislator grandfathering then-existing VIE Entities in the PRC); (iii) the PRC law no longer requiring the conduct of the PRC Business to be owned or controlled by PRC nationals or entities; (iv) the promulgation of the FIL as it relates to VIE Entities is abandoned by the PRC legislator; or (v) the relevant authorities in the PRC having approved the Company’s VIE structure without the need for the VIE Entities to be owned or controlled by PRC nationals or entities. In addition, a holder of Class B ordinary shares shall have the right to convert such Class B ordinary shares into Class A ordinary shares by notice in writing to the Company.

***Voting rights*** Each Class B ordinary share shall carry the right to one (1) vote per Class B ordinary share other than in respect of the following matters only, in respect of which the Class B ordinary shares shall carry the right to twenty (20) votes per Class B ordinary share: (A) the appointment or removal of a majority of the Directors of the Company pursuant to the Articles, and (B) any amendment of the Articles or the Memorandum that would adversely affect the rights of the holders of the Class B Ordinary Shares. Each Class A ordinary share shall carry the right to one (1) vote per Class A ordinary share.

***Transfers of Class B ordinary shares*** Class B ordinary shares cannot be assigned or transferred in whole or in part by Mr. Huang or any of the entities in whose name any Class B ordinary shares were registered as at the effective date of the Articles.

***Conversion of Class A ordinary shares and the acquisition of additional Class B ordinary shares by Mr. Huang*** Class A ordinary shares are not convertible into Class B ordinary shares at any time other than as set out in the rest of this paragraph. The Articles provide that Mr. Huang shall only acquire Class A ordinary shares in his name or an entity established or controlled by him. Any Class A ordinary shares so acquired (whether by allotment and issue of new shares or acquisition of issued Class A ordinary shares) will be automatically converted into Class B ordinary shares.

***(ii) Variation of rights of existing shares or classes of shares***

Subject to the Companies Law, if at any time the share capital of the Company is divided into different classes of shares, all or any of the special rights attached to the shares or any class of shares may (unless otherwise provided for by the terms of issue of that class) be varied, modified or abrogated either with the consent in writing of the holders of not less than three-fourths in nominal value of the issued shares of that class or with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of that class. To every such separate general meeting the provisions of the Articles relating to general meetings will mutatis mutandis apply, but so that the necessary quorum (other than at an adjourned meeting) shall be a person or persons holding or representing by proxy not less than one-third in nominal value of the issued shares of that class. Every holder of shares of the class shall be entitled to one vote for every such share held by him.

Any special rights conferred upon the holders of any shares or class of shares shall not, unless otherwise expressly provided in the rights attaching to the terms of issue of such shares, be deemed to be varied by the creation or issue of further shares ranking *pari passu* therewith.

***(iii) Alteration of capital***

The Company may by ordinary resolution of its members:

- (i) increase its share capital by the creation of new shares;
- (ii) consolidate and divide all or any of its capital into shares of larger amount than its existing shares;
- (iii) divide its shares into several classes and attach to such shares any preferential, deferred, qualified or special rights, privileges, conditions or restrictions as the Company in general meeting or as the directors may determine;
- (iv) subdivide its shares or any of them into shares of smaller amount than is fixed by the Memorandum; or
- (v) cancel any shares which, at the date of passing of the resolution, have not been taken and diminish the amount of its capital by the amount of the shares so cancelled.

The Company may reduce its share capital or any capital redemption reserve in any way by special resolution.

***(iv) Transfer of shares***

Subject to the restrictions on transfer of Class B ordinary shares referred to above, all transfers of shares may be effected by an instrument of transfer in the usual or common form or in a form prescribed by The Stock Exchange of Hong Kong Limited (the “**Stock Exchange**”) or in such other form as the board may approve and which may be under hand or, if the transferor or transferee is a clearing house or its nominee(s), by hand or by machine imprinted signature or by such other manner of execution as the board may approve from time to time.

Notwithstanding the foregoing, for so long as any shares are listed on the Stock Exchange, titles to such listed shares may be evidenced and transferred in accordance with the laws applicable to and the rules and regulations of the Stock Exchange that are or shall be applicable to such listed shares. The register of members in respect of its listed shares (whether the principal register or a branch register) may be kept by recording the particulars required by Section 40 of the Companies Law in a form otherwise than legible if such recording otherwise complies with the laws applicable to and the rules and regulations of the Stock Exchange that are or shall be applicable to such listed shares.

The instrument of transfer shall be executed by or on behalf of the transferor and the transferee provided that the board may dispense with the execution of the instrument of transfer by the transferee. The transferor shall be deemed to remain the holder of the share until the name of the transferee is entered in the register of members in respect of that share.

The board may, in its absolute discretion, at any time transfer any share upon the principal register to any branch register or any share on any branch register to the principal register or any other branch register.

The board may decline to recognise any instrument of transfer unless a fee (not exceeding the maximum sum as the Stock Exchange may determine to be payable) determined by the Directors is paid to the Company, the instrument of transfer is properly stamped (if applicable), it is in respect of only one class of share and is lodged at the relevant registration office or registered office or such other place at which the principal register is kept accompanied by the relevant share certificate(s) and such other evidence as the board may reasonably require to show the right of the transferor to make the transfer (and if the instrument of transfer is executed by some other person on his behalf, the authority of that person so to do).

The registration of transfers may, after compliance with any notice requirement of the Stock Exchange, be suspended at such times and for such periods as the board may determine. The register of members must not be closed for periods exceeding in the whole thirty (30) days in any year.

Subject to the above, fully paid shares are free from any restriction on transfer and free of all liens in favour of the Company.

**(v) *Power of the Company to purchase its own shares***

The Company is empowered by the Companies Law and the Articles to purchase its own shares subject to certain restrictions and the board may only exercise this power on behalf of the Company subject to any applicable requirements imposed from time to time by the Stock Exchange and/or any competent regulatory authority.

**(vi) *Power of any subsidiary of the Company to own shares in the Company***

There are no provisions in the Articles relating to ownership of shares in the Company by a subsidiary.

**(vii) *Calls on shares and forfeiture of shares***

The board may from time to time make such calls upon the members in respect of any monies unpaid on the shares held by them respectively (whether on account of the nominal value of the shares or by way of premium). If the sum payable in respect of any call or instalment is not paid on or before the day appointed for payment thereof, the person or persons from whom the sum is due shall pay interest on the same from the day appointed for the payment thereof to the time of actual payment at such rate (not exceeding twenty per cent. (20%) per annum) as the board may determine, but the board may waive payment of such interest wholly or in part. The board may, if it thinks fit, receive from any member willing to advance the same, either in money or money's worth, all or any part of the monies uncalled and unpaid or installments payable upon any shares held by him, and upon all or any of the monies so advanced the Company may pay interest at such rate (if any) as the board may decide.

If a member fails to pay any call on the day appointed for payment thereof, the board may serve not less than fourteen (14) clear days' notice on him requiring payment of so much of the call as is unpaid, together with any interest which may have accrued and which may still accrue up to the date of actual payment and stating that, in the event of non-payment at or before the time appointed, the shares in respect of which the call was made will be liable to be forfeited.

If the requirements of any such notice are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the board to that effect. Such forfeiture will include all dividends and bonuses declared in respect of the forfeited share and not actually paid before the forfeiture.

A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares but shall, notwithstanding, remain liable to pay to the Company all monies which, at the date of forfeiture, were payable by him to the Company in respect of the shares, together with (if the board shall in its discretion so require) interest thereon from the date of forfeiture until the date of actual payment at such rate (not exceeding twenty per cent. (20%) per annum) as the board determines.

**(b) Directors**

**(i) *Appointment, retirement and removal***

Unless otherwise determined by the Company in general meeting, the number of Directors shall not be less than two. The maximum number of Directors shall be up to 11.

The Directors shall be divided into three classes: Class I, Class II and Class III. Each class shall consist of as nearly equal numbers of Directors as possible, and designated Class I, Class II, and Class III.

Article 86(2) provides that, by written notice to the Company, (a) for so long as STT continues to have Beneficial Ownership in not less than twenty-five per cent. (25%) of the issued share capital of the Company on an as converted basis, STT may appoint and remove three (3) directors (each an “STT Director”); (b) where STT has Beneficial Ownership in less than twenty-five per cent. (25%) but not less than fifteen per cent. (15%) of the issued share capital of the Company on an as converted basis, STT may appoint and remove two (2) STT Directors; and (c) where STT has Beneficial Ownership in less than fifteen per cent. (15%) but not less than eight per cent. (8%), of the then issued share capital of the Company on an as converted basis, STT may appoint and remove one (1) STT Director.

Article 86(4) provides that for so long as William Wei Huang continues to have Beneficial Ownership in not less than five per cent. (5%) of the then issued share capital of the Company on an as converted basis, the holders of the Class B Ordinary Shares shall have the right to nominate five (5) Directors (one of which is intended to be William Wei Huang) for appointment as Directors. Such Directors shall be elected by resolutions of the Members (with the Class B Ordinary Shares having twenty (20) votes per Class B Ordinary Share in respect of such resolutions). Upon either (i) the Automatic Conversion of the Class B Ordinary Shares, or (ii) the conversion of such of the Class B Ordinary Shares that results in William Wei Huang having Beneficial Ownership in less than five per cent. (5%) but not less than two per cent. (2%) of the then issued share capital of the Company on an as converted basis, (a) any Directors (other than William Wei Huang) appointed pursuant to the above provisions shall retire from office by rotation at the appropriate annual general meeting of Members in accordance with the terms of their appointment, and (b) at the relevant annual general meeting, their replacement as a Director shall be nominated by the Nominating and Corporate Governance Committee and shall be elected by resolutions of the Members (with the Class B Ordinary Shares having one (1) vote per Class B Ordinary Share in respect of such resolutions); and (c) Mr. Huang shall continue to have the right to appoint and remove one (1) Director (which is intended to be Mr. Huang). Upon Mr. Huang having Beneficial Ownership in less than two per cent. (2%) of the then issued share capital of the Company on an as converted basis, (a) Mr. Huang’s above appointment right shall cease and terminate, (b) any Director appointed pursuant to such right shall retire from office by rotation at the appropriate annual general meeting of Members in accordance with the terms of their



appointment, and (iii) at the relevant annual general meeting, their replacement as a Director shall be nominated by the Nominating and Corporate Governance Committee and shall be elected by resolutions of the Members (with the Class B Ordinary Shares having one (1) vote per Class B Ordinary Share in respect of such resolutions).

The Nominating and Corporate Governance Committee shall have the right to nominate one (1) Director (being an Independent Director) for appointment as a Director. Such Independent Director shall be elected by resolutions of the Members (with the Class B Ordinary Shares having twenty (20) votes per Class B Ordinary Share in respect of such resolutions).

The Nominating and Corporate Governance Committee shall have the right to nominate the remaining Directors (being, two (2) Independent Directors) for appointment as Directors. Such Directors, (at least two (2) of whom shall be Independent Directors) shall be elected by resolutions of the Members (with the Class B Ordinary Shares having one (1) vote per Class B Ordinary Share in respect of such resolutions).

Any Director (other than Mr. Huang (for so long as he is a Director) and any STT Director) may be removed by way of a special resolution of the Members at any time before the expiration of his period of office notwithstanding anything in the Articles or in any agreement between the Company and such Director (but without prejudice to any claim for damages under any such agreement).

A vacancy on the Board created by the removal of a Director under the above provisions may be filled by the election or appointment by (i) resolution of the Members (passed in accordance with the provisions of Article 86(4) or Article 86(5) or Article 86(6), as the case may be) at the meeting at which such Director is removed, or (ii) (in the case of an Independent Director only) by the affirmative vote of a simple majority of the Nominating and Corporate Governance Committee.

The Board may from time to time by resolution increase or reduce the number of Directors but so that the number of Directors shall never be less than two (2). Any resolution to change the number of Directors shall require the prior written approval of the STT Directors. Where any increase or reduction is made in the number of Directors on the Board pursuant to these Articles, the number of Directors appointed under Article 86(4) shall increase or reduce proportionately, so that for so long as Mr. Huang continues to have Beneficial Ownership in not less than five per cent. (5%) of the then issued share capital of the Company on an as converted basis, Mr. Huang and the holders of the Class B Ordinary Shares shall always be entitled to nominate and/or appoint or control the nomination and/or appointment of, a majority of the Board of Directors of the Company.

At each annual general meeting, one third of the Directors for the time being (or if their number is not a multiple of three, then the number nearest to but not less than one third) shall retire from office by rotation provided that every Director shall be subject to retirement at an annual general meeting at least once every three years. The Directors to retire by rotation shall include any Director who wishes to retire and not offer himself for re-election. Any further Directors so to retire shall be those who have been longest in office since their last re-election or appointment but as between persons who became or were last re-elected Directors on the same day those to retire will (unless they otherwise agree among themselves) be determined by lot.

Neither a Director nor an alternate Director is required to hold any shares in the Company by way of qualification. Further, there are no provisions in the Articles relating to retirement of Directors upon reaching any age limit.

The office of director shall be vacated if:

- (aa) he resigns by notice in writing delivered to the Company; (bb) he becomes of unsound mind or dies;
- (cc) without special leave, he is absent from meetings of the board for six (6) consecutive months, and the board resolves that his office is vacated;
- (dd) he becomes bankrupt or has a receiving order made against him or suspends payment or compounds with his creditors;
- (ee) he is prohibited from being a director by law; or
- (ff) he ceases to be a director by virtue of any provision of law or is removed from office pursuant to the Articles.

The board may appoint one or more of its body to be managing director, joint managing director, or deputy managing director or to hold any other employment or executive office with the Company for such period and upon such terms as the board may determine and the board may revoke or terminate any of such appointments. The board may delegate any of its powers, authorities and discretions to committees consisting of such Director or Directors and other persons as the board thinks fit, and it may from time to time revoke such delegation or revoke the appointment of and discharge any such committees either wholly or in part, and either as to persons or purposes, but every committee so formed must, in the exercise of the powers, authorities and discretions so delegated, conform to any regulations that may from time to time be imposed upon it by the board.

***(ii) Power to allot and issue shares and warrants***

Subject to the provisions of the Companies Law and the Articles and, where applicable, the rules of the Stock Exchange and without prejudice to any special rights or restrictions for the time being attached to any shares or any class of shares, all unissued shares in the Company are at the disposal of the board, which may offer, allot, grant options over or otherwise dispose of them to such persons, at such times, for such consideration and on such terms and conditions as it in its absolute discretion thinks fit, but so that no shares shall be issued at a discount to their nominal value.

Notwithstanding anything to the contrary in the Articles or the Memorandum, the Company and the Directors shall not, without the prior approval of Members by ordinary resolution, with the Class B Ordinary Shares having only one vote per Class B Ordinary Share in respect of such resolution, take, approve, authorise, ratify, agree, commit to engage in or otherwise effect or consummate the allotment or issue of any shares or securities of the Company equal to ten per cent. (10%) or more of the existing issued share capital of the Company or of the votes attached to the existing issued share capital of the Company at the date of such allotment or issue in any 12-month period, whether in a single transaction or a series of transactions other than any allotment or issues of shares on the exercise of any options or warrants granted by the Company from time to time or any shares issued on the conversion by Ping An Insurance and by STT of the convertible and redeemable bonds due 2019 held by Ping An Insurance and STT respectively.

In particular and without prejudice to the generality of the foregoing the board is empowered to authorize by resolution or resolutions from time to time the issuance of one or more classes or series of preferred shares and to fix the designations, powers, preferences and relative, participating, optional and other rights, if any, and the qualifications, limitations and restrictions thereof, if any, including, without limitation, the number of shares constituting each such class or series, dividend rights, conversion rights, redemption privileges, voting powers, full or limited or no voting powers, and liquidation preferences, and to increase or decrease the size of any such class or series (but not below the number of shares of any class or series of preferred shares then outstanding) to the extent permitted by Law. Without limiting the generality of the foregoing, the resolution or resolutions providing for the establishment of any class or series of preferred shares may, to the extent permitted by law, provide that such class or series shall be superior to, rank equally with or be junior to the preferred shares of any other class or series.

Neither the Company nor the board is obliged, when making or granting any allotment of, offer of, option over or disposal of shares, to make, or make available, any such allotment, offer, option or shares to members or others with registered addresses in any particular territory or territories being a territory or territories where, in the absence of a registration statement or other special formalities, this would or might, in the opinion of the board, be unlawful or impracticable. Members affected as a result of the foregoing sentence shall not be, or be deemed to be, a separate class of members for any purpose whatsoever.

The board may issue warrants or convertible securities or securities of similar nature conferring the right upon the holders thereof to subscribe for any class of shares or securities in the capital of the Company on such terms as it may determine.

***(iii) Power to dispose of the assets of the Company or any of its subsidiaries***

The Directors may, exercise all powers and do all acts and things which may be exercised or done or approved by the Company and which are not required by the Articles or the Companies Law to be exercised or done by the Company in general meeting.

Notwithstanding anything to the contrary in the Articles or the Memorandum, the Company and the Directors shall not, without the prior approval of Members by ordinary resolution, with the Class B Ordinary Shares having only one vote per Class B Ordinary Share in respect of such resolution, take, approve, authorise, ratify, agree, commit to engage in or otherwise effect or consummate the authorisation, or entry into agreements for the sale of, agree to sell, transfer or dispose of, whether in one transaction or a series of transactions a material part of the assets or undertakings of the Company (material for the purposes of the relevant Article being assets or undertakings representing ten per cent. (10%) or more of the net tangible assets of the Company in its latest audited accounts).

***(iv) Borrowing powers***

Subject to the Articles, the board may exercise all the powers of the Company to raise or borrow money, to mortgage or charge all or any part of the undertaking, property and assets and uncalled capital of the Company and, subject to the Companies Law, to issue debentures, bonds and other securities of the Company, whether outright or as collateral security for any debt, liability or obligation of the Company or of any third party.

***(v) Remuneration***

Subject to the rule of the Stock Exchange, the Director, shall receive such remuneration as the board may from time to time determine. The Directors are also entitled to be prepaid or repaid all traveling, hotel and incidental expenses reasonably incurred or expected to be incurred by them in attending any board meetings, committee meetings or general meetings or separate meetings of any class of shares or of debentures of the Company or otherwise in connection with the discharge of their duties as Directors.

Any Director who, by request, goes or resides abroad for any purpose of the Company or who performs services which in the opinion of the board go beyond the ordinary duties of a Director may be paid such extra remuneration as the board may determine and such extra remuneration shall be in addition to or in substitution for any ordinary remuneration as a Director. An executive Director appointed to be a managing director, joint managing director, deputy managing director or other executive officer shall receive such remuneration and such other benefits and allowances as the board may from time to time decide. Such remuneration may be either in addition to or in lieu of his remuneration as a Director.

The board may establish or concur or join with other companies (being subsidiary companies of the Company or companies with which it is associated in business) in establishing and making contributions out of the Company's monies to any schemes or funds for providing pensions, sickness or compassionate allowances, life assurance or other benefits for employees (which expression as used in this and the following paragraph shall include any Director or past Director who may hold or have held any executive office or any office of profit with the Company or any of its subsidiaries) and ex employees of the Company and their dependents or any class or classes of such persons.

The board may pay, enter into agreements to pay or make grants of revocable or irrevocable, and either subject or not subject to any terms or conditions, pensions or other benefits to employees and ex employees and their dependents, or to any of such persons, including pensions or benefits additional to those, if any, to which such employees or ex employees or their dependents are or may become entitled under any such scheme or fund as is mentioned in the previous paragraph. Any such pension or benefit may, as the board considers desirable, be granted to an employee either before and in anticipation of, or upon or at any time after, his actual retirement.

***(vi) Compensation or payments for loss of office***

Subject to the rules of the Designated Exchange, the Board may, without the approval of the Company in general meeting, make payments to any Director or past Director of the Company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office (not being payment to which the Director is contractually entitled).

***(vii) Loans and provision of security for loans to Directors***

The articles contain no provision in this recalls similar to those prohibited by the Companies Ordinance (Chapter 622 of the laws of Hong Kong) as if the Company were a company incorporated in Hong Kong.

***(viii) Disclosure of interests in contracts with the Company or any of its subsidiaries***

A Director may (a) hold any other office or place of profit with the Company (except that of the auditor of the Company) in conjunction with his office of Director for such period and upon such terms as the board may determine, and may be paid such extra remuneration therefor in addition to any remuneration provided for by or pursuant to the Articles; (b) act by himself or his firm in a professional capacity for the Company (otherwise than as Auditor) and he or his firm may be remunerated for professional services as if he were not a Director, and (c) be or become a director or other officer of, or otherwise interested in, any company promoted by the Company or any other company in which the Company may be interested, and shall not be liable to account to the Company or the members for any remuneration, profits or other benefits received by him as a director, officer or member of, or from his interest in, such other company.

The board may also cause the voting power conferred by the shares in any other company held or owned by the Company to be exercised in such manner in all respects as it thinks fit, including the exercise thereof in favour of any resolution appointing the Directors or any of them to be directors or officers of such other company, or voting or providing for the payment of remuneration to the directors or officers of such other company.

Notwithstanding the foregoing, no Independent Director shall without the consent of the Audit Committee take any of the foregoing actions or any other action that would reasonably be likely to affect such Director 's status as an "Independent Director" of the Company.

No Director or proposed or intended Director shall be disqualified by his office from contracting with the Company, either with regard to his tenure of any office or place of profit or as vendor, purchaser or in any other manner whatsoever, nor shall any such contract or any other contract or arrangement in which any Director is in any way interested be liable to be avoided, nor shall any Director so contracting or being so interested be liable to account to the Company or the members for any remuneration, profit or other benefits realised by any such contract or arrangement by reason of such Director holding that office or the fiduciary relationship thereby established provided that such Director shall disclose the nature of his interest in any contract or arrangement in which he is interested in accordance with Article 102 herein. Any such transaction that would reasonably be likely to affect a Director 's status as an "Independent Director," or that would constitute a "related party transaction" as defined by Item 7.N of Form 20F promulgated by the SEC, shall require the approval of the Audit Committee.

A Director who to his knowledge is in any way, whether directly or indirectly, interested in a contract or arrangement or proposed contract or arrangement with the Company shall declare the nature of his interest at the meeting of the Board at which the question of entering into the contract or arrangement is first considered, if he knows his interest then exists, or in any other case at the first meeting of the Board after he knows that he is or has become so interested. For the purposes of the Articles, a general Notice to the Board by a Director to the effect that:

- (a) he is a member or officer of a specified company or firm and is to be regarded as interested in any contract or arrangement which may after the date of the Notice be made with that company or firm; or
- (b) he is to be regarded as interested in any contract or arrangement which may after the date of the Notice be made with a specified person who is connected with him;

shall be deemed to be a sufficient declaration of interest under this Article in relation to any such contract or arrangement, provided that no such Notice shall be effective unless either it is given at a meeting of the Board or the Director takes reasonable steps to secure that it is brought up and read at the next Board meeting after it is given.



Following a declaration being made pursuant to the Articles, subject to any separate requirement for Audit Committee approval under applicable law or the listing rules of the Company's Designated Stock Exchange, and unless disqualified by the chairman of the relevant Board meeting, a Director may vote in respect of any contract or proposed contract or arrangement in which such Director is interested and may be counted in the quorum at such meeting.

**(c) Proceedings of the Board**

The board may meet for the despatch of business, adjourn and otherwise regulate its meetings as it considers appropriate. Questions arising at any meeting shall be determined by a majority of votes. In the case of an equality of votes, the chairman of the meeting shall have an additional or casting vote.

A meeting of the Board may be convened by the Secretary on request of a Director or by any Director.

The quorum necessary for the transaction of the business of the Board shall be a majority of the Directors then appointed, including (for so long as Mr. Huang continues to have Beneficial Ownership in not less than five per cent. (5%) of the then issued share capital of the Company on an as converted basis) two (2) Directors nominated for appointment by Mr. Huang pursuant to the provisions of the Articles and (for so long as STT continues to have Beneficial Ownership in not less than fifteen per cent. (15%) of the issued share capital of the Company on an as converted basis), two (2) STT Directors.

**(d) Alterations to constitutional documents and the Company's name**

Subject to the provisions of the Articles, including as set out below, (A) no Article shall be rescinded, altered or amended and no new Article shall be made until the same has been approved by a special resolution of the Members, and (B) a special resolution shall be required to alter the provisions of the Memorandum of Association or to change the name of the Company. The Class B Ordinary Shares shall have only one vote per Class B Ordinary Share in respect of any such special resolution.

For so long as Mr. Huang continues to have Beneficial Ownership in any of the issued share capital of the Company on an as converted basis, none of the provisions of Articles 9, 86, 102(4), 114, 122, 125(2), 58(2) and 166 shall be rescinded, altered or amended (either directly or by the inclusion of any new Articles herein) without the affirmative vote of Mr. Huang and/or the holders of the Class B Ordinary Shares as the case may be.

For so long as STT continues to have Beneficial Ownership in any of the issued share capital of the Company on an as converted basis, none of the provisions of Articles 86(1), 86(2), 86(8), 102(4), 122, 125(2), 58(2) and 166 shall be rescinded, altered or amended (either directly or by the inclusion of any new Articles herein) without the affirmative vote of STT.

**(e) Meetings of members**

**(i) *Special and ordinary resolutions***

A special resolution of the Company must be passed by a majority of not less than seventy-five per cents (75%) of the votes cast by such members as, being entitled so to do, vote in person or, in the case of such members as are corporations, by their duly authorised representatives or, where proxies are allowed, by proxy at a general meeting of which notice has been duly given in accordance with the Articles.

Under the Companies Law, a copy of any special resolution must be forwarded to the Registrar of Companies in the Cayman Islands within fifteen (15) days of being passed.

An ordinary resolution is defined in the Articles to mean a resolution passed by a simple majority of the votes of such members of the Company as, being entitled to do so, vote in person or, in the case of corporations, by their duly authorised representatives or, where proxies are allowed, by proxy at a general meeting of which notice has been duly given in accordance with the Articles.

**(ii) *Voting rights and right to demand a poll***

Subject to any special rights or restrictions as to voting for the time being attached to any shares, at any general meeting on a poll every member present in person or by proxy or, in the case of a member being a corporation, by its duly authorised representative shall have one vote for every fully paid share of which he is the holder but so that no amount paid up or credited as paid up on a share in advance of calls or installments is treated for the foregoing purposes as paid up on the share. A member entitled to more than one vote need not use all his votes or cast all the votes he uses in the same way.

At any general meeting a resolution put to the vote of the meeting is to be decided by way of a poll save that the chairman of the meeting may in good faith, allow a resolution which relates purely to a procedural or administrative matter to be voted on by a show of hands in which case every member present in person (or being a corporation, is present by a duly authorized representative), or by proxy(ies) shall have one vote provided that where more than one proxy is appointed by a member which is a clearing house (or its nominee(s)), each such proxy shall have one vote on a show of hands.

If a clearing house (or its nominee(s)) or a central depository entity, being a corporation, is a member of the Company it may authorise such person or persons as it thinks fit to act as its representative(s) at any meeting of the Company or at any meeting of any class of members of the Company provided that, if more than one person is so authorised, the authorisation shall specify the number and class of shares in respect of which each such person is so authorised.

A person authorised pursuant to this provision shall be deemed to have been duly authorised without further evidence of the facts and be entitled to exercise the same powers on behalf of the recognised clearing house (or its nominee(s)) as if such person was the registered holder of the shares of the Company held by that clearing house (or its nominee(s)) including, where a show of hands is allowed, the right to vote individually on a show of hands.

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

The Company must hold an annual general meeting of the Company every year.

A majority of the Board or the Chairman of the Board may call extraordinary general meetings, which extraordinary general meetings shall be held at such times and locations (as permitted hereby) as such person or persons shall determine.

In addition to the powers to call meetings set out above:

- (i) for so long as either STT or the holders of the Class B Ordinary Shares and Mr. Huang have the right to nominate or appoint Directors contained in Articles 86(2) and Article 86(4), respectively, STT and/or Mr. Huang and/or any one or more of the registered holders of Class B Ordinary Shares (as the case may be) shall at all times have the right, by written requisition to the Board or the Secretary of the Company, to require an extraordinary general meeting to be called by the Board for the transaction of any business necessary for the nomination and appointment of any such Directors;
- (ii) for so long as STT has the right to appoint any STT Director pursuant to Article 86(2), any one or more Members (other than STT or any affiliate of STT controlled by STT) holding at the date of deposit of the requisition not less than one-third of the issued Class A Ordinary Shares (excluding for the purposes of this Article), any Class A Ordinary Shares Beneficially Owned by STT or any affiliate of STT controlled by STT) shall at all times have the right, by written requisition to the Board or the Secretary of the Company, to require an extraordinary general meeting to be called by the Board for the transaction of any business specified in such requisition; and
- (iii) for so long as STT ceases to have the right to appoint any STT Director pursuant to Article 86(2), any one or more Members (including STT or any affiliate of STT controlled by STT) holding at the date of deposit of the requisition not less than one-third of the issued Class A Ordinary Shares shall at all times have the right, by written requisition to the Board or the Secretary of the Company, to require an extraordinary general meeting to be called by the Board for the transaction of any business specified in such requisition.

Any such meeting shall be held within two (2) months after the deposit of such requisition. If within ten (10) days of such deposit the Board fails to proceed to convene such meeting the requisitionist(s) himself (themselves) may do so in the same manner, and all reasonable expenses incurred by the requisitionist(s) as a result of the failure of the Board shall be reimbursed to the requisitionist(s) by the Company.

***(iv) Notices of meetings and business to be conducted***

An annual general meeting and any extraordinary general meeting may be called by not less than ten (10) clear days' Notice but a general meeting may be called by shorter notice, subject to the Law, if it is so agreed:

- (a) in the case of a meeting called as an annual general meeting, by all the Members entitled to attend and vote thereat; and
- (b) in the case of any other meeting, by a majority in number of the Members having the right to attend and vote at the meeting, being a majority together holding not less than ninety-five per cent. (95%) in nominal value of the issued shares giving that right.

The notice shall specify the time and place of the meeting and, in case of special business, the general nature of the business. The notice convening an annual general meeting shall specify the meeting as such. Notice of every general meeting shall be given to all Members other than to such Members as, under the provisions of these Articles or the terms of issue of the shares they hold, are not entitled to receive such notices from the Company, to all persons entitled to a share in consequence of the death or bankruptcy or winding-up of a Member and to each of the Directors and the Auditors.

In addition, notice of every general meeting must be given to all members of the Company other than to such members as, under the provisions of the Articles or the terms of issue of the shares they hold, are not entitled to receive such notices from the Company, and also to, among others, the auditors for the time being of the Company.

Any notice to be given to or by any person pursuant to the Articles may be served on or delivered to any member of the Company personally, by post to such member's registered address or by advertisement in newspapers in accordance with the requirements of the Stock Exchange. Subject to compliance with Cayman Islands law and the rules of the Stock Exchange, notice may also be served or delivered by the Company to any member by electronic means.

**(v) *Quorum for meetings and separate class meetings***

No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business, but the absence of a quorum shall not preclude the appointment of a chairman.

The quorum for a general meeting shall be two (2) members entitled to vote and present in person (or, in the case of a member being a corporation, by its duly authorised representative) or by proxy representing not less than one-third in nominal value of the issued voting shares of the Company.

**(vi) *Proxies***

Any member of the Company entitled to attend and vote at a meeting of the Company is entitled to appoint another person as his proxy to attend and vote instead of him. A member who is the holder of two or more shares may appoint more than one proxy to represent him and vote on his behalf at a general meeting of the Company or at a class meeting. A proxy need not be a member of the Company and is entitled to exercise the same powers on behalf of a member who is an individual and for whom he acts as proxy as such member could exercise. In addition, a proxy is entitled to exercise the same powers on behalf of a member which is a corporation and for which he acts as proxy as such member could exercise as if it were an individual member. Votes may be given either personally (or, in the case of a member being a corporation, by its duly authorised representative) or by proxy.

**(f) *Accounts and audit***

The board shall cause true accounts to be kept of the sums of money received and expended by the Company, and the matters in respect of which such receipt and expenditure take place, and of the property, assets, credits and liabilities of the Company and of all other matters required by the Companies Law or necessary to give a true and fair view of the Company's affairs and to explain its transactions.

The accounting records must be kept at the registered office or at such other place or places as the board decides and shall always be open to inspection by any Director. No member (other than a Director) shall have any right to inspect any accounting record or book or document of the Company except as conferred by law or authorised by the board or the Company in general meeting. However, an exempted company must make available at its registered office in electronic form or any other medium, copies of its books of account or parts thereof as may be required of it upon service of an order or notice by the Tax Information Authority pursuant to the Tax Information Authority Law of the Cayman Islands.

A copy of every balance sheet and profit and loss account (including every document required by law to be annexed thereto) which is to be laid before the Company at its general meeting, together with a printed copy of the Directors' report and a copy of the auditors' report, shall not less than ten (10) days before the date of the meeting be sent to every person entitled to receive notices of general meetings of the Company under the provisions of the Articles; however, subject to compliance with all applicable laws, including the rules of the Stock Exchange, the Company may send to such persons summarised financial statements derived from the Company's annual accounts and the directors' report instead provided that any such person may by notice in writing served on the Company, demand that the Company sends to him, in addition to summarised financial statements, a complete printed copy of the Company's annual financial statement and the directors' report thereon.

Subject to applicable law and rules of the Designated Stock Exchange:

- (1) The Board shall appoint an auditor to audit the accounts of the Company and such auditor shall hold office until the Board appoints another auditor. Such auditor may be a Member but no Director or officer or employee of the Company shall, during his continuance in office, be eligible to act as an auditor of the Company.
- (2) The Board may remove the Auditor at any time before the expiration of his term of office and may by resolution appoint another Auditor in his stead. Subject to the Law the accounts of the Company shall be audited at least once in every year.

The remuneration of the Auditor shall be fixed by the Board.

The financial statements of the Company shall be audited by the auditor in accordance with generally accepted auditing standards which may be those of a country or jurisdiction other than the Cayman Islands. The auditor shall make a written report thereon in accordance with generally accepted auditing standards and the report of the auditor must be submitted to the members in general meeting.

**(g) Dividends and other methods of distribution**

Subject to the Companies Law, the board may from time to time declare dividends in any currency to be paid to the members.

The Articles provide dividends may be declared and paid out of the profits of the Company, realised or unrealised, or from any reserve set aside from profits which the directors determine is no longer needed. Dividends may also be declared and paid out of share premium account or any other fund or account which can be authorised for this purpose in accordance with the Companies Law.



Except in so far as the rights attaching to, or the terms of issue of, any share may otherwise provide, (i) all dividends shall be declared and paid according to the amounts paid up on the shares in respect whereof the dividend is paid but no amount paid up on a share in advance of calls shall for this purpose be treated as paid up on the share and (ii) all dividends shall be apportioned and paid pro rata according to the amount paid up on the shares during any portion or portions of the period in respect of which the dividend is paid. The Directors may deduct from any dividend or other monies payable to any member or in respect of any shares all sums of money (if any) presently payable by him to the Company on account of calls or otherwise.

Whenever the board has resolved that a dividend be paid or declared on the share capital of the Company, the board may further resolve either (a) that such dividend be satisfied wholly or in part in the form of an allotment of shares credited as fully paid up, provided that the shareholders entitled thereto will be entitled to elect to receive such dividend (or part thereof) in cash in lieu of such allotment, or (b) that shareholders entitled to such dividend will be entitled to elect to receive an allotment of shares credited as fully paid up in lieu of the whole or such part of the dividend as the board may think fit.

The Company may also upon the recommendation of the board by an ordinary resolution resolve in respect of any one particular dividend of the Company that it may be satisfied wholly in the form of an allotment of shares credited as fully paid up without offering any right to shareholders to elect to receive such dividend in cash in lieu of such allotment.

Any dividend, interest or other sum payable in cash to the holder of shares may be paid by cheque or warrant sent through the post addressed to the holder at his registered address, or in the case of joint holders, addressed to the holder whose name stands first in the register of the Company in respect of the shares at his address as appearing in the register or addressed to such person and at such addresses as the holder or joint holders may in writing direct. Every such cheque or warrant shall, unless the holder or joint holders otherwise direct, be made payable to the order of the holder or, in the case of joint holders, to the order of the holder whose name stands first on the register in respect of such shares, and shall be sent at his or their risk and payment of the cheque or warrant by the bank on which it is drawn shall constitute a good discharge to the Company. Any one of two or more joint holders may give effectual receipts for any dividends or other moneys payable or property distributable in respect of the shares held by such joint holders.

Whenever the board has resolved that a dividend be paid or declared the board may further resolve that such dividend be satisfied wholly or in part by the distribution of specific assets of any kind.

The Board may from time to time pay to the Members such interim dividends as appear to the Board to be justified by the profits of the Company and in particular (but without prejudice to the generality of the foregoing) if at any time the share capital of the Company is divided into different classes, the Board may pay such interim dividends in respect of those shares in the capital of the Company which confer on the holders thereof deferred or non-preferential rights as well as in respect of those shares which confer on the holders thereof preferential rights with regard to dividend and provided that the Board acts bona fide the Board shall not incur any responsibility to the holders of shares conferring any preference for any damage that they may suffer by reason of the payment of an interim dividend on any shares having deferred or non-preferential rights and may also pay any fixed dividend which is payable on any shares of the Company half-yearly or on any other dates, whenever such profits, in the opinion of the Board, justifies such payment.

All dividends or bonuses unclaimed for one year after having been declared may be invested or otherwise made use of by the board for the benefit of the Company until claimed and the Company shall not be constituted a trustee in respect thereof. All dividends or bonuses unclaimed for six years after having been declared may be forfeited by the board and shall revert to the Company.

No dividend or other monies payable by the Company on or in respect of any share shall bear interest against the Company.

**(h) Inspection of corporate records**

The Register and branch register of Members, as the case may be, shall be open to inspection for such times and on such days as the Board shall determine by Members without charge or by any other person, upon a maximum payment of \$2.50 or such other sum specified by the Board, at the Office or Registration Office or such other place at which the Register is kept in accordance with the Law. The Register including any overseas or local or other branch register of Members may, after compliance with any notice requirement of the Designated Stock Exchange, be closed at such times or for such periods not exceeding in the whole thirty (30) days in each year as the Board may determine and either generally or in respect of any class of shares.

**(i) Rights of minorities in relation to fraud or oppression**

There are no provisions in the Articles relating to rights of minority shareholders in relation to fraud or oppression. However, certain remedies are available to shareholders of the Company under Cayman Islands law, as summarised in paragraph 3(f) of this Appendix.

**(j) Procedures on liquidation**

The Board shall have power in the name and on behalf of the Company to present a petition to the court for the Company to be wound up.

A resolution that the Company be wound up by the court or be wound up voluntarily shall be a special resolution.

Subject to any special rights, privileges or restrictions as to the distribution of available surplus assets on liquidation for the time being attached to any class or classes of shares:

- (i) if the Company is wound up and the assets available for distribution amongst the members of the Company shall be more than sufficient to repay the whole of the capital paid up at the commencement of the winding up, the excess shall be distributed *pari passu* amongst such members in proportion to the amount paid up on the shares held by them respectively; and
- (ii) if the Company is wound up and the assets available for distribution amongst the members as such shall be insufficient to repay the whole of the paid-up capital, such assets shall be distributed so that, as nearly as may be, the losses shall be borne by the members in proportion to the capital paid up, or which ought to have been paid up, at the commencement of the winding up on the shares held by them respectively.

If the Company is wound up (whether the liquidation is voluntary or by the court) the liquidator may, with the authority of a special resolution and any other sanction required by the Companies Law divide among the members in specie or kind the whole or any part of the assets of the Company whether the assets shall consist of property of one kind or shall consist of properties of different kinds and the liquidator may, for such purpose, set such value as he deems fair upon any one or more class or classes of property to be divided as aforesaid and may determine how such division shall be carried out as between the members or different classes of members. The liquidator may, with the like authority, vest any part of the assets in trustees upon such trusts for the benefit of members as the liquidator, with the like authority, shall think fit, but so that no contributory shall be compelled to accept any shares or other property in respect of which there is a liability.

**(k) Subscription rights reserve**

The Articles provide that to the extent that it is not prohibited by and is in compliance with the Companies Law, if warrants to subscribe for shares have been issued by the Company and the Company does any act or engages in any transaction which would result in the subscription price of such warrants being reduced below the par value of a share, a subscription rights reserve shall be established and applied in paying up the difference between the subscription price and the par value of a share on any exercise of the warrants.

### **3. CAYMAN ISLANDS COMPANY LAW**

The Company is incorporated in the Cayman Islands subject to the Companies Law and, therefore, operates subject to Cayman Islands law. Set out below is a summary of certain provisions of Cayman company law, although this does not purport to contain all applicable qualifications and exceptions or to be a complete review of all matters of Cayman company law and taxation, which may differ from equivalent provisions in jurisdictions with which interested parties may be more familiar:

#### **(a) Company operations**

As an exempted company, the Company's operations must be conducted mainly outside the Cayman Islands. The Company is required to file an annual return each year with the Registrar of Companies of the Cayman Islands and pay a fee which is based on the amount of its authorised share capital.

#### **(b) Share capital**

The Companies Law provides that where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount of the value of the premiums on those shares shall be transferred to an account, to be called the "share premium account." At the option of a company, these provisions may not apply to premiums on shares of that company allotted pursuant to any arrangement in consideration of the acquisition or cancellation of shares in any other company and issued at a premium.

The Companies Law provides that the share premium account may be applied by the company subject to the provisions, if any, of its memorandum and articles of association in (a) paying distributions or dividends to members; (b) paying up unissued shares of the company to be issued to members as fully paid bonus shares; (c) the redemption and repurchase of shares (subject to the provisions of section 37 of the Companies Law); (d) writing-off the preliminary expenses of the company; and (e) writing-off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company.

No distribution or dividend may be paid to members out of the share premium account unless immediately following the date on which the distribution or dividend is proposed to be paid, the company will be able to pay its debts as they fall due in the ordinary course of business.

The Companies Law provides that, subject to confirmation by the Grand Court of the Cayman Islands (the "**Court**"), a company limited by shares or a company limited by guarantee and having a share capital may, if so authorised by its articles of association, by special resolution reduce its share capital in any way.

**(c) Financial assistance to purchase shares of a company or its holding company**

There is no statutory restriction in the Cayman Islands on the provision of financial assistance by a company to another person for the purchase of, or subscription for, its own or its holding company's shares. Accordingly, a company may provide financial assistance if the directors of the company consider, in discharging their duties of care and acting in good faith, for a proper purpose and in the interests of the company, that such assistance can properly be given. Such assistance should be on an arm's-length basis.

**(d) Purchase of shares and warrants by a company and its subsidiaries**

A company limited by shares or a company limited by guarantee and having a share capital may, if so authorised by its articles of association, issue shares which are to be redeemed or are liable to be redeemed at the option of the company or a shareholder and the Companies Law expressly provides that it shall be lawful for the rights attaching to any shares to be varied, subject to the provisions of the company's articles of association, so as to provide that such shares are to be or are liable to be so redeemed. In addition, such a company may, if authorised to do so by its articles of association, purchase its own shares, including any redeemable shares. However, if the articles of association do not authorise the manner and terms of purchase, a company cannot purchase any of its own shares unless the manner and terms of purchase have first been authorised by an ordinary resolution of the company. At no time may a company redeem or purchase its shares unless they are fully paid. A company may not redeem or purchase any of its shares if, as a result of the redemption or purchase, there would no longer be any issued shares of the company other than shares held as treasury shares. A payment out of capital by a company for the redemption or purchase of its own shares is not lawful unless immediately following the date on which the payment is proposed to be made, the company shall be able to pay its debts as they fall due in the ordinary course of business.

Shares purchased by a company is to be treated as cancelled unless, subject to the memorandum and articles of association of the company, the directors of the company resolve to hold such shares in the name of the company as treasury shares prior to the purchase. Where shares of a company are held as treasury shares, the company shall be entered in the register of members as holding those shares, however, notwithstanding the foregoing, the company is not be treated as a member for any purpose and must not exercise any right in respect of the treasury shares, and any purported exercise of such a right shall be void, and a treasury share must not be voted, directly or indirectly, at any meeting of the company and must not be counted in determining the total number of issued shares at any given time, whether for the purposes of the company's articles of association or the Companies Law.

A company is not prohibited from purchasing and may purchase its own warrants subject to and in accordance with the terms and conditions of the relevant warrant instrument or certificate. There is no requirement under Cayman Islands law that a company's memorandum or articles of association contain a specific provision enabling such purchases and the directors of a company may rely upon the general power contained in its memorandum of association to buy and sell and deal in personal property of all kinds.

Under Cayman Islands law, a subsidiary may hold shares in its holding company and, in certain circumstances, may acquire such shares.

**(e) Dividends and distributions**

The Companies Law permits, subject to a solvency test and the provisions, if any, of the company's memorandum and articles of association, the payment of dividends and distributions out of the share premium account. With the exception of the foregoing, there are no statutory provisions relating to the payment of dividends. Based upon English case law, which is regarded as persuasive in the Cayman Islands, dividends may be paid only out of profits.

No dividend may be declared or paid, and no other distribution (whether in cash or otherwise) of the company's assets (including any distribution of assets to members on a winding up) may be made to the company, in respect of a treasury share.

**(f) Protection of minorities and shareholders' suits**

The Courts ordinarily would be expected to follow English case law precedents which permit a minority shareholder to commence a representative action against or derivative actions in the name of the company to challenge (a) an act which is ultra vires the company or illegal, (b) an act which constitutes a fraud against the minority and the wrongdoers are themselves in control of the company, and (c) an irregularity in the passing of a resolution which requires a qualified (or special) majority.

In the case of a company (not being a bank) having a share capital divided into shares, the Court may, on the application of members holding not less than one fifth of the shares of the company in issue, appoint an inspector to examine into the affairs of the company and to report thereon in such manner as the Court shall direct.

Any shareholder of a company may petition the Court which may make a winding up order if the Court is of the opinion that it is just and equitable that the company should be wound up or, as an alternative to a winding up order, (a) an order regulating the conduct of the company's affairs in the future, (b) an order requiring the company to refrain from doing or continuing an act complained of by the shareholder petitioner or to do an act which the shareholder petitioner has complained it has omitted to do, (c) an order authorising civil proceedings to be brought in the name and on behalf of the company by the shareholder petitioner on such terms as the Court may direct, or (d) an order providing for the purchase of the shares of any shareholders of the company by other shareholders or by the company itself and, in the case of a purchase by the company itself, a reduction of the company's capital accordingly.



Generally claims against a company by its shareholders must be based on the general laws of contract or tort applicable in the Cayman Islands or their individual rights as shareholders as established by the company's memorandum and articles of association.

**(g) Disposal of assets**

The Companies Law contains no specific restrictions on the power of directors to dispose of assets of a company. However, as a matter of general law, every officer of a company, which includes a director, managing director and secretary, in exercising his powers and discharging his duties must do so honestly and in good faith with a view to the best interests of the company and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

**(h) Accounting and auditing requirements**

A company must cause proper books of account to be kept with respect to (i) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place; (ii) all sales and purchases of goods by the company; and (iii) the assets and liabilities of the company.

Proper books of account shall not be deemed to be kept if there are not kept such books as are necessary to give a true and fair view of the state of the company's affairs and to explain its transactions.

An exempted company must make available at its registered office in electronic form or any other medium, copies of its books of account or parts thereof as may be required of it upon service of an order or notice by the Tax Information Authority pursuant to the Tax Information Authority Law of the Cayman Islands.

**(i) Exchange control**

There are no exchange control regulations or currency restrictions in the Cayman Islands.

**(j) Taxation**

Pursuant to the Tax Concessions Law of the Cayman Islands, the Company has obtained an undertaking:

- (1) that no law which is enacted in the Cayman Islands imposing any tax to be levied on profits, income, gains or appreciation shall apply to the Company or its operations; and
- (2) that the aforesaid tax or any tax in the nature of estate duty or inheritance tax shall not be payable on or in respect of the shares, debentures or other obligations of the Company.

The undertaking for the Company is for a period of twenty years from 19 December 2006.

The Cayman Islands currently levy no taxes on individuals or corporations based upon profits, income, gains or appreciations and there is no taxation in the nature of inheritance tax or estate duty. There are no other taxes likely to be material to the Company levied by the Government of the Cayman Islands save for certain stamp duties which may be applicable, from time to time, on certain instruments executed in or brought within the jurisdiction of the Cayman Islands. The Cayman Islands are a party to a double tax treaty entered into with the United Kingdom in 2010 but otherwise is not party to any double tax treaties.

**(k) Stamp duty on transfers**

No stamp duty is payable in the Cayman Islands on transfers of shares of Cayman Islands companies except those which hold interests in land in the Cayman Islands.

**(l) Loans to directors**

There is no express provision in the Companies Law prohibiting the making of loans by a company to any of its directors.

**(m) Inspection of corporate records**

The notice of registered office is a matter of public record. A list of the names of the current directors and alternate directors (if applicable) is made available by the Registrar of Companies for inspection by any person on payment of a fee. The register of mortgages is open to inspection by creditors and members.

Members of the Company have no general right under the Companies Law to inspect or obtain copies of the register of members or corporate records of the Company. They will, however, have such rights as may be set out in the Company's Articles.

**(n) Register of members**

An exempted company may maintain its principal register of members and any branch registers at such locations, whether within or without the Cayman Islands, as the directors may, from time to time, think fit. The register of members shall contain such particulars as required by Section 40 of the Companies Law. A branch register must be kept in the same manner in which a principal register is by the Companies Law required or permitted to be kept. The company shall cause to be kept at the place where the company's principal register is kept a duplicate of any branch register duly entered up from time to time.

There is no requirement under the Companies Law for an exempted company to make any returns of members to the Registrar of Companies of the Cayman Islands. The names and addresses of the members are, accordingly, not a matter of public record and are not available for public inspection. However, an exempted company shall make available at its registered office, in electronic form or any other medium, such register of members, including any branch register of members, as may be required of it upon service of an order or notice by the Tax Information Authority pursuant to the Tax Information Authority Law of the Cayman Islands.

**(o) Register of Directors and Officers**

The Company is required to maintain at its registered office a register of directors and officers which is not available for inspection by the public. A copy of such register must be filed with the Registrar of Companies in the Cayman Islands and any change must be notified to the Registrar within thirty (30) days of any change in such directors or officers.

**(p) Beneficial Ownership Register**

An exempted company is required to maintain a beneficial ownership register at its registered office that records details of the persons who ultimately own or control, directly or indirectly, 25% or more of the equity interests or voting rights of the company or have rights to appoint or remove a majority of the directors of the company. The beneficial ownership register is not a public document and is only accessible by a designated competent authority of the Cayman Islands. Such requirement does not, however, apply to an exempted company with its shares listed on an approved stock exchange, which includes the Stock Exchange. Accordingly, for so long as the shares of the Company are listed on the Stock Exchange, the Company is not required to maintain a beneficial ownership register.

**(q) Winding up**

A company may be wound up (a) compulsorily by order of the Court, (b) voluntarily, or (c) under the supervision of the Court.

The Court has authority to order winding up in a number of specified circumstances including where the members of the company have passed a special resolution requiring the company to be wound up by the Court, or where the company is unable to pay its debts, or where it is, in the opinion of the Court, just and equitable to do so. Where a petition is presented by members of the company as contributories on the ground that it is just and equitable that the company should be wound up, the Court has the jurisdiction to make certain other orders as an alternative to a winding-up order, such as making an order regulating the conduct of the company's affairs in the future, making an order authorising civil proceedings to be brought in the name and on behalf of the company by the petitioner on such terms as the Court may direct, or making an order providing for the purchase of the shares of any of the members of the company by other members or by the company itself.

A company (save with respect to a limited duration company) may be wound up voluntarily when the company so resolves by special resolution or when the company in general meeting resolves by ordinary resolution that it be wound up voluntarily because it is unable to pay its debts as they fall due. In the case of a voluntary winding up, such company is obliged to cease to carry on its business (except so far as it may be beneficial for its winding up) from the time of passing the resolution for voluntary winding up or upon the expiry of the period or the occurrence of the event referred to above.

For the purpose of conducting the proceedings in winding up a company and assisting the Court therein, there may be appointed an official liquidator or official liquidators; and the court may appoint to such office such person, either provisionally or otherwise, as it thinks fit, and if more persons than one are appointed to such office, the Court must declare whether any act required or authorised to be done by the official liquidator is to be done by all or any one or more of such persons. The Court may also determine whether any and what security is to be given by an official liquidator on his appointment; if no official liquidator is appointed, or during any vacancy in such office, all the property of the company shall be in the custody of the Court.

As soon as the affairs of the company are fully wound up, the liquidator must make a report and an account of the winding up, showing how the winding up has been conducted and how the property of the company has been disposed of, and thereupon call a general meeting of the company for the purposes of laying before it the account and giving an explanation thereof. This final general meeting must be called by at least 21 days' notice to each contributory in any manner authorised by the company's articles of association and published in the Gazette.

#### **(r) Reconstructions**

There are statutory provisions which facilitate reconstructions and amalgamations approved by a majority in number representing seventy-five per cent. (75%) in value of shareholders or class of shareholders or creditors, as the case may be, as are present at a meeting called for such purpose and thereafter sanctioned by the Court. Whilst a dissenting shareholder would have the right to express to the Court his view that the transaction for which approval is sought would not provide the shareholders with a fair value for their shares, the Court is unlikely to disapprove the transaction on that ground alone in the absence of evidence of fraud or bad faith on behalf of management.

#### **(s) Take-overs**

Where an offer is made by a company for the shares of another company and, within four (4) months of the offer, the holders of not less than ninety per cent. (90%) of the shares which are the subject of the offer accept, the offeror may at any time within two (2) months after the expiration of the said four (4) months, by notice in the prescribed manner require the dissenting shareholders to transfer their shares on the terms of the offer. A dissenting shareholder may apply to the Court

within one (1) month of the notice objecting to the transfer. The burden is on the dissenting shareholder to show that the Court should exercise its discretion, which it will be unlikely to do unless there is evidence of fraud or bad faith or collusion as between the offeror and the holders of the shares who have accepted the offer as a means of unfairly forcing out minority shareholders.

**(t) Indemnification**

Cayman Islands law does not limit the extent to which a company's articles of association may provide for indemnification of officers and directors, except to the extent any such provision may be held by the Court to be contrary to public policy (e.g. for purporting to provide indemnification against the consequences of committing a crime).

**(u) Economic Substance Requirements**

Pursuant to the International Tax Cooperation (Economic Substance) Law, 2018 of the Cayman Islands ("ES Law") that came into force on 1 January 2019, a "relevant entity" is required to satisfy the economic substance test set out in the ES Law. A "relevant entity" includes an exempted company incorporated in the Cayman Islands as is the Company; however, it does not include an entity that is tax resident outside the Cayman Islands. Accordingly, for so long as the Company is a tax resident outside the Cayman Islands, including in Hong Kong, it is not required to satisfy the economic substance test set out in the ES Law.

**4. GENERAL**

Conyers Dill & Pearman, the Company's special legal counsel on Cayman Islands law, have sent to the Company a letter of advice summarising certain aspects of Cayman Islands company law. This letter, together with a copy of the Companies Law, is available for inspection as referred to in the paragraph headed "Documents Delivered to the Registrar of Companies and Available for Inspection" in Appendix V to this prospectus. Any person wishing to have a detailed summary of Cayman Islands company law or advice on the differences between it and the laws of any jurisdiction with which he is more familiar is recommended to seek independent legal advice.

## **C. CONSTITUTIONAL DOCUMENTS**

### **THE COMPANIES LAW EXEMPTED COMPANY LIMITED BY SHARES AMENDED AND RESTATED MEMORANDUM OF ASSOCIATION**

**OF**

**GDS Holdings Limited**

**Conditionally adopted by way of a special resolution passed on 18 October 2016  
and to become effective immediately upon the completion of the Company's  
initial public offering of Class A Ordinary Shares represented  
by American Depository Shares on the NASDAQ Global Market,  
effective on 7 November 2016**

1. The name of the Company is **GDS Holdings Limited**.
2. The Registered Office of the Company shall be at the offices of Codan trust Company (Cayman) Limited, Cricket Square, Hutchins Drive, P.O. 2681, Grand Cayman KY1-1111, Cayman Islands.
3. Subject to the following provisions of this Memorandum, the objects for which the Company is established are unrestricted.
4. Subject to the following provisions of this Memorandum, the Company shall have and be capable of exercising all the functions of a natural person of full capacity irrespective of any question of corporate benefit, as provided by Section 27(2) of the Companies Law.
5. Nothing in this Memorandum shall permit the Company to carry on a business for which a licence is required under the laws of the Cayman Islands unless duly licensed.
6. The Company shall not trade in the Cayman Islands with any person, firm or corporation except in furtherance of the business of the Company carried on outside the Cayman Islands; provided that nothing in this clause shall be construed as to prevent the Company effecting and concluding contracts in the Cayman Islands, and exercising in the Cayman Islands all of its powers necessary for the carrying on of its business outside the Cayman Islands.
7. The liability of each member is limited to the amount from time to time unpaid on such member's shares.
8. The share capital of the Company is US\$100,100 divided into 2,002,000,000 shares of a nominal or par value of US\$0.00005, of which 1,800,000,000 shall be designated as Class A ordinary shares, 200,000,000 shall be designated as Class B ordinary shares and 2,000,000 shall be designated as preferred shares.
9. The Company may exercise the power contained in the Companies Law to deregister in the Cayman Islands and be registered by way of continuation in another jurisdiction.



**The Companies Law (Revised)  
Company Limited by Shares**

**THE AMENDED AND RESTATED  
ARTICLES OF ASSOCIATION**

**OF**

**GDS Holdings Limited**

(Conditionally adopted by way of a special resolution passed on 18 October 2016 and to become effective immediately upon the completion of the Company's initial public offering of Class A Ordinary Shares represented by American Depository Shares on the NASDAQ Global Market, effective on 7 November 2016)

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## INTERPRETATION

### TABLE A

1. The regulations in Table A in the Schedule to the Companies Law (Revised) do not apply to the Company.

## INTERPRETATION

2. (1) In these Articles, unless the context otherwise requires, the words standing in the first column of the following table shall bear the meaning set opposite them respectively in the second column.

### WORD

### MEANING

“Articles”

these Articles in their present form or as supplemented or amended or substituted from time to time.

“affiliate”

for the purposes of Article 58(2), shall have the meaning given to it in Rule 405 of the United States Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“as converted basis”

the number of votes to which the holder of the Class B Ordinary Shares would be entitled if such holder converted the Class B Ordinary Shares at the then effective Conversion Rate on the record date in respect of the meeting at which any poll is taken or, if no record date is established, the date any poll is taken.

“Audit Committee”

the audit committee of the Company formed by the Board pursuant to Article 124 hereof, or any successor audit committee.

“Auditor”

the independent auditor of the Company which shall be an internationally recognized firm of independent accountants.

“Automatic Conversion Date”

the Business Day on which the first Automatic Conversion Event occurs.

“Automatic Conversion Event”	the first to occur of (i) William Wei Huang ceasing to have Beneficial Ownership in not less than five per cent. (5%) of the then issued share capital of the Company on an as converted basis; (ii) the FIL in the form implemented not requiring VIE Entities operating the PRC Business to be owned or controlled (as defined in the FIL as officially promulgated by the PRC legislator) by PRC nationals or entities (including without limitation the FIL as officially promulgated by the PRC legislator grandfathering then-existing VIE Entities in the PRC); (iii) the PRC law no longer requiring the conduct of the PRC Business to be owned or controlled by PRC nationals or entities; (iv) the promulgation of the FIL as it relates to VIE Entities is abandoned by the PRC legislator; or (v) the relevant authorities in the PRC having approved the Company’s VIE structure without the need for the VIE Entities to be owned or controlled by PRC nationals or entities.
“Beneficial Ownership”	shall have the meaning given to such term as defined in Rule 13d-3 under the Securities Exchange Act and Form 20-F issued under the Securities Exchange Act, and be calculated on an as converted basis. The terms “Beneficially Own”, “Beneficially Owned” and “Beneficial Owner” shall each have a correlative meaning.
“Board” or “Directors”	the board of directors of the Company or the directors present at a meeting of directors of the Company at which a quorum is present.
“Business Day”	shall mean a day on which the Designated Stock Exchange generally is open for the business of dealing in securities in the Unites States of America.
“capital”	the share capital from time to time of the Company.
“Class A Ordinary Shares”	class A ordinary shares of par value US\$0.00005 each of the Company having the rights set out in these Articles.
“Class B Ordinary Shares”	class B ordinary shares of par value US\$0.00005 each of the Company having the rights set out in these Articles.
“clear days”	in relation to the period of a notice, that period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect.

“clearing house”	a clearing house recognised by the laws of the jurisdiction in which the shares of the Company (or depositary receipts therefor) are listed or quoted on a stock exchange or interdealer quotation system in such jurisdiction.
“Company”	GDS Holdings Limited.
“competent regulatory authority”	a competent regulatory authority in the territory where the shares of the Company (or depositary receipts therefor) are listed or quoted on a stock exchange or interdealer quotation system in such territory.
“Conversion Date”	in respect of a Conversion Notice means the Business Day on which that Conversion Notice is delivered.
“Conversion Notice”	a written notice delivered to the Company at its Office (and as otherwise stated therein) stating that a holder of Class B Ordinary Shares elects to convert the number of Class B Ordinary Shares specified therein pursuant to Article 9.
“Conversion Number”	in relation to any Class B Ordinary Shares, such number of Class A Ordinary Shares as may, upon exercise of the Conversion Right, be issued at the Conversion Rate in force on the relevant Conversion Date.
“Conversion Rate”	at any time, on a 1:1 basis, subject to adjustment in accordance with Article 9(b).
“Conversion Right”	in respect of a Class B Ordinary Share means the right of its holder, subject to the provisions of the Articles and to any applicable fiscal or other laws or regulations including the Law, to convert all or any of its Class B Ordinary Shares, into the Conversion Number of Class A Ordinary Shares.
“control”	for the purposes of Article 58(2), shall have the meaning given to it in Rule 405 of the United States Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder, and the term “controlled by” shall have a correlative meaning.
“debenture” and “debenture holder”	include debenture stock and debenture stockholder respectively.
“Designated Stock Exchange”	the Nasdaq Global Market.
“Designated Stock Exchange Rules”	the Nasdaq Global Market listing rules.

“dollars” and “\$”	dollars, the legal currency of the United States of America.
“FIL”	the consultation draft Foreign Investment Law of the People’s Republic of China published by the Ministry of Commerce of the PRC on January 19, 2015.
“head office”	such office of the Company as the Directors may from time to time determine to be the principal office of the Company.
“Independent Director”	as defined in the Designated Stock Exchange Rules and in Rule 10A-3 under the Exchange Act, including for purposes of serving on an audit committee, and in respect of whom the Board has determined constitutes an Independent Director for purposes of compliance with applicable law or the Company’s listing requirements.
“Law”	The Companies Law, Cap. 22 (Law 3 of 1961, as consolidated and revised) of the Cayman Islands.
“Member”	a duly registered holder from time to time of the shares in the capital of the Company.
“month”	a calendar month.
“Notice”	written notice unless otherwise specifically stated and as further defined in these Articles.
“Office”	the registered office of the Company for the time being.
“ordinary resolution”	a resolution shall be an ordinary resolution when it has been passed by a simple majority of votes cast by such Members as, being entitled so to do, vote in person or, in the case of any Member being a corporation, by its duly authorised representative or, where proxies are allowed, by proxy at a general meeting of which not less than ten (10) clear days’ Notice has been duly given.
“paid up”	paid up or credited as paid up.
“PRC”	the People’s Republic of China.
“PRC Business”	such businesses as the Company or any of its subsidiaries or otherwise controlled entities have carried out or contemplate to carry out in the PRC.
“Register”	the principal register and where applicable, any branch register of Members of the Company to be maintained at such place within or outside the Cayman Islands as the Board shall determine from time to time.



“Registration Office”	in respect of any class of share capital such place as the Board may from time to time determine to keep a branch register of Members in respect of that class of share capital and where (except in cases where the Board otherwise directs) the transfers or other documents of title for such class of share capital are to be lodged for registration and are to be registered.
“SEC”	the United States Securities and Exchange Commission.
“Securities Exchange Act”	the United States Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.
“Seal”	common seal or any one or more duplicate seals of the Company (including a securities seal) for use in the Cayman Islands or in any place outside the Cayman Islands.
“Secretary”	any person, firm or corporation appointed by the Board to perform any of the duties of secretary of the Company and includes any assistant, deputy, temporary or acting secretary.
“special resolution”	<p>a resolution shall be a special resolution when it has been passed by a majority of not less than seventy-five per cent. (75%) of votes cast by such Members as, being entitled so to do, vote in person or, in the case of such Members as are corporations, by their respective duly authorised representative or, where proxies are allowed, by proxy at a general meeting of which not less than ten (10) clear days’ Notice, specifying (without prejudice to the power contained in these Articles to amend the same) the intention to propose the resolution as a special resolution, has been duly given.</p> <p>A special resolution shall be effective for any purpose for which an ordinary resolution is expressed to be required under any provision of these Articles or the Statutes.</p>
“Statutes”	the Law and every other law of the Legislature of the Cayman Islands for the time being in force applying to or affecting the Company, its Memorandum of Association and/or these Articles.
“STT”	STT GDC Pte. Ltd., a company incorporated with limited liability in Singapore.

“VIE Entities”	variable interest entities, including Beijing Wanguo Chang’an Science & Technology Co., Ltd., Shanghai Shu’an Data Services Co., Ltd. and their subsidiaries.
“STT Director”	has the meaning set out in Article 86(2).
“William Wei Huang”	William Wei Huang, the founder, a director and the Chairman of the Company.
“year”	a calendar year.

(2) In these Articles, unless there be something within the subject or context inconsistent with such construction:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include both gender and the neuter;
- (c) words importing persons include companies, associations and bodies of persons whether corporate or not;
- (d) the words:
  - (i) “may” shall be construed as permissive;
  - (ii) “shall” or “will” shall be construed as imperative;
- (e) expressions referring to writing shall, unless the contrary intention appears, be construed as including printing, lithography, photography and other modes of representing words or figures in a visible form, and including where the representation takes the form of electronic display, provided that both the mode of service of the relevant document or notice and the Member’s election comply with all applicable Statutes, rules and regulations;
- (f) references to any law, ordinance, statute or statutory provision shall be interpreted as relating to any statutory modification or re-enactment thereof for the time being in force;
- (g) save as aforesaid words and expressions defined in the Statutes shall bear the same meanings in these Articles if not inconsistent with the subject in the context;
- (h) references to a document being executed include references to it being executed under hand or under seal or by electronic signature or by any other method and references to a notice or document include a notice or document recorded or stored in any digital, electronic, electrical, magnetic or other retrievable form or medium and information in visible form whether having physical substance or not;
- (i) Section 8 of the Electronic Transactions Law (2003) of the Cayman Islands, as amended from time to time, shall not apply to these Articles to the extent it imposes obligations or requirements in addition to those set out in these Articles.

## SHARE CAPITAL

3. (1) The share capital of the Company at the date on which these Articles come into effect shall be divided into shares of a par value of US\$0.00005 each.
- (2) Subject to the Law, the Company's Memorandum and Articles of Association and, where applicable, the rules of the Designated Stock Exchange and/or any competent regulatory authority, any power of the Company to purchase or otherwise acquire its own shares shall be exercisable by the Board in such manner, upon such terms and subject to such conditions as it thinks fit.
- (3) No share shall be issued to bearer.

## ALTERATION OF CAPITAL

4. The Company may from time to time by ordinary resolution in accordance with the Law alter the conditions of its Memorandum of Association to:
  - (a) increase its capital by such sum, to be divided into shares of such amounts, as the resolution shall prescribe;
  - (b) consolidate and divide all or any of its capital into shares of larger amount than its existing shares;
  - (c) without prejudice to the powers of the Board under Article 12, divide its shares into several classes and without prejudice to any special rights previously conferred on the holders of existing shares attach thereto respectively any preferential, deferred, qualified or special rights, privileges, conditions or such restrictions which in the absence of any such determination by the Company in general meeting, as the Directors may determine provided always that, for the avoidance of doubt, where a class of shares has been authorized by the Company no resolution of the Company in general meeting is required for the issuance of shares of that class and the Directors may issue shares of that class and determine such rights, privileges, conditions or restrictions attaching thereto as aforesaid, and further provided that where the Company issues shares which do not carry voting rights, the words "non-voting" shall appear in the designation of such shares and where the equity capital includes shares with different voting rights, the designation of each class of shares, other than those with the most favourable voting rights, must include the words "restricted voting" or "limited voting";
  - (d) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the Memorandum of Association (subject, nevertheless, to the Law), and may by such resolution determine that, as between the holders of the shares resulting from such sub-division, one or more of the shares may have any such preferred, deferred or other rights or be subject to any such restrictions as compared with the other or others as the Company has power to attach to unissued or new shares;

- (e) cancel any shares which, at the date of the passing of the resolution, have not been taken, or agreed to be taken, by any person, and diminish the amount of its capital by the amount of the shares so cancelled or, in the case of shares, without par value, diminish the number of shares into which its capital is divided.
- 5. The Board may settle as it considers expedient any difficulty which arises in relation to any consolidation and division under the last preceding Article and in particular but without prejudice to the generality of the foregoing may issue certificates in respect of fractions of shares or arrange for the sale of the shares representing fractions and the distribution of the net proceeds of sale (after deduction of the expenses of such sale) in due proportion amongst the Members who would have been entitled to the fractions, and for this purpose the Board may authorise some person to transfer the shares representing fractions to their purchaser or resolve that such net proceeds be paid to the Company for the Company's benefit. Such purchaser will not be bound to see to the application of the purchase money nor will his title to the shares be affected by any irregularity or invalidity in the proceedings relating to the sale.
- 6. The Company may from time to time by special resolution, subject to any confirmation or consent required by the Law, reduce its share capital or any capital redemption reserve in any manner permitted by law.
- 7. Except so far as otherwise provided by the conditions of issue, or by these Articles, any capital raised by the creation of new shares shall be treated as if it formed part of the original capital of the Company, and such shares shall be subject to the provisions contained in these Articles with reference to the payment of calls and instalments, transfer and transmission, forfeiture, lien, cancellation, surrender, voting and otherwise.

### **SHARE RIGHTS**

- 8. (1) Subject to the provisions of the Law, the rules of the Designated Stock Exchange and the Memorandum and Articles of Association and to any special rights conferred on the holders of any shares or class of shares, and without prejudice to Article 12 hereof, any share in the Company (whether forming part of the present capital or not) may be issued with or have attached thereto such rights or restrictions whether in regard to dividend, voting, return of capital or otherwise as the Board may determine, including without limitation on terms that they may be, or at the option of the Company or the holder are, liable to be redeemed on such terms and in such manner, including out of capital, as the Board may deem fit.
- (2) Subject to the Law, any preferred shares may be issued or converted into shares that, at a determinable date or at the option of the Company or the holder thereof, are to be redeemed or are liable to be redeemed on such terms and in such manner as the Directors may in their absolute discretion determine.

9. Subject to Article 8(1), the Memorandum of Association and any resolution of the Members to the contrary and without prejudice to any special rights conferred thereby on the holders of any other shares or class of shares, the share capital of the Company shall be divided into shares of three classes, Class A Ordinary Shares, Class B Ordinary Shares and preferred shares. The Class A Ordinary Shares and Class B Ordinary Shares shall carry equal rights and rank *pari passu* with one another other than as set out below.

(a) *As regards conversion from Class B Ordinary Shares to Class A Ordinary Shares*

- (i) Subject to the provisions hereof (including, without limitation, Article 9(a)(vii) and to compliance with all fiscal and other laws and regulations applicable thereto, including the Law), (A) the Class B Ordinary Shares shall be subject to automatic conversion on the Automatic Conversion Date; and (B) a holder of Class B Ordinary Shares shall have the Conversion Right in respect of each Class B Ordinary Share. Any and all taxes and stamp, issue and registration duties (if any) arising on any conversion (whether automatic or optional) shall be borne by the Company.
- (ii) Subject to the provisions hereof (including, without limitation, Article 9(a)(vii) and to compliance with all fiscal and other laws and regulations applicable thereto, including the Law), each Class B Ordinary Share shall be converted at any time after issue and without the payment of any additional sum, into such number of fully paid Class A Ordinary Shares calculated at the Conversion Rate then in effect EITHER:
  - (A) *at the option of the holder*. Such conversion shall take effect on the Conversion Date. A Conversion Notice shall not be effective if it is not accompanied by the share certificates in respect of the relevant Class B Ordinary Shares and such other evidence (if any) as the Directors may reasonably require to prove the title of the person exercising such right (or, if such certificates have been lost or destroyed, such evidence of title and such indemnity as the Directors may reasonably require); OR
  - (B) *automatically*. Such conversion shall take effect on the Automatic Conversion Date, and a Conversion Notice shall not be required to be delivered to the Company give effect to such automatic conversion,
- (iii) To the extent the Conversion Rate is one Class A Ordinary Share for one Class B Ordinary Share, on the Conversion Date or the Automatic Conversion Date, as the case may be, every Class B Ordinary Share shall automatically be re-designated and re-classified as a Class A Ordinary Share with such rights and restrictions attached to and shall rank *pari passu* in all respects with the Class A Ordinary Shares then in issue.
- (iv) If the Conversion Rate is not on a one for one basis, the conversion shall take effect in such manner permitted by law (including, without limitation, by way of repurchase set out in Section 37 of the Companies Law Cap. 22 of the Cayman Islands) as any one Independent Director, considers appropriate without the further authorization of the Board and any one Independent Director shall have all such power and take all actions necessary to give effect to such conversion.

- (v) Subject to the provisions hereof (including, without limitation, Article 9(a)(vii) and to compliance with all fiscal and other laws and regulations applicable thereto, including the Law), on the Conversion Date or the Automatic Conversion Date, as the case may be, the Company shall allot and issue the relevant Class A Ordinary Shares to the converting Shareholder, repurchase and cancel the relevant Class B Ordinary Shares, enter or procure the entry of the name of the relevant holder of Class B Ordinary Shares as the holder of the relevant number of Class A Ordinary Shares resulting from the conversion of the Class B Ordinary Shares in, and make any other necessary and consequential changes to, the Register of Members and shall procure that certificates in respect of the relevant Class A Ordinary Shares, together with a new certificate for any unconverted Class B Ordinary Shares comprised in the certificate(s) surrendered by the holder of the Class B Ordinary Shares, are issued to the holders of the Class A Ordinary Shares and Class B Ordinary Shares, as the case may be.
  
- (vi) Until such time as the Class B Ordinary Shares have been converted into Class A Ordinary Shares the Company shall:
  - (1) at all times keep available for issue and free of all liens, charges, options, mortgages, pledges, claims, equities, encumbrances and other third-party rights of any nature, and not subject to any pre-emptive rights out of its authorized but unissued share capital, such number of authorized but unissued Class A Ordinary Shares as would enable all Class B Ordinary Shares to be converted into Class A Ordinary Shares and any other rights of conversion into, subscription for or exchange into Class A Ordinary Shares to be satisfied in full;
  
  - (2) maintain such amounts standing to the credit of its share premium and share capital accounts as to permit the conversion of the Class B Ordinary Shares into Class A Ordinary Shares by way of repurchase pursuant to Section 37 of the Companies Law Cap. 22 of the Cayman Islands; and
  
  - (3) not make any issue, grant or distribution or take any other action if the effect would be that on the conversion of the Class B Ordinary Shares to Class A Ordinary Shares it would be required to issue Class A Ordinary Shares at a price lower than the par value thereof.
  
- (vii) The Class B Ordinary Shares shall not be converted into Class A Ordinary Shares, either on the Conversion Date or the Automatic Conversion Date if the Board of Directors resolves by way of a super majority vote of 75% of the members of the Board that such conversion shall, in their opinion, result in the Company and/or any of the VIE Entities failing to comply with any foreign ownership restrictions applicable to the Company.



(b) *Adjustments of Conversion Rate and/or Conversion Price*

- (i) Subject as herein provided, the Conversion Rate shall from time to time be adjusted in accordance with the following relevant provisions.
- (ii) If and whenever a Class A Ordinary Share by reason of any consolidation or sub-division becomes of a different nominal amount, the Conversion Rate in force immediately prior thereto shall be adjusted by multiplying it by the revised nominal amount and dividing the result by the former nominal amount. Within two (2) Business Days of any such adjustment the Company will send to the holder of Class B Ordinary Shares a certificate signed by a Director of the Company setting forth brief particulars of the event giving rise to the adjustment, the Conversion Rate in effect prior to such adjustment, the adjusted Conversion Rate on the effective date of the adjustment. Each such adjustment shall be effective from the close of business in Hong Kong on the day preceding the date on which the consolidation or sub-division becomes effective.

(c) *As regards Voting Rights*

- (i) At all times during the period from the coming into effect of these Articles, each Class B Ordinary Shares shall carry the right to one (1) vote per Class B Ordinary Share at a meeting of Members, other than in respect of the following matters only, in respect of which the Class B Ordinary Shares shall carry the right to twenty (20) votes per Class B Ordinary Shares at a meeting of the Members: (a) the appointment or removal of a majority of the Directors of the Company in accordance with the provisions of, *inter alia*, Articles 86(4) and 86(5); and (b) any amendment of these Articles or the provisions of the Memorandum of Association that would adversely affect the rights of the holders of the Class B Ordinary Shares.
- (ii) At all times during the period from the coming into effect of these Articles, each Class A Ordinary Share shall carry the right to one (1) vote per Class A Ordinary Share at a meeting of Members.

(d) *As regards Transfers of Class B Ordinary Shares*

The Class B Ordinary Shares may not be assigned or transferred in whole or in part by William Wei Huang or any of the entities in whose name any Class B Ordinary Shares are registered as at the effective date of these Articles. Class B Ordinary Shares must be converted into Class A Ordinary Shares prior to any such assignment or transfer.

- (e) *As regards conversion of Class A Ordinary Shares and the acquisition of additional Class B Ordinary Shares by William Wei Huang*
- (i) Class A Ordinary Shares are not convertible into Class B Ordinary Shares at any time other than pursuant to the provisions of Article 9(e)(ii).
  - (ii) William Wei Huang shall only acquire Class A Ordinary Shares in his own name or through an entity established or controlled by him and through which William Wei Huang Beneficially Owns all of the Class A Ordinary Shares registered in the name of such entity. Any Class A Ordinary Shares so acquired from time to time (whether by allotment and issue of new shares or the acquisition of issued Class A Ordinary Shares) will be automatically converted into Class B Ordinary Shares at the Conversion Rate and the provisions of Articles 9(a) and 9(b) shall apply, *mutatis mutandis*, to any such conversion of Class A Ordinary Shares into Class B Ordinary Shares.

### **VARIATION OF RIGHTS**

10. Subject to the Law and without prejudice to Article 8, all or any of the special rights for the time being attached to the shares or any class of shares may, unless otherwise provided by the terms of issue of the shares of that class, from time to time (whether or not the Company is being wound up) be varied, modified or abrogated with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of that class. To every such separate general meeting, all the provisions of these Articles relating to general meetings of the Company shall, *mutatis mutandis*, apply, but so that:
- (a) the necessary quorum (whether at a separate general meeting or at its adjourned meeting) shall be a person or persons (or in the case of a Member being a corporation, its duly authorized representative) together holding or representing by proxy not less than one-third in nominal value of the issued shares of that class;
  - (b) every holder of shares of the class shall be entitled on a poll to one vote for every such share held by him; and
  - (c) any holder of shares of the class present in person or by proxy or authorised representative may demand a poll.
11. The special rights conferred upon the holders of any shares or class of shares shall not, unless otherwise expressly provided in the rights attaching to or the terms of issue of such shares, be deemed to be varied, modified or abrogated by the creation or issue of further shares ranking *pari passu* therewith.

## SHARES

12. (1) Subject to the Law, these Articles (including without limitation 102(4)(b)) and, where applicable, the rules of the Designated Stock Exchange and without prejudice to any special rights or restrictions for the time being attached to any shares or any class of shares, the unissued shares of the Company (whether forming part of the original or any increased capital) shall be at the disposal of the Board, which may offer, allot, grant options over or otherwise dispose of them to such persons, at such times and for such consideration and upon such terms and conditions as the Board may in its absolute discretion determine but so that no shares shall be issued at a discount. In particular and without prejudice to the generality of the foregoing, the Board is hereby empowered to authorize by resolution or resolutions from time to time the issuance of one or more classes or series of preferred shares and to fix the designations, powers, preferences and relative, participating, optional and other rights, if any, and the qualifications, limitations and restrictions thereof, if any, including, without limitation, the number of shares constituting each such class or series, dividend rights, conversion rights, redemption privileges, voting powers, full or limited or no voting powers, and liquidation preferences, and to increase or decrease the size of any such class or series (but not below the number of shares of any class or series of preferred shares then outstanding) to the extent permitted by Law. Without limiting the generality of the foregoing, the resolution or resolutions providing for the establishment of any class or series of preferred shares may, to the extent permitted by law, provide that such class or series shall be superior to, rank equally with or be junior to the preferred shares of any other class or series.
  - (2) Neither the Company nor the Board shall be obliged, when making or granting any allotment of, offer of, option over or disposal of shares, to make, or make available, any such allotment, offer, option or shares to Members or others with registered addresses in any particular territory or territories being a territory or territories where, in the absence of a registration statement or other special formalities, this would or might, in the opinion of the Board, be unlawful or impracticable. Members affected as a result of the foregoing sentence shall not be, or be deemed to be, a separate class of Members for any purpose whatsoever. Except as otherwise expressly provided in the resolution or resolutions providing for the establishment of any class or series of preferred shares, no vote of the holders of preferred shares or ordinary shares shall be a prerequisite to the issuance of any shares of any class or series of the preferred shares authorized by and complying with the conditions of the Memorandum and Articles of Association.
  - (3) The Board may issue options, warrants or convertible securities or securities of similar nature conferring the right upon the holders thereof to subscribe for, purchase or receive any class of shares or securities in the capital of the Company on such terms as it may from time to time determine.
13. The Company may in connection with the issue of any shares exercise all powers of paying commission and brokerage conferred or permitted by the Law. Subject to the Law, the commission may be satisfied by the payment of cash or by the allotment of fully or partly paid shares or partly in one and partly in the other.

14. Except as required by law, no person shall be recognised by the Company as holding any share upon any trust and the Company shall not be bound by or required in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any share or any fractional part of a share or (except only as otherwise provided by these Articles or by law) any other rights in respect of any share except an absolute right to the entirety thereof in the registered holder.
15. Subject to the Law and these Articles, the Board may at any time after the allotment of shares but before any person has been entered in the Register as the holder, recognise a renunciation thereof by the allottee in favour of some other person and may accord to any allottee of a share a right to effect such renunciation upon and subject to such terms and conditions as the Board considers fit to impose.

### **SHARE CERTIFICATES**

16. Every share certificate shall be issued under the Seal or a facsimile thereof and shall specify the number and class and distinguishing numbers (if any) of the shares to which it relates, and the amount paid up thereon and may otherwise be in such form as the Directors may from time to time determine. No certificate shall be issued representing shares of more than one class. The Board may by resolution determine, either generally or in any particular case or cases, that any signatures on any such certificates (or certificates in respect of other securities) need not be autographic but may be affixed to such certificates by some mechanical means or may be printed thereon.
17.
  - (1) In the case of a share held jointly by several persons, the Company shall not be bound to issue more than one certificate therefor and delivery of a certificate to one of several joint holders shall be sufficient delivery to all such holders.
  - (2) Where a share stands in the names of two or more persons, the person first named in the Register shall as regards service of notices and, subject to the provisions of these Articles, all or any other matters connected with the Company, except the transfer of the shares, be deemed the sole holder thereof.
18. Every person whose name is entered, upon an allotment of shares, as a Member in the Register shall be entitled, without payment, to receive one certificate for all such shares of any one class or several certificates each for one or more of such shares of such class upon payment for every certificate after the first of such reasonable out-of-pocket expenses as the Board from time to time determines.
19. Share certificates shall be issued within the relevant time limit as prescribed by the Law or as the Designated Stock Exchange may from time to time determine, whichever is the shorter, after allotment or, except in the case of a transfer which the Company is for the time being entitled to refuse to register and does not register, after lodgment of a transfer with the Company.

20. (1) Upon every transfer of shares the certificate held by the transferor shall be given up to be cancelled, and shall forthwith be cancelled accordingly, and a new certificate shall be issued to the transferee in respect of the shares transferred to him at such fee as is provided in paragraph (2) of this Article. If any of the shares included in the certificate so given up shall be retained by the transferor a new certificate for the balance shall be issued to him at the aforesaid fee payable by the transferor to the Company in respect thereof.
- (2) The fee referred to in paragraph (1) above shall be an amount not exceeding the relevant maximum amount as the Designated Stock Exchange may from time to time determine provided that the Board may at any time determine a lower amount for such fee.
21. If a share certificate shall be damaged or defaced or alleged to have been lost, stolen or destroyed a new certificate representing the same shares may be issued to the relevant Member upon request and on payment of such fee as the Company may determine and, subject to compliance with such terms (if any) as to evidence and indemnity and to payment of the costs and reasonable out-of-pocket expenses of the Company in investigating such evidence and preparing such indemnity as the Board may think fit and, in case of damage or defacement, on delivery of the old certificate to the Company provided always that where share warrants have been issued, no new share warrant shall be issued to replace one that has been lost unless the Board has determined that the original has been destroyed.

#### **LIEN**

22. The Company shall have a first and paramount lien on every share (not being a fully paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share. The Company shall also have a first and paramount lien on every share (not being a fully paid share) registered in the name of a Member (whether or not jointly with other Members) for all amounts of money presently payable by such Member or his estate to the Company whether the same shall have been incurred before or after notice to the Company of any equitable or other interest of any person other than such member, and whether the period for the payment or discharge of the same shall have actually arrived or not, and notwithstanding that the same are joint debts or liabilities of such Member or his estate and any other person, whether a Member of the Company or not. The Company's lien on a share shall extend to all dividends or other moneys payable thereon or in respect thereof. The Board may at any time, generally or in any particular case, waive any lien that has arisen or declare any share exempt in whole or in part, from the provisions of this Article.
23. Subject to these Articles, the Company may sell in such manner as the Board determines any share on which the Company has a lien, but no sale shall be made unless some sum in respect of which the lien exists is presently payable, or the liability or engagement in respect of which such lien exists is liable to be presently fulfilled or discharged nor until the expiration of fourteen (14) clear days after a notice in writing, stating and demanding payment of the sum presently payable, or specifying the liability or engagement and demanding fulfilment or discharge thereof and giving notice of the intention to sell in default, has been served on the registered holder for the time being of the share or the person entitled thereto by reason of his death or bankruptcy.

24. The net proceeds of the sale shall be received by the Company and applied in or towards payment or discharge of the debt or liability in respect of which the lien exists, so far as the same is presently payable, and any residue shall (subject to a like lien for debts or liabilities not presently payable as existed upon the share prior to the sale) be paid to the person entitled to the share at the time of the sale. To give effect to any such sale the Board may authorise some person to transfer the shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the shares so transferred and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings relating to the sale.

### **CALLS ON SHARES**

25. Subject to these Articles and to the terms of allotment, the Board may from time to time make calls upon the Members in respect of any moneys unpaid on their shares (whether on account of the nominal value of the shares or by way of premium), and each Member shall (subject to being given at least fourteen (14) clear days' Notice specifying the time and place of payment) pay to the Company as required by such notice the amount called on his shares. A call may be extended, postponed or revoked in whole or in part as the Board determines but no member shall be entitled to any such extension, postponement or revocation except as a matter of grace and favour.
26. A call shall be deemed to have been made at the time when the resolution of the Board authorising the call was passed and may be made payable either in one lump sum or by instalments.
27. A person upon whom a call is made shall remain liable for calls made upon him notwithstanding the subsequent transfer of the shares in respect of which the call was made. The joint holders of a share shall be jointly and severally liable to pay all calls and instalments due in respect thereof or other moneys due in respect thereof.
28. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest on the amount unpaid from the day appointed for payment thereof to the time of actual payment at such rate (not exceeding twenty per cent. (20%) per annum) as the Board may determine, but the Board may in its absolute discretion waive payment of such interest wholly or in part.
29. No Member shall be entitled to receive any dividend or bonus or to be present and vote (save as proxy for another Member) at any general meeting either personally or by proxy, or be reckoned in a quorum, or exercise any other privilege as a Member until all calls or instalments due by him to the Company, whether alone or jointly with any other person, together with interest and expenses (if any) shall have been paid.
30. On the trial or hearing of any action or other proceedings for the recovery of any money due for any call, it shall be sufficient to prove that the name of the Member sued is entered in the Register as the holder, or one of the holders, of the shares in respect of which such debt accrued, that the resolution making the call is duly recorded in the minute book, and that notice of such call was duly given to the Member sued, in pursuance of these Articles; and it shall not be necessary to prove the appointment of the Directors who made such call, nor any other matters whatsoever, but the proof of the matters aforesaid shall be conclusive evidence of the debt.



31. Any amount payable in respect of a share upon allotment or at any fixed date, whether in respect of nominal value or premium or as an instalment of a call, shall be deemed to be a call duly made and payable on the date fixed for payment and if it is not paid the provisions of these Articles shall apply as if that amount had become due and payable by virtue of a call duly made and notified.
32. On the issue of shares the Board may differentiate between the allottees or holders as to the amount of calls to be paid and the times of payment.
33. The Board may, if it thinks fit, receive from any Member willing to advance the same, and either in money or money's worth, all or any part of the moneys uncalled and unpaid or instalments payable upon any shares held by him and upon all or any of the moneys so advanced (until the same would, but for such advance, become presently payable) pay interest at such rate (if any) as the Board may decide. The Board may at any time repay the amount so advanced upon giving to such Member not less than one month's Notice of its intention in that behalf, unless before the expiration of such notice the amount so advanced shall have been called up on the shares in respect of which it was advanced. Such payment in advance shall not entitle the holder of such share or shares to participate in respect thereof in a dividend subsequently declared.

#### **FORFEITURE OF SHARES**

34. (1) If a call remains unpaid after it has become due and payable the Board may give to the person from whom it is due not less than fourteen (14) clear days' Notice:
  - (a) requiring payment of the amount unpaid together with any interest which may have accrued and which may still accrue up to the date of actual payment; and
  - (b) stating that if the Notice is not complied with the shares on which the call was made will be liable to be forfeited.
- (2) If the requirements of any such Notice are not complied with, any share in respect of which such Notice has been given may at any time thereafter, before payment of all calls and interest due in respect thereof has been made, be forfeited by a resolution of the Board to that effect, and such forfeiture shall include all dividends and bonuses declared in respect of the forfeited share but not actually paid before the forfeiture.
35. When any share has been forfeited, notice of the forfeiture shall be served upon the person who was before forfeiture the holder of the share. No forfeiture shall be invalidated by any omission or neglect to give such Notice.
36. The Board may accept the surrender of any share liable to be forfeited hereunder and, in such case, references in these Articles to forfeiture will include surrender.
37. Any share so forfeited shall be deemed the property of the Company and may be sold, re-allotted or otherwise disposed of to such person, upon such terms and in such manner as the Board determines, and at any time before a sale, re-allotment or disposition the forfeiture may be annulled by the Board on such terms as the Board determines.

38. A person whose shares have been forfeited shall cease to be a Member in respect of the forfeited shares but nevertheless shall remain liable to pay the Company all moneys which at the date of forfeiture were presently payable by him to the Company in respect of the shares, with (if the Directors shall in their discretion so require) interest thereon from the date of forfeiture until payment at such rate (not exceeding twenty per cent. (20%) per annum) as the Board determines. The Board may enforce payment thereof if it thinks fit, and without any deduction or allowance for the value of the forfeited shares, at the date of forfeiture, but his liability shall cease if and when the Company shall have received payment in full of all such moneys in respect of the shares. For the purposes of this Article any sum which, by the terms of issue of a share, is payable thereon at a fixed time which is subsequent to the date of forfeiture, whether on account of the nominal value of the share or by way of premium, shall notwithstanding that time has not yet arrived be deemed to be payable at the date of forfeiture, and the same shall become due and payable immediately upon the forfeiture, but interest thereon shall only be payable in respect of any period between the said fixed time and the date of actual payment.
39. A declaration by a Director or the Secretary that a share has been forfeited on a specified date shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share, and such declaration shall (subject to the execution of an instrument of transfer by the Company if necessary) constitute a good title to the share, and the person to whom the share is disposed of shall be registered as the holder of the share and shall not be bound to see to the application of the consideration (if any), nor shall his title to the share be affected by any irregularity in or invalidity of the proceedings in reference to the forfeiture, sale or disposal of the share. When any share shall have been forfeited, notice of the declaration shall be given to the Member in whose name it stood immediately prior to the forfeiture, and an entry of the forfeiture, with the date thereof, shall forthwith be made in the register, but no forfeiture shall be in any manner invalidated by any omission or neglect to give such notice or make any such entry.
40. Notwithstanding any such forfeiture as aforesaid, the Board may at any time, before any shares so forfeited shall have been sold, re-allotted or otherwise disposed of, permit the shares forfeited to be bought back upon the terms of payment of all calls and interest due upon and expenses incurred in respect of the share, and upon such further terms (if any) as it thinks fit.
41. The forfeiture of a share shall not prejudice the right of the Company to any call already made or instalment payable thereon.
42. The provisions of these Articles as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the nominal value of the share or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

## **REGISTER OF MEMBERS**

43. (1) The Company shall keep in one or more books a Register of its Members and shall enter therein the following particulars, that is to say:
- (a) the name and address of each Member, the number and class of shares held by him and the amount paid or agreed to be considered as paid on such shares;
  - (b) the date on which each person was entered in the Register; and
  - (c) the date on which any person ceased to be a Member.
- (2) The Company may keep an overseas or local or other branch register of Members resident in any place, and the Board may make and vary such regulations as it determines in respect of the keeping of any such register and maintaining a Registration Office in connection therewith.
44. The Register and branch register of Members, as the case may be, shall be open to inspection for such times and on such days as the Board shall determine by Members without charge or by any other person, upon a maximum payment of \$2.50 or such other sum specified by the Board, at the Office or Registration Office or such other place at which the Register is kept in accordance with the Law. The Register including any overseas or local or other branch register of Members may, after compliance with any notice requirement of the Designated Stock Exchange, be closed at such times or for such periods not exceeding in the whole thirty (30) days in each year as the Board may determine and either generally or in respect of any class of shares.

## **RECORD DATES**

45. (1) For the purpose of determining the Members entitled to notice of or to vote at any general meeting, or any adjournment thereof, or entitled to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of shares or for the purpose of any other lawful action, the Board may fix, in advance, a date as the record date for any such determination of Members, which date shall not be more than sixty (60) days nor less than ten (10) days before the date of such meeting, nor more than sixty (60) days prior to any other such action.
- (2) If the Board does not fix a record date for any general meeting, the record date for determining the Members entitled to a notice of or to vote at such meeting shall be at the close of business on the day next preceding the day on which notice is given, or, if in accordance with these Articles notice is waived, at the close of business on the day next preceding the day on which the meeting is held. The record date for determining the Members for any other purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.
- (3) A determination of the Members of record entitled to notice of or to vote at a meeting of the Members shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

## TRANSFER OF SHARES

46. Subject to these Articles including, without limitation, in the case of Class B Ordinary Shares, Article 9(d), any Member may transfer all or any of his shares by an instrument of transfer in the usual or common form or in a form prescribed by the Designated Stock Exchange or in any other form approved by the Board and may be under hand or, if the transferor or transferee is a clearing house or a central depository house or its nominee(s), by hand or by machine imprinted signature or by such other manner of execution as the Board may approve from time to time.
47. The instrument of transfer shall be executed by or on behalf of the transferor and the transferee provided that the Board may dispense with the execution of the instrument of transfer by the transferee in any case which it thinks fit in its discretion to do so. Without prejudice to the last preceding Article, the Board may also resolve, either generally or in any particular case, upon request by either the transferor or transferee, to accept mechanically executed transfers. The transferor shall be deemed to remain the holder of the share until the name of the transferee is entered in the Register in respect thereof. Nothing in these Articles shall preclude the Board from recognising a renunciation of the allotment or provisional allotment of any share by the allottee in favour of some other person.
48. (1) The Board may, in its absolute discretion, and without giving any reason therefor, refuse to register a transfer of any share (not being a fully paid up share) to a person of whom it does not approve, or any share issued under any share incentive scheme for employees upon which a restriction on transfer imposed thereby still subsists, and it may also, without prejudice to the foregoing generality, refuse to register a transfer of any share to more than four joint holders or a transfer of any share (not being a fully paid up share) on which the Company has a lien.
- (2) The Board in so far as permitted by any applicable law may, in its absolute discretion, at any time and from time to time transfer any share upon the Register to any branch register or any share on any branch register to the Register or any other branch register. In the event of any such transfer, the shareholder requesting such transfer shall bear the cost of effecting the transfer unless the Board otherwise determines.
- (3) Unless the Board otherwise agrees (which agreement may be on such terms and subject to such conditions as the Board in its absolute discretion may from time to time determine, and which agreement the Board shall, without giving any reason therefor, be entitled in its absolute discretion to give or withhold), no shares upon the Register shall be transferred to any branch register nor shall shares on any branch register be transferred to the Register or any other branch register and all transfers and other documents of title shall be lodged for registration, and registered, in the case of any shares on a branch register, at the relevant Registration Office, and, in the case of any shares on the Register, at the Office or such other place at which the Register is kept in accordance with the Law.

49. Without limiting the generality of the last preceding Article, the Board may decline to recognise any instrument of transfer unless:–
- (a) a fee of such maximum sum as the Designated Stock Exchange may determine to be payable or such lesser sum as the Board may from time to time require is paid to the Company in respect thereof;
  - (b) the instrument of transfer is in respect of only one class of share;
  - (c) the instrument of transfer is lodged at the Office or such other place at which the Register is kept in accordance with the Law or the Registration Office (as the case may be) accompanied by the relevant share certificate(s) and such other evidence as the Board may reasonably require to show the right of the transferor to make the transfer (and, if the instrument of transfer is executed by some other person on his behalf, the authority of that person so to do); and
  - (d) if applicable, the instrument of transfer is duly and properly stamped.
50. If the Board refuses to register a transfer of any share, it shall, within three months after the date on which the transfer was lodged with the Company, send to each of the transferor and transferee notice of the refusal.
51. The registration of transfers of shares or of any class of shares may, after compliance with any notice requirement of the Designated Stock Exchange, be suspended at such times and for such periods (not exceeding in the whole thirty (30) days in any year) as the Board may determine.

### **TRANSMISSION OF SHARES**

52. If a Member dies, the survivor or survivors where the deceased was a joint holder, and his legal personal representatives where he was a sole or only surviving holder, will be the only persons recognised by the Company as having any title to his interest in the shares; but nothing in this Article will release the estate of a deceased Member (whether sole or joint) from any liability in respect of any share which had been solely or jointly held by him.
53. Any person becoming entitled to a share in consequence of the death or bankruptcy or winding-up of a Member may, upon such evidence as to his title being produced as may be required by the Board, elect either to become the holder of the share or to have some person nominated by him registered as the transferee thereof. If he elects to become the holder he shall notify the Company in writing either at the Registration Office or Office, as the case may be, to that effect. If he elects to have another person registered he shall execute a transfer of the share in favour of that person. The provisions of these Articles relating to the transfer and registration of transfers of shares shall apply to such notice or transfer as aforesaid as if the death or bankruptcy of the Member had not occurred and the notice or transfer were a transfer signed by such Member.

54. A person becoming entitled to a share by reason of the death or bankruptcy or winding-up of a Member shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share. However, the Board may, if it thinks fit, withhold the payment of any dividend payable or other advantages in respect of such share until such person shall become the registered holder of the share or shall have effectually transferred such share, but, subject to the requirements of Article 75(2) being met, such a person may vote at meetings.

### UNTRACEABLE MEMBERS

55. (1) Without prejudice to the rights of the Company under paragraph (2) of this Article, the Company may cease sending cheques for dividend entitlements or dividend warrants by post if such cheques or warrants have been left uncashed on two consecutive occasions. However, the Company may exercise the power to cease sending cheques for dividend entitlements or dividend warrants after the first occasion on which such a cheque or warrant is returned undelivered.
- (2) The Company shall have the power to sell, in such manner as the Board thinks fit, any shares of a Member who is untraceable, but no such sale shall be made unless:
- (a) all cheques or warrants in respect of dividends of the shares in question, being not less than three in total number, for any sum payable in cash to the holder of such shares in respect of them sent during the relevant period in the manner authorised by the Articles of the Company have remained uncashed;
  - (b) so far as it is aware at the end of the relevant period, the Company has not at any time during the relevant period received any indication of the existence of the Member who is the holder of such shares or of a person entitled to such shares by death, bankruptcy or operation of law; and
  - (c) the Company, if so required by the rules governing the listing of shares on the Designated Stock Exchange, has given notice to, and caused advertisement in newspapers to be made in accordance with the requirements of, the Designated Stock Exchange of its intention to sell such shares in the manner required by the Designated Stock Exchange, and a period of three months or such shorter period as may be allowed by the Designated Stock Exchange has elapsed since the date of such advertisement.

For the purpose of the foregoing, the “relevant period” means the period commencing twelve (12) years before the date of publication of the advertisement referred to in paragraph (c) of this Article and ending at the expiry of the period referred to in that paragraph.



- (3) To give effect to any such sale the Board may authorise some person to transfer the said shares and an instrument of transfer signed or otherwise executed by or on behalf of such person shall be as effective as if it had been executed by the registered holder or the person entitled by transmission to such shares, and the purchaser shall not be bound to see to the application of the purchase money nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings relating to the sale. The net proceeds of the sale will belong to the Company and upon receipt by the Company of such net proceeds it shall become indebted to the former Member for an amount equal to such net proceeds. No trust shall be created in respect of such debt and no interest shall be payable in respect of it and the Company shall not be required to account for any money earned from the net proceeds which may be employed in the business of the Company or as it thinks fit. Any sale under this Article shall be valid and effective notwithstanding that the Member holding the shares sold is dead, bankrupt or otherwise under any legal disability or incapacity.

### GENERAL MEETINGS

56. An annual general meeting of the Company shall be held in each year other than the year in which these Articles were adopted at such time and place as may be determined by the Board.
57. Each general meeting, other than an annual general meeting, shall be called an extraordinary general meeting. General meetings may be held at such times and in any location in the world as may be determined by the Board.
58. (1) A majority of the Board or the Chairman of the Board may call extraordinary general meetings, which extraordinary general meetings shall be held at such times and locations (as permitted hereby) as such person or persons shall determine.
- (2) In addition to the powers to call meetings set out in Article 58(1):
- (i) for so long as either STT or the holders of the Class B Ordinary Shares and William Wei Huang have the right to nominate or appoint Directors contained in Articles 86(2) and Article 86(4), respectively, STT and/or William Wei Huang and/or any one or more of the registered holders of Class B Ordinary Shares (as the case may be) shall at all times have the right, by written requisition to the Board or the Secretary of the Company, to require an extraordinary general meeting to be called by the Board for the transaction of any business necessary for the nomination and appointment of any such Directors;
  - (ii) for so long as STT has the right to appoint any STT Director pursuant to Article 86(2), any one or more Members (other than STT or any affiliate of STT controlled by STT) holding at the date of deposit of the requisition not less than one-third of the issued Class A Ordinary Shares (excluding for the purposes of this Article 58(2)(ii), any Class A Ordinary Shares Beneficially Owned by STT or any affiliate of STT controlled by STT) shall at all times have the right, by written requisition to the Board or the Secretary of the Company, to require an extraordinary general meeting to be called by the Board for the transaction of any business specified in such requisition; and



- (iii) for so long as STT ceases to have the right to appoint any STT Director pursuant to Article 86(2), any one or more Members (including STT or any affiliate of STT controlled by STT) holding at the date of deposit of the requisition not less than one-third of the issued Class A Ordinary Shares shall at all times have the right, by written requisition to the Board or the Secretary of the Company, to require an extraordinary general meeting to be called by the Board for the transaction of any business specified in such requisition.
- (3) Any such meeting shall be held within two (2) months after the deposit of such requisition. If within ten (10) days of such deposit the Board fails to proceed to convene such meeting the requisitionist(s) himself (themselves) may do so in the same manner, and all reasonable expenses incurred by the requisitionist(s) as a result of the failure of the Board shall be reimbursed to the requisitionist(s) by the Company.

### **NOTICE OF GENERAL MEETINGS**

- 59. (1) An annual general meeting and any extraordinary general meeting may be called by not less than ten (10) clear days' Notice but a general meeting may be called by shorter notice, subject to the Law, if it is so agreed:
    - (a) in the case of a meeting called as an annual general meeting, by all the Members entitled to attend and vote thereat; and
    - (b) in the case of any other meeting, by a majority in number of the Members having the right to attend and vote at the meeting, being a majority together holding not less than ninety-five per cent. (95%) in nominal value of the issued shares giving that right.
  - (2) The notice shall specify the time and place of the meeting and, in case of special business, the general nature of the business. The notice convening an annual general meeting shall specify the meeting as such. Notice of every general meeting shall be given to all Members other than to such Members as, under the provisions of these Articles or the terms of issue of the shares they hold, are not entitled to receive such notices from the Company, to all persons entitled to a share in consequence of the death or bankruptcy or winding-up of a Member and to each of the Directors and the Auditors.
60. The accidental omission to give Notice of a meeting or (in cases where instruments of proxy are sent out with the Notice) to send such instrument of proxy to, or the non-receipt of such Notice or such instrument of proxy by, any person entitled to receive such Notice shall not invalidate any resolution passed or the proceedings at that meeting.

## PROCEEDINGS AT GENERAL MEETINGS

61. (1) All business shall be deemed special that is transacted at an extraordinary general meeting, and also all business that is transacted at an annual general meeting, with the exception of the election of Directors.
  - (2) No business other than the appointment of a chairman of a meeting shall be transacted at any general meeting unless a quorum is present at the commencement of the business. At any general meeting of the Company, two (2) Members entitled to vote and present in person or by proxy or (in the case of a Member being a corporation) by its duly authorised representative representing not less than one-third in nominal value of the total issued voting shares in the Company throughout the meeting shall form a quorum for all purposes.
62. If within thirty (30) minutes (or such longer time not exceeding one hour as the chairman of the meeting may determine to wait) after the time appointed for the meeting a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Board may determine. If at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the meeting shall be dissolved.
63. The chairman of the Company shall preside as chairman at every general meeting. If at any meeting the chairman is not present within fifteen (15) minutes after the time appointed for holding the meeting, or is not willing to act as chairman, the Directors present shall choose one of their number to act, or if one Director only is present he shall preside as chairman if willing to act. If no Director is present, or if each of the Directors present declines to take the chair, or if the chairman chosen shall retire from the chair, the Members present in person or by proxy and entitled to vote shall elect one of their number to be chairman.
64. The chairman may adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business which might lawfully have been transacted at the meeting had the adjournment not taken place. When a meeting is adjourned for fourteen (14) days or more, at least seven (7) clear days' notice of the adjourned meeting shall be given specifying the time and place of the adjourned meeting but it shall not be necessary to specify in such notice the nature of the business to be transacted at the adjourned meeting and the general nature of the business to be transacted. Save as aforesaid, it shall be unnecessary to give notice of an adjournment.
65. If an amendment is proposed to any resolution under consideration but is in good faith ruled out of order by the chairman of the meeting, the proceedings on the substantive resolution shall not be invalidated by any error in such ruling. In the case of a resolution duly proposed as a special resolution, no amendment thereto (other than a mere clerical amendment to correct a patent error) may in any event be considered or voted upon.

## VOTING

66. Subject to any special rights or restrictions as to voting for the time being attached to any shares by or in accordance with these Articles including, without limitation, Article 9(c) and Article 102(4), at any general meeting on a poll every Member present in person or by proxy or, in the case of a Member being a corporation, by its duly authorised representative shall have one vote for every fully paid share of which he is the holder but so that no amount paid up or credited as paid up on a share in advance of calls or instalments is treated for the foregoing purposes as paid up on the share.
67. A resolution put to the vote of a meeting shall be decided by way of a poll save that the chairman of the meeting may in good faith, allow a resolution which relates purely to a procedural or administrative matter to be voted on by a show of hands in which case every Member present in person (or being a corporation, is present by a duly authorized representative), or by proxy(ies) shall have one vote provided that where more than one proxy is appointed by a Member which is a clearing house (or its nominee(s)), each such proxy shall have one vote on a show of hands. For purposes of this Article, procedural and administrative matters are those that (i) are not on the agenda of the general meeting or in any supplementary circular that may be issued by the Company to its Members; and (ii) relate to the chairman's duties to maintain the orderly conduct of the meeting and/or allow the business of the meeting to be properly and effectively dealt with, whilst allowing all Members a reasonable opportunity to express their views.
68. Where a show of hands is allowed, before or on the declaration of the result of the show of hands, a poll may be demanded:
- (a) by at least three Members present in person or in the case of a Member being a corporation by its duly authorised representative or by proxy for the time being entitled to vote at the meeting; or
  - (b) by a Member or Members present in person or in the case of a Member being a corporation by its duly authorised representative or by proxy and representing not less than one-tenth of the total voting rights of all Members having the right to vote at the meeting; or
  - (c) by a Member or Members present in person or in the case of a Member being a corporation by its duly authorised representative or by proxy and holding shares in the Company conferring a right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all shares conferring that right.

A demand by a person as proxy for a Member or in the case of a Member being a corporation by its duly authorised representative shall be deemed to be the same as a demand by the Member.

69. [intentionally omitted].

70. Where a resolution is voted on by a show of hands, a declaration by the chairman that a resolution has been carried, or carried unanimously, or by a particular majority, or not carried by a particular majority, or lost, and an entry to that effect made in the minute book of the Company, shall be conclusive evidence of the facts without proof of the number or proportion of the votes recorded for or against the resolution. The result of the poll shall be deemed to be the resolution of the meeting. The Company shall only be required to disclose the voting figures on a poll if such disclosure is required by the rules of the Designated Stock Exchange.
71. On a poll votes may be given either personally or by proxy.
72. A person entitled to more than one vote on a poll need not use all his votes or cast all the votes he uses in the same way.
73. Subject to any special rights or restrictions as to voting for the time being attached to any shares by or in accordance with these Articles including, without limitation, Article 9(c) and Article 102(4), all questions submitted to a general meeting shall be decided by a simple majority of votes except where a greater majority is required by these Articles or by the Law. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of such general meeting shall not be entitled to a second or casting vote in addition to any other vote he may have.
74. Where there are joint holders of any share any one of such joint holder may vote, either in person or by proxy, in respect of such share as if he were solely entitled thereto, but if more than one of such joint holders be present at any meeting the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders, and for this purpose seniority shall be determined by the order in which the names stand in the Register in respect of the joint holding. Several executors or administrators of a deceased Member in whose name any share stands shall for the purposes of this Article be deemed joint holders thereof.
75. (1) A Member who is a patient for any purpose relating to mental health or in respect of whom an order has been made by any court having jurisdiction for the protection or management of the affairs of persons incapable of managing their own affairs may vote, whether on a show of hands or on a poll, by his receiver, committee, curator bonis or other person in the nature of a receiver, committee or curator bonis appointed by such court, and such receiver, committee, curator bonis or other person may vote on a poll by proxy, and may otherwise act and be treated as if he were the registered holder of such shares for the purposes of general meetings, provided that such evidence as the Board may require of the authority of the person claiming to vote shall have been deposited at the Office, head office or Registration Office, as appropriate, not less than forty-eight (48) hours before the time appointed for holding the meeting, or adjourned meeting or poll, as the case may be.  
  
(2) Any person entitled under Article 53 to be registered as the holder of any shares may vote at any general meeting in respect thereof in the same manner as if he were the registered holder of such shares, provided that forty-eight (48) hours at least before the time of the holding of the meeting or adjourned meeting, as the case may be, at which he proposes to vote, he shall satisfy the Board of his entitlement to such shares, or the Board shall have previously admitted his right to vote at such meeting in respect thereof.

76. No Member shall, unless the Board otherwise determines, be entitled to attend and vote and to be reckoned in a quorum at any general meeting unless he is duly registered and all calls or other sums presently payable by him in respect of shares in the Company have been paid.

77. If:

(a) any objection shall be raised to the qualification of any voter; or

(b) any votes have been counted which ought not to have been counted or which might have been rejected; or

(c) any votes are not counted which ought to have been counted;

the objection or error shall not vitiate the decision of the meeting or adjourned meeting on any resolution unless the same is raised or pointed out at the meeting or, as the case may be, the adjourned meeting at which the vote objected to is given or tendered or at which the error occurs. Any objection or error shall be referred to the chairman of the meeting and shall only vitiate the decision of the meeting on any resolution if the chairman decides that the same may have affected the decision of the meeting. The decision of the chairman on such matters shall be final and conclusive.

### **PROXIES**

78. Any Member entitled to attend and vote at a meeting of the Company shall be entitled to appoint another person as his proxy to attend and vote instead of him. A Member who is the holder of two or more shares may appoint more than one proxy to represent him and vote on his behalf at a general meeting of the Company or at a class meeting. A proxy need not be a Member. In addition, a proxy or proxies representing either a Member who is an individual or a Member which is a corporation shall be entitled to exercise the same powers on behalf of the Member which he or they represent as such Member could exercise.

79. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing or, if the appointor is a corporation, either under its seal or under the hand of an officer, attorney or other person authorised to sign the same. In the case of an instrument of proxy purporting to be signed on behalf of a corporation by an officer thereof it shall be assumed, unless the contrary appears, that such officer was duly authorised to sign such instrument of proxy on behalf of the corporation without further evidence of the facts.

80. The instrument appointing a proxy and (if required by the Board) the power of attorney or other authority (if any) under which it is signed, or a certified copy of such power or authority, shall be delivered to such place or one of such places (if any) as may be specified for that purpose in or by way of note to or in any document accompanying the notice convening the meeting (or, if no place is so specified at the Registration Office or the Office, as may be appropriate) not less than forty-eight (48) hours before the time appointed for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote or, in the case of a poll taken subsequently to the date of a meeting or adjourned meeting, not less than twenty-four (24) hours before the time appointed for the taking of the poll and in default the instrument of proxy shall not be treated as valid. No instrument appointing a proxy shall be valid after the expiration of twelve (12) months from the date named in it as the date of its execution, except at an adjourned meeting or on a poll demanded at a meeting or an adjourned meeting in cases where the meeting was originally held within twelve (12) months from such date. Delivery of an instrument appointing a proxy shall not preclude a Member from attending and voting in person at the meeting convened and in such event, the instrument appointing a proxy shall be deemed to be revoked.
81. Instruments of proxy shall be in any common form or in such other form as the Board may approve (provided that this shall not preclude the use of the two-way form) and the Board may, if it thinks fit, send out with the notice of any meeting forms of instrument of proxy for use at the meeting. The instrument of proxy shall be deemed to confer authority to demand or join in demanding a poll and to vote on any amendment of a resolution put to the meeting for which it is given as the proxy thinks fit. The instrument of proxy shall, unless the contrary is stated therein, be valid as well for any adjournment of the meeting as for the meeting to which it relates.
82. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal, or revocation of the instrument of proxy or of the authority under which it was executed, provided that no intimation in writing of such death, insanity or revocation shall have been received by the Company at the Office or the Registration Office (or such other place as may be specified for the delivery of instruments of proxy in the notice convening the meeting or other document sent therewith) two hours at least before the commencement of the meeting or adjourned meeting, or the taking of the poll, at which the instrument of proxy is used.
83. Anything which under these Articles a Member may do by proxy he may likewise do by his duly appointed attorney and the provisions of these Articles relating to proxies and instruments appointing proxies shall apply *mutatis mutandis* in relation to any such attorney and the instrument under which such attorney is appointed.

#### **CORPORATIONS ACTING BY REPRESENTATIVES**

84. (1) Any corporation which is a Member may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the Company or at any meeting of any class of Members. The person so authorised shall be entitled to exercise the same powers on behalf of such corporation as the corporation could exercise if it were an individual Member and such corporation shall for the purposes of these Articles be deemed to be present in person at any such meeting if a person so authorised is present thereat.



- (2) If a clearing house (or its nominee(s)) or a central depository entity, being a corporation, is a Member, it may authorise such persons as it thinks fit to act as its representatives at any meeting of the Company or at any meeting of any class of Members provided that the authorisation shall specify the number and class of shares in respect of which each such representative is so authorised. Each person so authorised under the provisions of this Article shall be deemed to have been duly authorised without further evidence of the facts and be entitled to exercise the same rights and powers on behalf of the clearing house or central depository entity (or its nominee(s)) as if such person was the registered holder of the shares of the Company held by the clearing house or a central depository entity (or its nominee(s)) including the right to vote individually on a show of hands.
- (3) Any reference in these Articles to a duly authorised representative of a Member being a corporation shall mean a representative authorised under the provisions of this Article.

### **NO ACTION BY WRITTEN RESOLUTIONS OF MEMBERS**

85. Any action required or permitted to be taken at any annual or extraordinary general meetings of the Company may be taken only upon the vote of the Members at an annual or extraordinary general meeting duly noticed and convened in accordance with these Articles and the Law and may not be taken by written resolution of Members without a meeting.

### **BOARD OF DIRECTORS**

86. (1) Unless otherwise determined by special resolution of the Members in general meeting, the number of Directors shall be not be less than two (2). There shall be no maximum number of Directors unless otherwise determined from time to time by special resolution of the Members in general meeting. Subject to Article 86(10), at the effective date of these Articles, the number of Directors shall be up to eleven (11). The Directors shall be elected or appointed in accordance with this Article 86 and Article 87 and shall hold office until their successors are elected or appointed. The Directors shall be divided into three classes: Class I, Class II and Class III. Each class shall consist of as nearly equal numbers of Directors as possible, and designated Class I, Class II, and Class III. The term of office of Class I shall expire at the first annual meeting of Members following the effectiveness of these Articles, and each third annual meeting of Members thereafter; the term of office of Class II shall expire at the second annual meeting of Members following the effectiveness of these Articles, and each third annual meeting of Members thereafter; and the term of office of Class III shall expire at the third annual meeting of Members following the effectiveness of these Articles, and each third annual meeting of Members thereafter. As soon as practicable following the effectiveness of these Articles, the Directors then in office shall by resolution of the Board of Directors select which of such Directors shall be Class I Directors, Class II Directors and Class III Directors. Directors added to the Board of Directors between annual general meetings of Members by reason of an increase in the authorized number of directors shall belong to the class designated by the Board of Directors; provided however that the number of board seats designated to belong to Class I, Class II and Class III must be as nearly equal in number as possible.



- (2) (A) For so long as STT continues to have Beneficial Ownership in not less than twenty-five per cent. (25%) of the issued share capital of the Company on an as converted basis, STT may, by written notice to the Company, appoint three (3) directors (each an “**STT Director**”) and may in like manner remove, with or without cause, any STT Director so appointed and may in like manner appoint any person in their place. Where STT ceases to have Beneficial Ownership in not less than twenty-five per cent. (25%) of the issued share capital of the Company on an as converted basis, but continues to have Beneficial Ownership in not less than fifteen per cent. (15%) of the then issued share capital of the Company on an as converted basis, then (i) the foregoing right shall cease and terminate, (ii) the provisions of Article 86(2)(B) shall apply, (iii) such STT Director as determined by STT, or failing which, the STT Director who has been longest in office since their last re-election or appointment, shall retire from office by rotation at the appropriate annual general meeting of Members in accordance with the terms of their appointment, and (iv) at the relevant annual general meeting, their replacement as a Director shall be nominated and appointed pursuant to the provisions of Article 86(6).
- (B) For so long as STT continues to have Beneficial Ownership in less than twenty-five per cent. (25%) but not less than fifteen per cent. (15%) of the issued share capital of the Company on an as converted basis, STT may, by written notice to the Company, appoint two (2) STT Directors and may in like manner remove, with or without cause, the STT Director so appointed and may in like manner appoint any person in their place. Where STT ceases to have Beneficial Ownership in not less than fifteen per cent. (15%) of the then issued share capital of the Company on an as converted basis, but continues to have Beneficial Ownership in not less than eight per cent. (8%), of the then issued share capital of the Company on an as converted basis, then (i) the foregoing right shall cease and terminate, (ii) the provisions of Article 86(2)(C) shall apply, (iii) such STT Director as determined by STT, or failing which, the STT Director who has been longest in office since their last re-election or appointment, shall retire from office by rotation at the appropriate annual general meeting of Members in accordance with the terms of their appointment, and (iv) at the relevant annual general meeting, their replacement as a Director shall be nominated and appointed pursuant to the provisions of Article 86(6).
- (C) For so long as STT continues to have Beneficial Ownership in less than fifteen per cent. (15%) but not less than eight per cent. (8%) of the issued share capital of the Company on an as converted basis, STT may, by written notice to the Company, appoint one (1) STT Director and may in like manner remove, with or without cause, the STT Director so appointed and may in like manner appoint any person in their place. Where STT ceases to have Beneficial Ownership in not less than eight per cent. (8%) of the then issued share capital of the Company on an as converted basis, then (i) the foregoing right shall cease and terminate, (ii) any STT Director then in office shall retire from office at the next annual general meeting of Members, and (iii) at such annual general meeting, their replacement as a Director shall be nominated and appointed pursuant to the provisions of Article 86(6).

- (3) [intentionally omitted].
- (4) (A) For so long as William Wei Huang continues to have Beneficial Ownership in not less than five per cent. (5%) of the then issued share capital of the Company on an as converted basis, the holders of the Class B Ordinary Shares shall have the right to nominate five (5) Directors (one of which is intended to be William Wei Huang) for appointment as Directors in accordance with the provisions of this Article 86(4)(A). Such Directors shall be elected by resolutions of the Members (with the Class B Ordinary Shares having twenty (20) votes per Class B Ordinary Share in respect of such resolutions).
- (B) In the circumstances where either (i) any person nominated by the holders of the Class B Ordinary Shares to be appointed as a Director pursuant to Article 86(4) (A) is not elected as a Director by the Members pursuant to the provisions of Article 86(4)(A); or (ii) any Director appointed as a Director pursuant to Article 86(4)(A) ceases to be a Director in accordance with the provisions of Article 89, then the holders of the Class B Ordinary Shares may, by written notice to the Company, appoint another person as Director in their stead. Any such person so appointed shall hold office only until the first general meeting of Members after their appointment and be subject to retirement and re-election at such meeting. At any such general meeting, the provisions of Article 86(4)(A) shall apply, *mutatis mutandis*, to the election of such Directors.
- (C) Upon either (i) the Automatic Conversion of the Class B Ordinary Shares, or (ii) the conversion of such of the Class B Ordinary Shares that results in William Wei Huang ceasing to have Beneficial Ownership in less than five per cent. (5%) but not less than two per cent. (2%) of the then issued share capital of the Company on an as converted basis:
- (i) (a) the nomination and appointment rights set out in Article 86(4)(A) shall cease and terminate, (b) any Directors (other than William Wei Huang) appointed pursuant to the provisions of Article 86(4) then in office shall retire from office by rotation at the appropriate annual general meeting of Members in accordance with the terms of their appointment, and (iii) at the relevant annual general meeting, their replacement as a Director shall be nominated and appointed pursuant to the provisions of Article 86(6); and
- (ii) William Wei Huang may, by written notice to the Company, appoint one (1) Director (which is intended to be William Wei Huang) and may in like manner remove, with or without cause, the Director so appointed and may in like manner appoint any person in their place.
- (D) Upon William Wei Huang ceasing to have Beneficial Ownership in less than two per cent. (2%) of the then issued share capital of the Company on an as converted basis, (a) the appointment right set out in Article 86(4)(C)(ii) shall cease and terminate, (b) any Director appointed pursuant to the provisions of Article 86(4) (C)(ii) then in office shall retire from office by rotation at the appropriate annual general meeting of Members in accordance with the terms of their appointment, and (iii) at the relevant annual general meeting, their replacement as a Director shall be nominated and appointed pursuant to the provisions of Article 86(6).

- (5) (A) The Nominating and Corporate Governance Committee shall have the right to nominate one (1) Director (being an Independent Director) for appointment as a Director in accordance with the provisions of this Article 86(5). Such Independent Director shall be elected by resolutions of the Members (with the Class B Ordinary Shares having twenty (20) votes per Class B Ordinary Share in respect of such resolutions).
- (B) In the circumstances where either (i) any person nominated by the Nominating and Corporate Governance Committee to be appointed as an Independent Director pursuant to Article 86(5)(A) is not elected as a Director by the Members pursuant to the provisions of Article 86(5)(A), or (ii) any Director appointed as a Director pursuant to Article 86(5)(A) ceases to be a Director in accordance with the provisions of Article 89, then the holders of the Class B Ordinary Shares may, by written notice to the Company, appoint another person as Director (being an Independent Director) in their stead. Any such person so appointed shall hold office only until the first general meeting of Members after their appointment and be subject to retirement and re-election at such meeting. At any such general meeting, the provisions of Article 86(5)(A) shall apply, *mutatis mutandis*, to the election of such Directors.
- (6) (A) The Nominating and Corporate Governance Committee shall have the right to nominate the remaining Directors (being, at the effective date of these Articles, two (2) Independent Directors) for appointment as Directors in accordance with the provisions of this Article 86(6). Such Directors, (at least two (2) of whom shall be Independent Directors) shall be elected by resolutions of the Members (with the Class B Ordinary Shares having one (1) vote per Class B Ordinary Share in respect of such resolutions).
- (B) In the circumstances where either (i) any person nominated by the Nominating and Corporate Governance Committee to be appointed as an Independent Director pursuant to Article 86(6)(A) is not elected as a Director by the Members pursuant to the provisions of Article 86(6)(A); or (ii) any Director appointed as a Director pursuant to Article 86(6)(A) ceases to be a Director in accordance with the provisions of Article 89, then Nominating and Corporate Governance Committee, by affirmative vote of a simple majority of the members of the Nominating and Corporate Governance Committee, may appoint another person as Director in their stead. Any such person so appointed shall hold office only until the first general meeting of Members after their appointment and be subject to retirement and re-election at such meeting. At any such general meeting, the provisions of Article 86(6)(A) shall apply, *mutatis mutandis*, to the election of such Directors.
- (7) No Director shall be required to hold any shares of the Company by way of qualification and a Director who is not a Member shall be entitled to receive notice of and to attend and speak at any general meeting of the Company and of all classes of shares of the Company.

- (8) Any Director (other than William Wei Huang (for so long as he is a Director) and any STT Director) may be removed by way of a special resolution of the Members at any time before the expiration of his period of office notwithstanding anything in these Articles or in any agreement between the Company and such Independent Director (but without prejudice to any claim for damages under any such agreement).
- (9) A vacancy on the Board created by the removal of a Director under the provisions of subparagraph (8) above may be filled by the election or appointment by (i) resolution of the Members (passed in accordance with the provisions of Article 86(4) or Article 86(5) or Article 86(6), as the case may be) at the meeting at which such Director is removed, or (ii) (in the case of an Independent Director only) by the affirmative vote of a simple majority of the Nominating and Corporate Governance Committee.
- (10) The Board may from time to time by resolution increase or reduce the number of Directors but so that the number of Directors shall never be less than two (2). Any resolution to change the number of Directors shall require the prior written approval of the STT Directors. Where any increase or reduction is made in the number of Directors on the Board pursuant to these Articles, the number of Directors appointed under Article 86(4) shall increase or reduce proportionately, so that for so long as William Wei Huang continues to have Beneficial Ownership in not less than five per cent. (5%) of the then issued share capital of the Company on an as converted basis, William Wei Huang and the holders of the Class B Ordinary Shares shall always be entitled to nominate and/or appoint or control the nomination and/or appointment of, a majority of the Board of Directors of the Company pursuant to Article 86(4) and Article 86(5).

### **RETIREMENT OF DIRECTORS**

87. Notwithstanding any other provisions in the Articles, at each annual general meeting one-third of the Directors for the time being (or, if their number is not a multiple of three (3), the number nearest to but not greater than one-third) shall retire from office by rotation provided that every Director shall be subject to retirement at an annual general meeting at least once every three years.
88. A retiring Director shall be eligible for re-appointment or re-election in accordance with the relevant provisions of Article 86. The Director to retire by rotation shall include (so far as necessary to ascertain the number of directors to retire by rotation) any Director who wishes to retire and not to offer himself for re-election. Any further Directors so to retire shall be those of the other Directors subject to retirement by rotation who have been longest in office since their last re-election or appointment and so that as between persons who became or were last re-elected Directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

## **DISQUALIFICATION OF DIRECTORS**

89. The office of a Director shall be vacated if the Director:
- (1) resigns his office by notice in writing delivered to the Company at the Office or tendered at a meeting of the Board;
  - (2) becomes of unsound mind or dies;
  - (3) without special leave of absence from the Board, is absent from meetings of the Board for six consecutive months and the Board resolves that his office be vacated; or
  - (4) becomes bankrupt or has a receiving order made against him or suspends payment or compounds with his creditors;
  - (5) is prohibited by law from being a Director; or
  - (6) ceases to be a Director by virtue of any provision of the Statutes or is removed from office pursuant to these Articles.

## **ALTERNATE DIRECTORS**

90. Any Director may at any time by Notice delivered to the Office or head office or at a meeting of the Directors appoint any person (including another Director) to be his alternate Director. Any person so appointed shall have all the rights and powers of the Director or Directors for whom such person is appointed in the alternative provided that such person shall not be counted more than once in determining whether or not a quorum is present. An alternate Director may be removed at any time by the body which appointed him and, subject thereto, the office of alternate Director shall continue until the happening of any event which, if he were a Director, would cause him to vacate such office or if his appointer ceases for any reason to be a Director. Any appointment or removal of an alternate Director shall be effected by Notice signed by the appointor and delivered to the Office or head office or tendered at a meeting of the Board. An alternate Director may also be a Director in his own right and may act as alternate to more than one Director. An alternate Director shall, if his appointor so requests, be entitled to receive notices of meetings of the Board or of committees of the Board to the same extent as, but in lieu of, the Director appointing him and shall be entitled to such extent to attend and vote as a Director at any such meeting at which the Director appointing him is not personally present and generally at such meeting to exercise and discharge all the functions, powers and duties of his appointor as a Director and for the purposes of the proceedings at such meeting the provisions of these Articles shall apply as if he were a Director save that as an alternate for more than one Director his voting rights shall be cumulative.

91. An alternate Director shall only be a Director for the purposes of the Law and shall only be subject to the provisions of the Law insofar as they relate to the duties and obligations of a Director when performing the functions of the Director for whom he is appointed in the alternative and shall alone be responsible to the Company for his acts and defaults and shall not be deemed to be the agent of or for the Director appointing him. An alternate Director shall be entitled to contract and be interested in and benefit from contracts or arrangements or transactions and to be repaid expenses and to be indemnified by the Company to the same extent *mutatis mutandis* as if he were a Director but he shall not be entitled to receive from the Company any fee in his capacity as an alternate Director except only such part, if any, of the remuneration otherwise payable to his appointor as such appointor may by Notice to the Company from time to time direct.
92. Every person acting as an alternate Director shall have one vote for each Director for whom he acts as alternate (in addition to his own vote if he is also a Director). If his appointor is for the time being absent from the People's Republic of China or otherwise not available or unable to act, the signature of an alternate Director to any resolution in writing of the Board or a committee of the Board of which his appointor is a member shall, unless the notice of his appointment provides to the contrary, be as effective as the signature of his appointor.
93. An alternate Director shall ipso facto cease to be an alternate Director if his appointor ceases for any reason to be a Director, however, such alternate Director or any other person may be re-appointed by the Directors to serve as an alternate Director PROVIDED always that, if at any meeting any Director retires but is re-elected at the same meeting, any appointment of such alternate Director pursuant to these Articles which was in force immediately before his retirement shall remain in force as though he had not retired.

#### **DIRECTORS' FEES AND EXPENSES**

94. Subject to the rules of the Designated Exchange, the Directors shall receive such remuneration as the Board may from time to time determine.
95. Each Director shall be entitled to be repaid or prepaid all travelling, hotel and incidental expenses reasonably incurred or expected to be incurred by him in attending meetings of the Board or committees of the Board or general meetings or separate meetings of any class of shares or of debentures of the Company or otherwise in connection with the discharge of his duties as a Director.
96. Any Director who, by request, goes or resides abroad for any purpose of the Company or who performs services which in the opinion of the Board go beyond the ordinary duties of a Director may be paid such extra remuneration (whether by way of salary, commission, participation in profits or otherwise) as the Board may determine and such extra remuneration shall be in addition to or in substitution for any ordinary remuneration provided for by or pursuant to any other Article.
97. Subject to the rules of the Designated Exchange, the Board may, without the approval of the Company in general meeting, make payments to any Director or past Director of the Company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office (not being payment to which the Director is contractually entitled).



## DIRECTORS' INTERESTS

98. A Director may:
- (a) hold any other office or place of profit with the Company (except that of Auditor) in conjunction with his office of Director for such period and upon such terms as the Board may determine. Any remuneration (whether by way of salary, commission, participation in profits or otherwise) paid to any Director in respect of any such other office or place of profit shall be in addition to any remuneration provided for by or pursuant to any other Article;
  - (b) act by himself or his firm in a professional capacity for the Company (otherwise than as Auditor) and he or his firm may be remunerated for professional services as if he were not a Director;
  - (c) continue to be or become a director, or other officer or member of any other company promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise and (unless otherwise agreed) no such Director shall be accountable for any remuneration, profits or other benefits received by him as a director, or other officer or member of or from his interests in any such other company. Subject as otherwise provided by these Articles the Directors may exercise or cause to be exercised the voting powers conferred by the shares in any other company held or owned by the Company, or exercisable by them as Directors of such other company in such manner in all respects as they think fit (including the exercise thereof in favour of any resolution appointing themselves or any of them directors, or other officers of such company) or voting or providing for the payment of remuneration to the director, or other officers of such other company and any Director may vote in favour of the exercise of such voting rights in manner aforesaid notwithstanding that he may be, or about to be, appointed a director, or other officer of such a company, and that as such he is or may become interested in the exercise of such voting rights in manner aforesaid.

Notwithstanding the foregoing, no Independent Director shall without the consent of the Audit Committee take any of the foregoing actions or any other action that would reasonably be likely to affect such Director's status as an "Independent Director" of the Company.

99. Subject to the Law and to these Articles, no Director or proposed or intending Director shall be disqualified by his office from contracting with the Company, either with regard to his tenure of any office or place of profit or as vendor, purchaser or in any other manner whatever, nor shall any such contract or any other contract or arrangement in which any Director is in any way interested be liable to be avoided, nor shall any Director so contracting or being so interested be liable to account to the Company or the Members for any remuneration, profit or other benefits realised by any such contract or arrangement by reason of such Director holding that office or of the fiduciary relationship thereby established provided that such Director shall disclose the nature of his interest in any contract or arrangement in which he is interested in accordance with Article 102 herein. Any such transaction that would reasonably be likely to affect a Director's status as an "Independent Director", or that would constitute a "related party transaction" as defined by Item 7.N of Form 20F promulgated by the SEC, shall require the approval of the Audit Committee.



100. A Director who to his knowledge is in any way, whether directly or indirectly, interested in a contract or arrangement or proposed contract or arrangement with the Company shall declare the nature of his interest at the meeting of the Board at which the question of entering into the contract or arrangement is first considered, if he knows his interest then exists, or in any other case at the first meeting of the Board after he knows that he is or has become so interested. For the purposes of this Article, a general Notice to the Board by a Director to the effect that:

- (a) he is a member or officer of a specified company or firm and is to be regarded as interested in any contract or arrangement which may after the date of the Notice be made with that company or firm; or
- (b) he is to be regarded as interested in any contract or arrangement which may after the date of the Notice be made with a specified person who is connected with him;

shall be deemed to be a sufficient declaration of interest under this Article in relation to any such contract or arrangement, provided that no such Notice shall be effective unless either it is given at a meeting of the Board or the Director takes reasonable steps to secure that it is brought up and read at the next Board meeting after it is given.

101. Following a declaration being made pursuant to the last preceding two Articles, subject to any separate requirement for Audit Committee approval under applicable law or the listing rules of the Company's Designated Stock Exchange, and unless disqualified by the chairman of the relevant Board meeting, a Director may vote in respect of any contract or proposed contract or arrangement in which such Director is interested and may be counted in the quorum at such meeting.

### **GENERAL POWERS OF THE DIRECTORS**

102. (1) Subject to these Articles including, without limitation, Article 102(4), and further to obtaining any Executive Committee approval (which approval must include the affirmative vote of the STT Director serving on the Executive Committee) as may be required prior to the incurring or refinancing of any borrowing or indebtedness above certain levels, the business of the Company shall be managed and conducted by the Board, which may pay all expenses incurred in forming and registering the Company and may exercise all powers of the Company (whether relating to the management of the business of the Company or otherwise) which are not by the Statutes or by these Articles required to be exercised by the Company in general meeting, subject nevertheless to the provisions of the Statutes and of these Articles and to such regulations being not inconsistent with such provisions, as may be prescribed by the Company in general meeting, but no regulations made by the Company in general meeting shall invalidate any prior act of the Board which would have been valid if such regulations had not been made. The general powers given by this Article shall not be limited or restricted by any special authority or power given to the Board by any other Article (other than as set out in Article 9(c)).

- (2) Any person contracting or dealing with the Company in the ordinary course of business shall be entitled to rely on any written or oral contract or agreement or deed, document or instrument entered into or executed as the case may be by any two of the Directors acting jointly on behalf of the Company and the same shall be deemed to be validly entered into or executed by the Company as the case may be and shall, subject to any rule of law, be binding on the Company.
- (3) Without prejudice to the general powers conferred by these Articles it is hereby expressly declared that the Board shall have the following powers:
  - (a) To give to any person the right or option of requiring at a future date that an allotment shall be made to him of any share at par or at such premium as may be agreed.
  - (b) To give to any Directors, officers or employees of the Company an interest in any particular business or transaction or participation in the profits thereof or in the general profits of the Company either in addition to or in substitution for a salary or other remuneration.
  - (c) To resolve that the Company be deregistered in the Cayman Islands and continued in a named jurisdiction outside the Cayman Islands subject to the provisions of the Law.
- (4) Notwithstanding anything to the contrary in these Articles or the Memorandum, the Company and the Directors shall not, without the prior approval of Members by ordinary resolution, with the Class B Ordinary Shares having only one vote per Class B Ordinary Share in respect of such resolution, take, approve, authorise, ratify, agree, commit to engage in or otherwise effect or consummate any of the following matters:
  - (a) the election of not less than two (2) Independent Directors in accordance with the provisions of Article 86(6);
  - (b) allot or issue any shares or securities of the Company equal to ten per cent. (10%) or more of the existing issued share capital of the Company or of the votes attached to the existing issued share capital of the Company at the date of such allotment or issue in any 12-month period, whether in a single transaction or a series of transactions OTHER THAN any allotment or issues of shares on the exercise of any options or warrants granted by the Company from time to time or any shares issued on the conversion by Ping An Insurance and by STT of the convertible and redeemable bonds due 2019 held by Ping An Insurance and STT respectively; or
  - (c) authorise, enter into agreements for the sale of, agree to sell, transfer or dispose of, whether in one transaction or a series of transactions a material part of the assets or undertakings of the Company (material for the purposes of this Article 102(4)(c) being assets or undertakings representing ten per cent. (10%) or more of the net tangible assets of the Company in its latest audited accounts).

103. The Board may establish any regional or local boards or agencies for managing any of the affairs of the Company in any place, and may appoint any persons to be members of such local boards, or any agents, and may fix their remuneration (either by way of salary or by commission or by conferring the right to participation in the profits of the Company or by a combination of two or more of these modes) and pay the working expenses of any staff employed by them upon the business of the Company. The Board may delegate to any regional or local board, manager or agent any of the powers, authorities and discretions vested in or exercisable by the Board (other than its powers to make calls and forfeit shares), with power to sub-delegate, and may authorise the members of any of them to fill any vacancies therein and to act notwithstanding vacancies. Any such appointment or delegation may be made upon such terms and subject to such conditions as the Board may think fit, and the Board may remove any person appointed as aforesaid, and may revoke or vary such delegation, but no person dealing in good faith and without notice of any such revocation or variation shall be affected thereby.
104. The Board may by power of attorney appoint any company, firm or person or any fluctuating body of persons, whether nominated directly or indirectly by the Board, to be the attorney or attorneys of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Board under these Articles) and for such period and subject to such conditions as it may think fit, and any such power of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the Board may think fit, and may also authorise any such attorney to sub-delegate all or any of the powers, authorities and discretions vested in him. Such attorney or attorneys may, if so authorised under the Seal of the Company, execute any deed or instrument under their personal seal with the same effect as the affixation of the Company's Seal.
105. The Board may entrust to and confer upon any Director any of the powers exercisable by it upon such terms and conditions and with such restrictions as it thinks fit, and either collaterally with, or to the exclusion of, its own powers, and may from time to time revoke or vary all or any of such powers but no person dealing in good faith and without notice of such revocation or variation shall be affected thereby.
106. All cheques, promissory notes, drafts, bills of exchange and other instruments, whether negotiable or transferable or not, and all receipts for moneys paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in such manner as the Board shall from time to time by resolution determine. The Company's banking accounts shall be kept with such banker or bankers as the Board shall from time to time determine.
107. (1) The Board may establish or concur or join with other companies (being subsidiary companies of the Company or companies with which it is associated in business) in establishing and making contributions out of the Company's moneys to any schemes or funds for providing pensions, sickness or compassionate allowances, life assurance or other benefits for employees (which expression as used in this and the following paragraph shall include any Director or ex-Director who may hold or have held any executive office or any office of profit under the Company or any of its subsidiary companies) and ex-employees of the Company and their dependants or any class or classes of such person.

- (2) The Board may pay, enter into agreements to pay or make grants of revocable or irrevocable pensions or other benefits to employees and ex-employees and their dependants, or to any of such persons, including pensions or benefits additional to those, if any, to which such employees or ex-employees or their dependants are or may become entitled under any such scheme or fund as mentioned in the last preceding paragraph. Any such pension or benefit may, as the Board considers desirable, be granted to an employee either before and in anticipation of or upon or at any time after his actual retirement, and may be subject or not subject to any terms or conditions as the Board may determine.

### **BORROWING POWERS**

108. Subject to the provisions of these Articles, including without limitation Article 102(4), the Board may exercise all the powers of the Company to raise or borrow money and to mortgage or charge all or any part of the undertaking, property and assets (present and future) and uncalled capital of the Company and, subject to the Law, to issue debentures, bonds and other securities, whether outright or as collateral security for any debt, liability or obligation of the Company or of any third party.
109. Debentures, bonds and other securities may be made assignable free from any equities between the Company and the person to whom the same may be issued.
110. Any debentures, bonds or other securities may be issued at a discount (other than shares), premium or otherwise and with any special privileges as to redemption, surrender, drawings, allotment of shares, attending and voting at general meetings of the Company, appointment of Directors and otherwise.
111. (1) Where any uncalled capital of the Company is charged, all persons taking any subsequent charge thereon shall take the same subject to such prior charge, and shall not be entitled, by notice to the Members or otherwise, to obtain priority over such prior charge.  
  
(2) The Board shall cause a proper register to be kept, in accordance with the provisions of the Law, of all charges specifically affecting the property of the Company and of any series of debentures issued by the Company and shall duly comply with the requirements of the Law in regard to the registration of charges and debentures therein specified and otherwise.

### **PROCEEDINGS OF THE DIRECTORS**

112. The Board may meet for the despatch of business, adjourn and otherwise regulate its meetings as it considers appropriate. Questions arising at any meeting shall be determined by a majority of votes. In the case of any equality of votes the chairman of the meeting shall have an additional or casting vote.
113. A meeting of the Board may be convened by the Secretary on request of a Director or by any Director. The Secretary shall convene a meeting of the Board of which notice may be given in writing or by telephone or in such other manner as the Board may from time to time determine whenever he shall be required so to do by the president or chairman, as the case may be, or any Director.

114. (1) The quorum necessary for the transaction of the business of the Board shall be a majority of the Directors then appointed, including (for so long as William Wei Huang continues to have Beneficial Ownership in not less than five per cent. (5%) of the then issued share capital of the Company on an as converted basis) two (2) Directors appointed pursuant to the provisions of Article 86(4) and (for so long as STT continues to have Beneficial Ownership in not less than fifteen per cent. (15%) of the issued share capital of the Company on an as converted basis), two (2) STT Directors. An alternate Director shall be counted in a quorum in the case of the absence of a Director for whom he is the alternate provided that he shall not be counted more than once for the purpose of determining whether or not a quorum is present.
- (2) Directors may participate in any meeting of the Board by means of a conference telephone or other communications equipment through which all persons participating in the meeting can communicate with each other simultaneously and instantaneously and, for the purpose of counting a quorum, such participation shall constitute presence at a meeting as if those participating were present in person.
- (3) Any Director who ceases to be a Director at a Board meeting may continue to be present and to act as a Director and be counted in the quorum until the termination of such Board meeting if no other Director objects and if otherwise a quorum of Directors would not be present.
115. The continuing Directors or a sole continuing Director may act notwithstanding any vacancy in the Board but, if and so long as the number of Directors is reduced below the minimum number fixed by or in accordance with these Articles, the continuing Directors or Director, notwithstanding that the number of Directors is below the number fixed by or in accordance with these Articles as the quorum or that there is only one continuing Director, may act for the purpose of filling vacancies in the Board or of summoning general meetings of the Company but not for any other purpose.
116. The Chairman of the Board shall be the chairman of all meetings of the Board. If the Chairman of the Board is not present at any meeting within five (5) minutes after the time appointed for holding the same, the vice-chairman of the Board shall be the chairman of such meeting. If the vice-chairman of the Board is not present at any meeting within ten (10) minutes after the time appointed for holding the same, the Directors present may choose one of their number to be chairman of the meeting.
117. A meeting of the Board at which a quorum is present shall be competent to exercise all the powers, authorities and discretions for the time being vested in or exercisable by the Board.
118. (1) The Board may delegate any of its powers, authorities and discretions to committees (including, without limitation, the Audit Committee), consisting of such Director or Directors and other persons as it thinks fit, and they may, from time to time, revoke such delegation or revoke the appointment of and discharge any such committees either wholly or in part, and either as to persons or purposes. Any committee so formed shall, in the exercise of the powers, authorities and discretions so delegated, conform to any regulations which may be imposed on it by the Board.



- (2) All acts done by any such committee in conformity with such regulations, and in fulfilment of the purposes for which it was appointed, but not otherwise, shall have like force and effect as if done by the Board, and the Board (or if the Board delegates such power, the committee) shall have power to remunerate the members of any such committee, and charge such remuneration to the current expenses of the Company.
119. The meetings and proceedings of any committee consisting of two or more members shall be governed by the provisions contained in these Articles for regulating the meetings and proceedings of the Board so far as the same are applicable and are not superseded by any regulations imposed by the Board under the last preceding Article, indicating, without limitation, any committee charter adopted by the Board for purposes or in respect of any such committee.
120. A resolution in writing signed by all the Directors except such as are temporarily unable to act through ill-health or disability shall (provided that such number is sufficient to constitute a quorum and further provided that a copy of such resolution has been given or the contents thereof communicated to all the Directors for the time being entitled to receive notices of Board meetings in the same manner as notices of meetings are required to be given by these Articles) be as valid and effectual as if a resolution had been passed at a meeting of the Board duly convened and held. Such resolution may be contained in one document or in several documents in like form each signed by one or more of the Directors and for this purpose a facsimile signature of a Director shall be treated as valid.
121. All acts bona fide done by the Board or by any committee or by any person acting as a Director or members of a committee, shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any member of the Board or such committee or person acting as aforesaid or that they or any of them were disqualified or had vacated office, be as valid as if every such person had been duly appointed and was qualified and had continued to be a Director or member of such committee.

#### **AUDIT COMMITTEE, COMPENSATION COMMITTEE, NOMINATING AND CORPORATE GOVERNANCE COMMITTEE AND EXECUTIVE COMMITTEES**

122. (1) Without prejudice to the freedom of the Directors to establish any other committees, for so long as the shares of the Company (or depositary receipts therefor) are listed or quoted on the Designated Stock Exchange, the Board shall establish and maintain:
- (i) an Audit Committee as a committee of the Board, the composition and responsibilities of which shall comply with the Designated Stock Exchange Rules and the rules and regulations of the SEC. The Audit Committee shall consist of three (3) Directors, each of whom shall be an Independent Director (howsoever appointed);
  - (ii) a Compensation Committee as a committee of the Board, the composition and responsibilities of which shall comply with the Designated Stock Exchange Rules and the rules and regulations of the SEC. The Compensation Committee shall consist of such members as required by the formal written committee charter governing the Compensation Committee, among which one (1) of whom shall be an Independent Director elected pursuant to the provisions of Article 86(6);

- (iii) a Nominating and Corporate Governance Committee as a committee of the Board, the composition and responsibilities of which shall comply with the Designated Stock Exchange Rules and the rules and regulations of the SEC. The Nominating and Corporate Governance Committee shall consist of such members as required by the formal written committee charter governing the Nominating and Corporate Governance Committee, among which one (1) of whom shall be an Independent Director elected pursuant to the provisions of Article 86(6); and
  - (iv) an Executive Committee as a committee of the Board, the composition and responsibilities of which shall comply with the Designated Stock Exchange Rules and the rules and regulations of the SEC. The Executive Committee shall consist of such members as required by the formal written committee charter governing the Executive Committee.
123. (1) The Board shall adopt a formal written committee charter in respect of each of the above committees and review and assess the adequacy of the formal written charter on an annual basis.
- (2) The Audit Committee shall meet at least once every financial quarter, or more frequently as circumstances dictate. The other committees shall meet at least once every financial year, or more frequently as circumstances dictate.
124. For so long as the shares of the Company (or depositary receipts therefor) are listed or quoted on the Designated Stock Exchange, the Company shall conduct an appropriate review of all related party transactions on an ongoing basis and shall utilize the Audit Committee for the review and approval of potential conflicts of interest. Specially, the Audit Committee shall approve any transaction or transactions between the Company and any of the following parties: (i) any shareholder owning an interest in the voting power of the Company or any subsidiary of the Company that gives such shareholder significant influence over the Company or any subsidiary of the Company, (ii) any director or executive officer of the Company or any subsidiary of the Company and any relative of such director or executive officer, (iii) any person in which a substantial interest in the voting power of the Company is owned, directly or indirectly, by any person described in (i) or (ii) or over which such a person is able to exercise significant influence, and (iv) any affiliate (other than a subsidiary) of the Company.

## **OFFICERS**

125. (1) The officers of the Company shall consist of the Chairman of the Board, the vice-chairman of the Board, the Directors and Secretary and such additional officers (who may or may not be Directors) as the Board may from time to time determine, all of whom shall be deemed to be officers for the purposes of the Law and these Articles.



- (2) The Directors shall, as soon as may be after each appointment or election of Directors, elect amongst the Directors a chairman and if more than one Director is proposed for this office, the election to such office shall take place in such manner as the Directors may determine. Unless and until this Article is rescinded, altered or amended by a special resolution of the Members, Mr. William Wei Huang shall be appointed as chairman of the Company and of the Board. For so long as STT continues to have Beneficial Ownership in not less than eight (8%) of the issued share capital of the Company on an as converted basis, STT may, by written notice to the Company, appoint the vice-chairman of the Company and of the Board.
  - (3) The officers shall receive such remuneration as the Directors may from time to time determine.
126. (1) The Secretary and additional officers, if any, shall be appointed by the Board and shall hold office on such terms and for such period as the Board may determine. If thought fit, two or more persons may be appointed as joint Secretaries. The Board may also appoint from time to time on such terms as it thinks fit one or more assistant or deputy Secretaries.
- (2) The Secretary shall attend all meetings of the Members and shall keep correct minutes of such meetings and enter the same in the proper books provided for the purpose. He shall perform such other duties as are prescribed by the Law or these Articles or as may be prescribed by the Board.
127. The officers of the Company shall have such powers and perform such duties in the management, business and affairs of the Company as may be delegated to them by the Directors from time to time.
128. A provision of the Law or of these Articles requiring or authorising a thing to be done by or to a Director and the Secretary shall not be satisfied by its being done by or to the same person acting both as Director and as or in place of the Secretary.

### **REGISTER OF DIRECTORS AND OFFICERS**

129. The Company shall cause to be kept in one or more books at its Office a Register of Directors and Officers in which there shall be entered the full names and addresses of the Directors and Officers and such other particulars as required by the Law or as the Directors may determine. The Company shall send to the Registrar of Companies in the Cayman Islands a copy of such register, and shall from time to time notify to the said Registrar of any change that takes place in relation to such Directors and Officers as required by the Law.

### **MINUTES**

130. (1) The Board shall cause minutes to be duly entered in books provided for the purpose:
- (a) of all elections and appointments of officers;
  - (b) of the names of the Directors present at each meeting of the Directors and of any committee of the Directors;

- (c) of all resolutions and proceedings of each general meeting of the Members, or of all meetings of the Board and meetings of committees of the Board.
- (2) Minutes shall be kept by the Secretary at the Office.

### **SEAL**

131. (1) The Company shall have one or more Seals, as the Board may determine. For the purpose of sealing documents creating or evidencing securities issued by the Company, the Company may have a securities seal which is a facsimile of the Seal of the Company with the addition of the word "Securities" on its face or in such other form as the Board may approve. The Board shall provide for the custody of each Seal and no Seal shall be used without the authority of the Board or of a committee of the Board authorised by the Board in that behalf. Subject as otherwise provided in these Articles, any instrument to which a Seal is affixed shall be signed autographically by one Director and the Secretary or by two Directors or by such other person (including a Director) or persons as the Board may appoint, either generally or in any particular case, save that as regards any certificates for shares or debentures or other securities of the Company the Board may by resolution determine that such signatures or either of them shall be dispensed with or affixed by some method or system of mechanical signature. Every instrument executed in manner provided by this Article shall be deemed to be sealed and executed with the authority of the Board previously given.
- (2) Where the Company has a Seal for use abroad, the Board may by writing under the Seal appoint any agent or committee abroad to be the duly authorised agent of the Company for the purpose of affixing and using such Seal and the Board may impose restrictions on the use thereof as may be thought fit. Wherever in these Articles reference is made to the Seal, the reference shall, when and so far as may be applicable, be deemed to include any such other Seal as aforesaid.

### **AUTHENTICATION OF DOCUMENTS**

132. Any Director or the Secretary or any person appointed by the Board for the purpose may authenticate any documents affecting the constitution of the Company and any resolution passed by the Company or the Board or any committee, and any books, records, documents and accounts relating to the business of the Company, and to certify copies thereof or extracts therefrom as true copies or extracts, and if any books, records, documents or accounts are elsewhere than at the Office or the head office the local manager or other officer of the Company having the custody thereof shall be deemed to be a person so appointed by the Board. A document purporting to be a copy of a resolution, or an extract from the minutes of a meeting, of the Company or of the Board or any committee which is so certified shall be conclusive evidence in favour of all persons dealing with the Company upon the faith thereof that such resolution has been duly passed or, as the case may be, that such minutes or extract is a true and accurate record of proceedings at a duly constituted meeting.

## DESTRUCTION OF DOCUMENTS

133. (1) The Company shall be entitled to destroy the following documents at the following times:
- (a) any share certificate which has been cancelled at any time after the expiry of one (1) year from the date of such cancellation;
  - (b) any dividend mandate or any variation or cancellation thereof or any notification of change of name or address at any time after the expiry of two (2) years from the date such mandate variation cancellation or notification was recorded by the Company;
  - (c) any instrument of transfer of shares which has been registered at any time after the expiry of seven (7) years from the date of registration;
  - (d) any allotment letters after the expiry of seven (7) years from the date of issue thereof; and
  - (e) copies of powers of attorney, grants of probate and letters of administration at any time after the expiry of seven (7) years after the account to which the relevant power of attorney, grant of probate or letters of administration related has been closed;

and it shall conclusively be presumed in favour of the Company that every entry in the Register purporting to be made on the basis of any such documents so destroyed was duly and properly made and every share certificate so destroyed was a valid certificate duly and properly cancelled and that every instrument of transfer so destroyed was a valid and effective instrument duly and properly registered and that every other document destroyed hereunder was a valid and effective document in accordance with the recorded particulars thereof in the books or records of the Company. Provided always that: (1) the foregoing provisions of this Article shall apply only to the destruction of a document in good faith and without express notice to the Company that the preservation of such document was relevant to a claim; (2) nothing contained in this Article shall be construed as imposing upon the Company any liability in respect of the destruction of any such document earlier than as aforesaid or in any case where the conditions of proviso (1) above are not fulfilled; and (3) references in this Article to the destruction of any document include references to its disposal in any manner.

- (2) Notwithstanding any provision contained in these Articles, the Directors may, if permitted by applicable law, authorise the destruction of documents set out in sub-paragraphs (a) to (e) of paragraph (1) of this Article and any other documents in relation to share registration which have been microfilmed or electronically stored by the Company or by the share registrar on its behalf provided always that this Article shall apply only to the destruction of a document in good faith and without express notice to the Company and its share registrar that the preservation of such document was relevant to a claim.

## DIVIDENDS AND OTHER PAYMENTS

134. Subject to the Law, the Board may from time to time declare dividends in any currency to be paid to the Members.
135. Dividends may be declared and paid out of the profits of the Company, realised or unrealised, or from any reserve set aside from profits which the Directors determine is no longer needed. The Board may also declare and pay dividends out of share premium account or any other fund or account which can be authorised for this purpose in accordance with the Law.
136. Except in so far as the rights attaching to, or the terms of issue of, any share otherwise provide:
  - (a) all dividends shall be declared and paid according to the amounts paid up on the shares in respect of which the dividend is paid, but no amount paid up on a share in advance of calls shall be treated for the purposes of this Article as paid up on the share; and
  - (b) all dividends shall be apportioned and paid pro rata according to the amounts paid up on the shares during any portion or portions of the period in respect of which the dividend is paid.
137. The Board may from time to time pay to the Members such interim dividends as appear to the Board to be justified by the profits of the Company and in particular (but without prejudice to the generality of the foregoing) if at any time the share capital of the Company is divided into different classes, the Board may pay such interim dividends in respect of those shares in the capital of the Company which confer on the holders thereof deferred or non-preferential rights as well as in respect of those shares which confer on the holders thereof preferential rights with regard to dividend and provided that the Board acts bona fide the Board shall not incur any responsibility to the holders of shares conferring any preference for any damage that they may suffer by reason of the payment of an interim dividend on any shares having deferred or non-preferential rights and may also pay any fixed dividend which is payable on any shares of the Company half-yearly or on any other dates, whenever such profits, in the opinion of the Board, justifies such payment.
138. The Board may deduct from any dividend or other moneys payable to a Member by the Company on or in respect of any shares all sums of money (if any) presently payable by him to the Company on account of calls or otherwise.
139. No dividend or other moneys payable by the Company on or in respect of any share shall bear interest against the Company.
140. Any dividend, interest or other sum payable in cash to the holder of shares may be paid by cheque or warrant sent through the post addressed to the holder at his registered address or, in the case of joint holders, addressed to the holder whose name stands first in the Register in respect of the shares at his address as appearing in the Register or addressed to such person and at such address as the holder or joint holders may in writing direct. Every such cheque or warrant shall, unless the holder or joint holders otherwise direct, be made payable to the order of the holder or, in the case of joint holders, to the order of the holder whose name stands first on the Register in respect of such shares, and shall be sent at his or their risk and payment of the cheque or warrant by the bank on which it is drawn shall constitute a good discharge to the Company notwithstanding that it may subsequently appear that the same has been stolen or that any endorsement thereon has been forged. Any one of two or more joint holders may give effectual receipts for any dividends or other moneys payable or property distributable in respect of the shares held by such joint holders.

141. All dividends or bonuses unclaimed for one (1) year after having been declared may be invested or otherwise made use of by the Board for the benefit of the Company until claimed. Any dividend or bonuses unclaimed after a period of six (6) years from the date of declaration shall be forfeited and shall revert to the Company. The payment by the Board of any unclaimed dividend or other sums payable on or in respect of a share into a separate account shall not constitute the Company a trustee in respect thereof.
142. Whenever the Board has resolved that a dividend be paid or declared, the Board may further resolve that such dividend be satisfied wholly or in part by the distribution of specific assets of any kind and in particular of paid up shares, debentures or warrants to subscribe securities of the Company or any other company, or in any one or more of such ways, and where any difficulty arises in regard to the distribution the Board may settle the same as it thinks expedient, and in particular may issue certificates in respect of fractions of shares, disregard fractional entitlements or round the same up or down, and may fix the value for distribution of such specific assets, or any part thereof, and may determine that cash payments shall be made to any Members upon the footing of the value so fixed in order to adjust the rights of all parties, and may vest any such specific assets in trustees as may seem expedient to the Board and may appoint any person to sign any requisite instruments of transfer and other documents on behalf of the persons entitled to the dividend, and such appointment shall be effective and binding on the Members. The Board may resolve that no such assets shall be made available to Members with registered addresses in any particular territory or territories where, in the absence of a registration statement or other special formalities, such distribution of assets would or might, in the opinion of the Board, be unlawful or impracticable and in such event the only entitlement of the Members aforesaid shall be to receive cash payments as aforesaid. Members affected as a result of the foregoing sentence shall not be or be deemed to be a separate class of Members for any purpose whatsoever.
143. (1) Whenever the Board has resolved that a dividend be paid or declared on any class of the share capital of the Company, the Board may further resolve either:
- (a) that such dividend be satisfied wholly or in part in the form of an allotment of shares credited as fully paid up, provided that the Members entitled thereto will be entitled to elect to receive such dividend (or part thereof if the Board so determines) in cash in lieu of such allotment. In such case, the following provisions shall apply:
    - (i) the basis of any such allotment shall be determined by the Board;
    - (ii) the Board, after determining the basis of allotment, shall give not less than ten (10) days' Notice to the holders of the relevant shares of the right of election accorded to them and shall send with such notice forms of election and specify the procedure to be followed and the place at which and the latest date and time by which duly completed forms of election must be lodged in order to be effective;
    - (iii) the right of election may be exercised in respect of the whole or part of that portion of the dividend in respect of which the right of election has been accorded; and

- (iv) the dividend (or that part of the dividend to be satisfied by the allotment of shares as aforesaid) shall not be payable in cash on shares in respect whereof the cash election has not been duly exercised (“**the non-elected shares**”) and in satisfaction thereof shares of the relevant class shall be allotted credited as fully paid up to the holders of the non-elected shares on the basis of allotment determined as aforesaid and for such purpose the Board shall capitalise and apply out of any part of the undivided profits of the Company (including profits carried and standing to the credit of any reserves or other special account, share premium account, capital redemption reserve other than the Subscription Rights Reserve) as the Board may determine, such sum as may be required to pay up in full the appropriate number of shares of the relevant class for allotment and distribution to and amongst the holders of the non-elected shares on such basis; or
- (b) that the Members entitled to such dividend shall be entitled to elect to receive an allotment of shares credited as fully paid up in lieu of the whole or such part of the dividend as the Board may think fit. In such case, the following provisions shall apply:
  - (i) the basis of any such allotment shall be determined by the Board;
  - (ii) the Board, after determining the basis of allotment, shall give not less than ten (10) days’ Notice to the holders of the relevant shares of the right of election accorded to them and shall send with such notice forms of election and specify the procedure to be followed and the place at which and the latest date and time by which duly completed forms of election must be lodged in order to be effective;
  - (iii) the right of election may be exercised in respect of the whole or part of that portion of the dividend in respect of which the right of election has been accorded; and
  - (iv) the dividend (or that part of the dividend in respect of which a right of election has been accorded) shall not be payable in cash on shares in respect whereof the share election has been duly exercised (“**the elected shares**”) and in lieu thereof shares of the relevant class shall be allotted credited as fully paid up to the holders of the elected shares on the basis of allotment determined as aforesaid and for such purpose the Board shall capitalise and apply out of any part of the undivided profits of the Company (including profits carried and standing to the credit of any reserves or other special account, share premium account, capital redemption reserve other than the Subscription Rights Reserve) as the Board may determine, such sum as may be required to pay up in full the appropriate number of shares of the relevant class for allotment and distribution to and amongst the holders of the elected shares on such basis.



- (2) (a) The shares allotted pursuant to the provisions of paragraph (1) of this Article shall rank *pari passu* in all respects with shares of the same class (if any) then in issue save only as regards participation in the relevant dividend or in any other distributions, bonuses or rights paid, made, declared or announced prior to or contemporaneously with the payment or declaration of the relevant dividend unless, contemporaneously with the announcement by the Board of their proposal to apply the provisions of sub-paragraph (a) or (b) of paragraph (2) of this Article in relation to the relevant dividend or contemporaneously with their announcement of the distribution, bonus or rights in question, the Board shall specify that the shares to be allotted pursuant to the provisions of paragraph (1) of this Article shall rank for participation in such distribution, bonus or rights.
- (b) The Board may do all acts and things considered necessary or expedient to give effect to any capitalisation pursuant to the provisions of paragraph (1) of this Article, with full power to the Board to make such provisions as it thinks fit in the case of shares becoming distributable in fractions (including provisions whereby, in whole or in part, fractional entitlements are aggregated and sold and the net proceeds distributed to those entitled, or are disregarded or rounded up or down or whereby the benefit of fractional entitlements accrues to the Company rather than to the Members concerned). The Board may authorise any person to enter into on behalf of all Members interested, an agreement with the Company providing for such capitalisation and matters incidental thereto and any agreement made pursuant to such authority shall be effective and binding on all concerned.
- (3) The Company may upon the recommendation of the Board by ordinary resolution resolve in respect of any particular dividend of the Company that notwithstanding the provisions of paragraph (1) of this Article a dividend may be satisfied wholly in the form of an allotment of shares credited as fully paid up without offering any right to shareholders to elect to receive such dividend in cash in lieu of such allotment.
- (4) The Board may on any occasion determine that rights of election and the allotment of shares under paragraph (1) of this Article shall not be made available or made to any shareholders with registered addresses in any territory where, in the absence of a registration statement or other special formalities, the circulation of an offer of such rights of election or the allotment of shares would or might, in the opinion of the Board, be unlawful or impracticable, and in such event the provisions aforesaid shall be read and construed subject to such determination. Members affected as a result of the foregoing sentence shall not be or be deemed to be a separate class of Members for any purpose whatsoever.
- (5) Any resolution of the Board declaring a dividend on shares of any class, may specify that the same shall be payable or distributable to the persons registered as the holders of such shares at the close of business on a particular date, notwithstanding that it may be a date prior to that on which the resolution is passed, and thereupon the dividend shall be payable or distributable to them in accordance with their respective holdings so registered, but without prejudice to the rights inter se in respect of such dividend of transferors and transferees of any such shares. The provisions of this Article shall *mutatis mutandis* apply to bonuses, capitalisation issues, distributions of realised capital profits or offers or grants made by the Company to the Members.



## **RESERVES**

144. (1) The Board shall establish an account to be called the share premium account and shall carry to the credit of such account from time to time a sum equal to the amount or value of the premium paid on the issue of any share in the Company. Unless otherwise provided by the provisions of these Articles, the Board may apply the share premium account in any manner permitted by the Law. The Company shall at all times comply with the provisions of the Law in relation to the share premium account.
- (2) Before recommending any dividend, the Board may set aside out of the profits of the Company such sums as it determines as reserves which shall, at the discretion of the Board, be applicable for any purpose to which the profits of the Company may be properly applied and pending such application may, also at such discretion, either be employed in the business of the Company or be invested in such investments as the Board may from time to time think fit and so that it shall not be necessary to keep any investments constituting the reserve or reserves separate or distinct from any other investments of the Company. The Board may also without placing the same to reserve carry forward any profits which it may think prudent not to distribute.

## **CAPITALISATION**

145. The Board may, at any time and from time to time, pass a resolution to the effect that it is desirable to capitalise all or any part of any amount for the time being standing to the credit of any reserve or fund (including a share premium account and capital redemption reserve and the profit and loss account) whether or not the same is available for distribution and accordingly that such amount be set free for distribution among the Members or any class of Members who would be entitled thereto if it were distributed by way of dividend and in the same proportions, on the footing that the same is not paid in cash but is applied either in or towards paying up the amounts for the time being unpaid on any shares in the Company held by such Members respectively or in paying up in full unissued shares, debentures or other obligations of the Company, to be allotted and distributed credited as fully paid up among such Members, or partly in one way and partly in the other, and the Board shall give effect to such resolution provided that, for the purposes of this Article, a share premium account and any capital redemption reserve or fund representing unrealised profits, may be applied only in paying up in full unissued shares of the Company to be allotted to such Members credited as fully paid.
146. The Board may settle, as it considers appropriate, any difficulty arising in regard to any distribution under the last preceding Article and in particular may issue certificates in respect of fractions of shares or authorise any person to sell and transfer any fractions or may resolve that the distribution should be as nearly as may be practicable in the correct proportion but not exactly so or may ignore fractions altogether, and may determine that cash payments shall be made to any Members in order to adjust the rights of all parties, as may seem expedient to the Board. The Board may appoint any person to sign on behalf of the persons entitled to participate in the distribution any contract necessary or desirable for giving effect thereto and such appointment shall be effective and binding upon the Members.

## SUBSCRIPTION RIGHTS RESERVE

147. The following provisions shall have effect to the extent that they are not prohibited by and are in compliance with the Law:

- (1) If, so long as any of the rights attached to any warrants issued by the Company to subscribe for shares of the Company shall remain exercisable, the Company does any act or engages in any transaction which, as a result of any adjustments to the subscription price in accordance with the provisions of the conditions of the warrants, would reduce the subscription price to below the par value of a share, then the following provisions shall apply:
  - (a) as from the date of such act or transaction the Company shall establish and thereafter (subject as provided in this Article) maintain in accordance with the provisions of this Article a reserve (the “**Subscription Rights Reserve**”) the amount of which shall at no time be less than the sum which for the time being would be required to be capitalised and applied in paying up in full the nominal amount of the additional shares required to be issued and allotted credited as fully paid pursuant to sub-paragraph (c) below on the exercise in full of all the subscription rights outstanding and shall apply the Subscription Rights Reserve in paying up such additional shares in full as and when the same are allotted;
  - (b) the Subscription Rights Reserve shall not be used for any purpose other than that specified above unless all other reserves of the Company (other than share premium account) have been extinguished and will then only be used to make good losses of the Company if and so far as is required by law;
  - (c) upon the exercise of all or any of the subscription rights represented by any warrant, the relevant subscription rights shall be exercisable in respect of a nominal amount of shares equal to the amount in cash which the holder of such warrant is required to pay on exercise of the subscription rights represented thereby (or, as the case may be the relevant portion thereof in the event of a partial exercise of the subscription rights) and, in addition, there shall be allotted in respect of such subscription rights to the exercising warrant holder, credited as fully paid, such additional nominal amount of shares as is equal to the difference between:
    - (i) the said amount in cash which the holder of such warrant is required to pay on exercise of the subscription rights represented thereby (or, as the case may be, the relevant portion thereof in the event of a partial exercise of the subscription rights); and
    - (ii) the nominal amount of shares in respect of which such subscription rights would have been exercisable having regard to the provisions of the conditions of the warrants, had it been possible for such subscription rights to represent the right to subscribe for shares at less than par and immediately upon such exercise so much of the sum standing to the credit of the Subscription Rights Reserve as is required to pay up in full such additional nominal amount of shares shall be capitalised and applied in paying up in full such additional nominal amount of shares which shall forthwith be allotted credited as fully paid to the exercising warrant holders; and

- (d) if, upon the exercise of the subscription rights represented by any warrant, the amount standing to the credit of the Subscription Rights Reserve is not sufficient to pay up in full such additional nominal amount of shares equal to such difference as aforesaid to which the exercising warrant holder is entitled, the Board shall apply any profits or reserves then or thereafter becoming available (including, to the extent permitted by law, share premium account) for such purpose until such additional nominal amount of shares is paid up and allotted as aforesaid and until then no dividend or other distribution shall be paid or made on the fully paid shares of the Company then in issue. Pending such payment and allotment, the exercising warrant holder shall be issued by the Company with a certificate evidencing his right to the allotment of such additional nominal amount of shares. The rights represented by any such certificate shall be in registered form and shall be transferable in whole or in part in units of one share in the like manner as the shares for the time being are transferable, and the Company shall make such arrangements in relation to the maintenance of a register therefor and other matters in relation thereto as the Board may think fit and adequate particulars thereof shall be made known to each relevant exercising warrant holder upon the issue of such certificate.
- (2) Shares allotted pursuant to the provisions of this Article shall rank *pari passu* in all respects with the other shares allotted on the relevant exercise of the subscription rights represented by the warrant concerned. Notwithstanding anything contained in paragraph (1) of this Article, no fraction of any share shall be allotted on exercise of the subscription rights.
- (3) The provision of this Article as to the establishment and maintenance of the Subscription Rights Reserve shall not be altered or added to in any way which would vary or abrogate, or which would have the effect of varying or abrogating the provisions for the benefit of any warrant holder or class of warrant holders under this Article without the sanction of a special resolution of such warrant holders or class of warrant holders.
- (4) A certificate or report by the auditors for the time being of the Company as to whether or not the Subscription Rights Reserve is required to be established and maintained and if so the amount thereof so required to be established and maintained, as to the purposes for which the Subscription Rights Reserve has been used, as to the extent to which it has been used to make good losses of the Company, as to the additional nominal amount of shares required to be allotted to exercising warrant holders credited as fully paid, and as to any other matter concerning the Subscription Rights Reserve shall (in the absence of manifest error) be conclusive and binding upon the Company and all warrant holders and shareholders.

### **ACCOUNTING RECORDS**

148. The Board shall cause true accounts to be kept of the sums of money received and expended by the Company, and the matters in respect of which such receipt and expenditure take place, and of the property, assets, credits and liabilities of the Company and of all other matters required by the Law or necessary to give a true and fair view of the Company's affairs and to explain its transactions.

149. The accounting records shall be kept at the Office or, at such other place or places as the Board decides and shall always be open to inspection by the Directors. No Member (other than a Director) shall have any right of inspecting any accounting record or book or document of the Company except as conferred by law or authorised by the Board or the Company in general meeting.
150. Subject to Article 153, a printed copy of the Directors' report, accompanied by the balance sheet and profit and loss account, including every document required by law to be annexed thereto, made up to the end of the applicable financial year and containing a summary of the assets and liabilities of the Company under convenient heads and a statement of income and expenditure, together with a copy of the Auditors' report, shall be sent to each person entitled thereto at least ten (10) days before the date of the general meeting and laid before the Company at the annual general meeting held in accordance with Article 56 provided that this Article shall not require a copy of those documents to be sent to any person whose address the Company is not aware of or to more than one of the joint holders of any shares or debentures.
151. Subject to due compliance with all applicable Statutes, rules and regulations, including, without limitation, the rules of the Designated Stock Exchange, and to obtaining all necessary consents, if any, required thereunder, the requirements of Article 152 shall be deemed satisfied in relation to any person by sending to the person in any manner not prohibited by the Statutes, a summary financial statement derived from the Company's annual accounts and the directors' report which shall be in the form and containing the information required by applicable laws and regulations, provided that any person who is otherwise entitled to the annual financial statements of the Company and the directors' report thereon may, if he so requires by notice in writing served on the Company, demand that the Company sends to him, in addition to a summary financial statement, a complete printed copy of the Company's annual financial statement and the directors' report thereon.
152. The requirement to send to a person referred to in Article 152 the documents referred to in that article or a summary financial report in accordance with Article 153 shall be deemed satisfied where, in accordance with all applicable Statutes, rules and regulations, including, without limitation, the rules of the Designated Stock Exchange, the Company publishes copies of the documents referred to in Article 152 and, if applicable, a summary financial report complying with Article 153, on the Company's computer network or in any other permitted manner (including by sending any form of electronic communication), and that person has agreed or is deemed to have agreed to treat the publication or receipt of such documents in such manner as discharging the Company's obligation to send to him a copy of such documents.

## **AUDIT**

153. Subject to applicable law and rules of the Designated Stock Exchange:
  - (1) The Board shall appoint an auditor to audit the accounts of the Company and such auditor shall hold office until the Board appoints another auditor. Such auditor may be a Member but no Director or officer or employee of the Company shall, during his continuance in office, be eligible to act as an auditor of the Company.
  - (2) The Board may remove the Auditor at any time before the expiration of his term of office and may by resolution appoint another Auditor in his stead.

154. Subject to the Law the accounts of the Company shall be audited at least once in every year.
155. The remuneration of the Auditor shall be fixed by the Board.
156. If the office of auditor becomes vacant by the resignation or death of the Auditor, or by his becoming incapable of acting by reason of illness or other disability at a time when his services are required, the Directors shall fill the vacancy and determine the remuneration of such Auditor.
157. The Auditor shall at all reasonable times have access to all books kept by the Company and to all accounts and vouchers relating thereto; and he may call on the Directors or officers of the Company for any information in their possession relating to the books or affairs of the Company.
158. The statement of income and expenditure and the balance sheet provided for by these Articles shall be examined by the Auditor and compared by him with the books, accounts and vouchers relating thereto; and he shall make a written report thereon stating whether such statement and balance sheet are drawn up so as to present fairly the financial position of the Company and the results of its operations for the period under review and, in case information shall have been called for from Directors or officers of the Company, whether the same has been furnished and has been satisfactory. The financial statements of the Company shall be audited by the Auditor in accordance with generally accepted auditing standards. The Auditor shall make a written report thereon in accordance with generally accepted auditing standards and the report of the Auditor shall be submitted to the Members in general meeting. The generally accepted auditing standards referred to herein may be those of a country or jurisdiction other than the Cayman Islands. If so, the financial statements and the report of the Auditor should disclose this act and name such country or jurisdiction.

## NOTICES

159. Any Notice or document, whether or not, to be given or issued under these Articles from the Company to a Member shall be in writing or by cable, telex or facsimile transmission message or other form of electronic transmission or communication and any such Notice and document may be served or delivered by the Company on or to any Member either personally or by sending it through the post in a prepaid envelope addressed to such Member at his registered address as appearing in the Register or at any other address supplied by him to the Company for the purpose or, as the case may be, by transmitting it to any such address or transmitting it to any telex or facsimile transmission number or electronic number or address or website supplied by him to the Company for the giving of Notice to him or which the person transmitting the notice reasonably and bona fide believes at the relevant time will result in the Notice being duly received by the Member or may also be served by advertisement in appropriate newspapers in accordance with the requirements of the Designated Stock Exchange or, to the extent permitted by the applicable laws, by placing it on the Company's website and giving to the member a notice stating that the notice or other document is available there (a "**notice of availability**"). The notice of availability may be given to the Member by any of the means set out above. In the case of joint holders of a share all notices shall be given to that one of the joint holders whose name stands first in the Register and notice so given shall be deemed a sufficient service on or delivery to all the joint holders.



160. Any Notice or other document:

- (a) if served or delivered by post, shall where appropriate be sent by airmail and shall be deemed to have been served or delivered on the day following that on which the envelope containing the same, properly prepaid and addressed, is put into the post; in proving such service or delivery it shall be sufficient to prove that the envelope or wrapper containing the notice or document was properly addressed and put into the post and a certificate in writing signed by the Secretary or other officer of the Company or other person appointed by the Board that the envelope or wrapper containing the notice or other document was so addressed and put into the post shall be conclusive evidence thereof;
- (b) if sent by electronic communication, shall be deemed to be given on the day on which it is transmitted from the server of the Company or its agent. A notice placed on the Company's website is deemed given by the Company to a Member on the day following that on which a notice of availability is deemed served on the Member;
- (c) if served or delivered in any other manner contemplated by these Articles, shall be deemed to have been served or delivered at the time of personal service or delivery or, as the case may be, at the time of the relevant despatch or transmission; and in proving such service or delivery a certificate in writing signed by the Secretary or other officer of the Company or other person appointed by the Board as to the act and time of such service, delivery, despatch or transmission shall be conclusive evidence thereof; and
- (d) may be given to a Member in the English language or such other language as may be approved by the Directors, subject to due compliance with all applicable Statutes, rules and regulations.

161. (1) Any Notice or other document delivered or sent by post to or left at the registered address of any Member in pursuance of these Articles shall, notwithstanding that such Member is then dead or bankrupt or that any other event has occurred, and whether or not the Company has notice of the death or bankruptcy or other event, be deemed to have been duly served or delivered in respect of any share registered in the name of such Member as sole or joint holder unless his name shall, at the time of the service or delivery of the notice or document, have been removed from the Register as the holder of the share, and such service or delivery shall for all purposes be deemed a sufficient service or delivery of such Notice or document on all persons interested (whether jointly with or as claiming through or under him) in the share.
- (2) A notice may be given by the Company to the person entitled to a share in consequence of the death, mental disorder or bankruptcy of a Member by sending it through the post in a prepaid letter, envelope or wrapper addressed to him by name, or by the title of representative of the deceased, or trustee of the bankrupt, or by any like description, at the address, if any, supplied for the purpose by the person claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death, mental disorder or bankruptcy had not occurred.



- (3) Any person who by operation of law, transfer or other means whatsoever shall become entitled to any share shall be bound by every notice in respect of such share which prior to his name and address being entered on the Register shall have been duly given to the person from whom he derives his title to such share.

### **SIGNATURES**

162. For the purposes of these Articles, a cable or telex or facsimile or electronic transmission message purporting to come from a holder of shares or, as the case may be, a Director, or, in the case of a corporation which is a holder of shares from a director or the secretary thereof or a duly appointed attorney or duly authorised representative thereof for it and on its behalf, shall in the absence of express evidence to the contrary available to the person relying thereon at the relevant time be deemed to be a document or instrument in writing signed by such holder or Director in the terms in which it is received.

### **WINDING UP**

163. (1) The Board shall have power in the name and on behalf of the Company to present a petition to the court for the Company to be wound up.
  - (2) A resolution that the Company be wound up by the court or be wound up voluntarily shall be a special resolution.
164. (1) Subject to any special rights, privileges or restrictions as to the distribution of available surplus assets on liquidation for the time being attached to any class or classes of shares (i) if the Company shall be wound up and the assets available for distribution amongst the Members of the Company shall be more than sufficient to repay the whole of the capital paid up at the commencement of the winding up, the excess shall be distributed *pari passu* amongst such Members in proportion to the amount paid up on the shares held by them respectively and (ii) if the Company shall be wound up and the assets available for distribution amongst the Members as such shall be insufficient to repay the whole of the paid-up capital such assets shall be distributed so that, a nearly as may be, the losses shall be borne by the Members in proportion to the capital paid up, or which ought to have been paid up, at the commencement of the winding up on the shares held by them respectively.
  - (2) If the Company shall be wound up (whether the liquidation is voluntary or by the court) the liquidator may, with the authority of a special resolution and any other sanction required by the Law, divide among the Members in specie or kind the whole or any part of the assets of the Company and whether or not the assets shall consist of properties of one kind or shall consist of properties to be divided as aforesaid of different kinds, and may for such purpose set such value as he deems fair upon any one or more class or classes of property and may determine how such division shall be carried out as between the Members or different classes of Members. The liquidator may, with the like authority, vest any part of the assets in trustees upon such trusts for the benefit of the Members as the liquidator with the like authority shall think fit, and the liquidation of the Company may be closed and the Company dissolved, but so that no contributory shall be compelled to accept any shares or other property in respect of which there is a liability.

## **INDEMNITY**

165. (1) The Directors, Secretary and other officers and the liquidator or trustees (if any) for the time being acting in relation to any of the affairs of the Company and every one of them, and every one of their heirs, executors and administrators, shall be indemnified and secured harmless out of the assets and profits of the Company from and against all actions, costs, charges, losses, damages and expenses which they or any of them, their or any of their heirs, executors or administrators, shall or may incur or sustain by or by reason of any act done, concurred in or omitted in or about the execution of their duty, or supposed duty, in their respective offices or trusts; and none of them shall be answerable for the acts, receipts, neglects or defaults of the other or others of them or for joining in any receipts for the sake of conformity, or for any bankers or other persons with whom any moneys or effects belonging to the Company shall or may be lodged or deposited for safe custody, or for insufficiency or deficiency of any security upon which any moneys of or belonging to the Company shall be placed out on or invested, or for any other loss, misfortune or damage which may happen in the execution of their respective offices or trusts, or in relation thereto; PROVIDED THAT this indemnity shall not extend to any matter in respect of any fraud or dishonesty which may attach to any of said persons.
- (2) Each Member agrees to waive any claim or right of action he might have, whether individually or by or in the right of the Company, against any Director on account of any action taken by such Director, or the failure of such Director to take any action in the performance of his duties with or for the Company; PROVIDED THAT such waiver shall not extend to any matter in respect of any fraud or dishonesty which may attach to such Director.

## **AMENDMENT TO MEMORANDUM AND ARTICLES OF ASSOCIATION AND NAME OF COMPANY**

166. (1) Subject to the provisions of Article 9(c) and Articles 166(2) and 166(3), no Article shall be rescinded, altered or amended and no new Article shall be made until the same has been approved by a special resolution of the Members. Subject to the provisions of Article 9(c) and Articles 166(2) and 166(3), a special resolution shall be required to alter the provisions of the Memorandum of Association or to change the name of the Company. The Class B Ordinary Shares shall have only one vote per Class B Ordinary Share in respect of any special resolution pursuant to this Article 166(1).
- (2) For so long as William Wei Huang continues to have Beneficial Ownership in any of the issued share capital of the Company on an as converted basis, none of the provisions of Articles 9, 86, 102(4), 114, 122, 125(2), 58(2) and this Article 166 shall be rescinded, altered or amended (either directly or by the inclusion of any new Articles herein) without the affirmative vote of William Wei Huang and/or the holders of the Class B Ordinary Shares as the case may be.
- (3) For so long as STT continues to have Beneficial Ownership in any of the issued share capital of the Company on an as converted basis, none of the provisions of Articles 86(1), 86(2), 86(8), 102(4), 122, 125(2), 58(2) and this Article 166 shall be rescinded, altered or amended (either directly or by the inclusion of any new Articles herein) without the affirmative vote of STT.

## **INFORMATION**

167. No Member shall be entitled to require discovery of or any information respecting any detail of the Company's trading or any matter which is or may be in the nature of a trade secret or secret process which may relate to the conduct of the business of the Company and which in the opinion of the Directors it will be inexpedient in the interests of the Members of the Company to communicate to the public.

## D. DEPOSIT AGREEMENT

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DEPOSIT AGREEMENT dated as of [DATE], 2016 (the “Deposit Agreement”) among GDS HOLDINGS LIMITED and its successors (the “Company”), JPMORGAN CHASE BANK, N.A., as depositary hereunder (the “Depositary”), and all holders from time to time of American Depositary Receipts issued hereunder (“ADRs”) evidencing American Depositary Shares (“ADSs”) representing deposited Shares (defined below). The Company hereby appoints the Depositary as depositary for the Deposited Securities and hereby authorizes and directs the Depositary to act in accordance with the terms set forth in this Deposit Agreement. All capitalized terms used herein have the meanings ascribed to them in Section 1 or elsewhere in this Deposit Agreement. The parties hereto agree as follows:

1. Certain Definitions.

(a) “ADR Register” is defined in paragraph (3) of the form of ADR.

(b) “ADRs” mean the American Depositary Receipts executed and delivered hereunder. ADRs may be either in physical certificated form or Direct Registration ADRs (as hereinafter defined). ADRs in physical certificated form, and the terms and conditions governing the Direct Registration ADRs, shall be substantially in the form of Exhibit A annexed hereto (the “form of ADR”). The term “Direct Registration ADR” means an ADR, the ownership of which is recorded on the Direct Registration System. References to “ADRs” shall include certificated ADRs and Direct Registration ADRs, unless the context otherwise requires. The form of ADR is hereby incorporated herein and made a part hereof; the provisions of the form of ADR shall be binding upon the parties hereto.

(c) Subject to paragraph (13) of the form of ADR, each “ADS” evidenced by an ADR represents the right to receive eight Shares and a pro rata share in any other Deposited Securities.

(d) “Custodian” means the agent or agents of the Depositary (singly or collectively, as the context requires) and any additional or substitute Custodian appointed pursuant to Section 9.

(e) The terms “deliver”, “execute”, “issue”, “register”, “surrender”, “transfer” or “cancel”, when used with respect to Direct Registration ADRs, shall refer to an entry or entries or an electronic transfer or transfers in the Direct Registration System, and, when used with respect to ADRs in physical certificated form, shall refer to the physical delivery, execution, issuance, registration, surrender, transfer or cancellation of certificates representing the ADRs.

(f) “Delivery Order” is defined in Section 3.

(g) “Deposited Securities” as of any time means all Shares at such time deposited under this Deposit Agreement and any and all other Shares, securities, property and cash at such time held by the Depositary or the Custodian in respect or in lieu of such deposited Shares and other Shares, securities, property and cash.



(h) “Direct Registration System” means the system for the uncertificated registration of ownership of securities established by The Depository Trust Company (“DTC”) and utilized by the Depository pursuant to which the Depository may record the ownership of ADRs without the issuance of a certificate, which ownership shall be evidenced by periodic statements issued by the Depository to the Holders entitled thereto. For purposes hereof, the Direct Registration System shall include access to the Profile Modification System maintained by DTC which provides for automated transfer of ownership between DTC and the Depository.

(i) “Holder” means the person or persons in whose name an ADR is registered on the ADR Register.

(j) “Securities Act of 1933” means the United States Securities Act of 1933, as from time to time amended.

(k) “Securities Exchange Act of 1934” means the United States Securities Exchange Act of 1934, as from time to time amended.

(l) “Shares” mean the Class A ordinary shares of the Company, and shall include the rights to receive Shares specified in paragraph (1) of the form of ADR.

(m) “Transfer Office” is defined in paragraph (3) of the form of ADR.

(n) “Withdrawal Order” is defined in Section 6.

2. ADRs. (a) ADRs in certificated form shall be printed or otherwise reproduced at the discretion of the Depository in accordance with its customary practices in its American depository receipt business, or at the request of the Company typewritten and photocopied on plain or safety paper, and shall be substantially in the form set forth in the form of ADR, with such changes as may be required by the Depository or the Company to comply with their obligations hereunder, any applicable law, regulation or usage or to indicate any special limitations or restrictions to which any particular ADRs are subject. ADRs may be issued in denominations of any number of ADSs. ADRs in certificated form shall be executed by the Depository by the manual or facsimile signature of a duly authorized officer of the Depository. ADRs in certificated form bearing the facsimile signature of anyone who was at the time of execution a duly authorized officer of the Depository shall bind the Depository, notwithstanding that such officer has ceased to hold such office prior to the delivery of such ADRs.

(b) Direct Registration ADRs. Notwithstanding anything in this Deposit Agreement or in the form of ADR to the contrary, ADSs shall be evidenced by Direct Registration ADRs, unless certificated ADRs are specifically requested by the Holder.

(c) Holders shall be bound by the terms and conditions of this Deposit Agreement and of the form of ADR, regardless of whether their ADRs are Direct Registration ADRs or certificated ADRs.

3. Deposit of Shares. In connection with the deposit of Shares hereunder, the Depositary or the Custodian shall require a written order, in a form satisfactory to the Depositary, directing the Depositary to issue to, or upon the written order of, the person or persons designated in such order a Direct Registration ADR or ADRs evidencing the number of ADSs representing such deposited Shares (a “Delivery Order”). Shares presented for deposit shall, at the time of such deposit, be registered in the name of JPMorgan Chase Bank, N.A., as depositary for the benefit of holders of ADRs or in such other name as the Depositary shall direct. Deposited Securities shall be held by the Custodian for the account and to the order of the Depositary for the benefit of Holders of ADRs (to the extent not prohibited by law) at such place or places and in such manner as the Depositary shall determine. Deposited Securities may be delivered by the Custodian to any person only under the circumstances expressly contemplated in this Deposit Agreement. To the extent that the provisions of or governing the Shares make delivery of certificates therefor impracticable, Shares may be deposited hereunder by such delivery thereof as the Depositary or the Custodian may reasonably accept, including, without limitation, by causing them to be credited to an account maintained by the Custodian for such purpose with the Company or an accredited intermediary, such as a bank, acting as a registrar for the Shares, together with delivery of the documents, payments and Delivery Order referred to herein to the Custodian or the Depositary.

4. Issue of ADRs. After any such deposit of Shares, the Custodian shall notify the Depositary of such deposit and of the information contained in any related Delivery Order by letter, first class airmail postage prepaid, or, at the request, risk and expense of the person making the deposit, by SWIFT, cable, telex or facsimile transmission. After receiving such notice from the Custodian, the Depositary, subject to this Deposit Agreement, shall properly issue at the Transfer Office, to or upon the order of any person named in such notice, an ADR or ADRs registered as requested and evidencing the aggregate ADSs to which such person is entitled.

5. Distributions on Deposited Securities. To the extent that the Depositary determines in its discretion that any distribution pursuant to paragraph (10) of the form of ADR is not practicable with respect to any Holder, the Depositary may make such distribution as it so deems practicable, including the distribution of foreign currency, securities or property (or appropriate documents evidencing the right to receive foreign currency, securities or property) or the retention thereof as Deposited Securities with respect to such Holder’s ADRs (without liability for interest thereon or the investment thereof).

6. Withdrawal of Deposited Securities. In connection with any surrender of an ADR for withdrawal of the Deposited Securities represented by the ADSs evidenced thereby, the Depositary may require proper endorsement in blank of such ADR (or duly executed instruments of transfer thereof in blank) and the Holder’s written order directing the Depositary to cause the Deposited Securities represented by the ADSs evidenced by such ADR to be withdrawn and delivered to, or upon the written order of, any person designated in such order (a “Withdrawal Order”). Directions from the Depositary to the Custodian to deliver Deposited Securities shall be given by letter, first class airmail postage prepaid, or, at the request, risk and expense of the Holder, by SWIFT, cable, telex or facsimile transmission. Delivery of Deposited Securities may be made by the delivery of certificates (which, if required by law shall be properly endorsed or accompanied by properly executed instruments of transfer or, if such certificates may be registered, registered in the name of such Holder or as ordered by such Holder in any Withdrawal Order) or by such other means as the Depositary may deem practicable, including, without limitation, by transfer of record ownership thereof to an account designated in the Withdrawal Order maintained either by the Company or an accredited intermediary, such as a bank, acting as a registrar for the Deposited Securities.

7. Substitution of ADRs. The Depositary shall execute and deliver a new Direct Registration ADR in exchange and substitution for any mutilated certificated ADR upon cancellation thereof or in lieu of and in substitution for such destroyed, lost or stolen certificated ADR, unless the Depositary has notice that such ADR has been acquired by a bona fide purchaser, upon the Holder thereof filing with the Depositary a request for such execution and delivery and a sufficient indemnity bond and satisfying any other reasonable requirements imposed by the Depositary.

8. Cancellation and Destruction of ADRs; Maintenance of Records. All ADRs surrendered to the Depositary shall be cancelled by the Depositary. The Depositary is authorized to destroy ADRs in certificated form so cancelled in accordance with its customary practices.

The Depositary agrees to maintain or cause its agents to maintain records of all ADRs surrendered and Deposited Securities withdrawn under Section 6 hereof and paragraph (2) of the form of ADR, substitute ADRs delivered under Section 7 hereof, and canceled or destroyed ADRs under this Section 8, in keeping with the procedures ordinarily followed by stock transfer agents located in the United States or as required by the laws or regulations governing the Depositary.

9. The Custodian. Any Custodian in acting hereunder shall be subject to the directions of the Depositary and shall be responsible solely to it. The Depositary reserves the right to add, replace or remove a Custodian. The Depositary will give prompt notice of any such action, which will be advance notice if practicable.

Any Custodian may resign from its duties hereunder by providing at least 30 days prior written notice to the Depositary. If upon the effectiveness of such resignation there would be no Custodian acting hereunder, the Depositary shall, after the effectiveness of such resignation, endeavor to appoint a substitute custodian or custodians, each of which shall thereafter be a Custodian hereunder. The Depositary may discharge any Custodian at any time upon notice to the Custodian being discharged. Any Custodian ceasing to act hereunder as Custodian shall deliver, upon the instruction of the Depositary, all Deposited Securities held by it to a Custodian continuing to act. Notwithstanding anything to the contrary contained in this Deposit Agreement (including the ADRs) and subject to the penultimate sentence of paragraph (14) of the form of ADR, the Depositary shall not be responsible for, and shall incur no liability in connection with or arising from, any act or omission to act on the part of the Custodian except to the extent that the Custodian has (i) committed fraud or willful misconduct in the provision of custodial services to the Depositary or (ii) failed to use reasonable care in the provision of custodial services to the Depositary as determined in accordance with the standards prevailing in the jurisdiction in which the Custodian is located.

10. Lists of Holders. The Company shall have the right to inspect transfer records of the Depositary and its agents and the ADR Register, take copies thereof and require the Depositary and its agents to supply copies of such portions of such records as the Company may request. The Depositary or its agent shall furnish to the Company promptly upon the written request of the Company, a list of the names, addresses and holdings of ADSs by all Holders as of a date within seven days of the Depositary's receipt of such request.

11. Depository's Agents. The Depository may perform its obligations under this Deposit Agreement through any agent appointed by it, provided that the Depository shall notify the Company of such appointment and shall remain responsible for the performance of such obligations as if no agent were appointed, subject to paragraph (14) of the form of ADR.

12. Successor Depository. The Depository may at any time resign as Depository hereunder by written notice of its election so to do delivered to the Company, such resignation to take effect upon the appointment of a successor depository and its acceptance of such appointment as hereinafter provided. The Depository may at any time be removed by the Company by providing no less than 120 days prior written notice of such removal to the Depository, such removal to take effect the later of (i) the 120th day after such notice of removal is first provided and (ii) the appointment of a successor depository and its acceptance of such appointment as hereinafter provided. Notwithstanding the foregoing, if upon the resignation or removal of the Depository a successor depository is not appointed within the applicable 60-day period (in the case of resignation) or 120-day period (in the case of removal) as specified in paragraph (17) of the form of ADR, then the Depository may elect to terminate this Deposit Agreement and the ADR and the provisions of said paragraph (17) shall thereafter govern the Depository's obligations hereunder. In case at any time the Depository acting hereunder shall resign or be removed, the Company shall use its best efforts to appoint a successor depository, which shall be a bank or trust company having an office in the Borough of Manhattan, The City of New York. Every successor depository shall execute and deliver to its predecessor and to the Company an instrument in writing accepting its appointment hereunder, and thereupon such successor depository, without any further act or deed, shall become fully vested with all the rights, powers, duties and obligations of its predecessor. The predecessor depository, only upon payment of all sums due to it and on the written request of the Company, shall (i) execute and deliver an instrument transferring to such successor all rights and powers of such predecessor hereunder (other than its rights to indemnification and fees owing, each of which shall survive any such removal and/or resignation), (ii) duly assign, transfer and deliver all right, title and interest to the Deposited Securities to such successor, and (iii) deliver to such successor a list of the Holders of all outstanding ADRs. Any such successor depository shall promptly mail notice of its appointment to such Holders. Any bank or trust company into or with which the Depository may be merged or consolidated, or to which the Depository shall transfer substantially all its American depository receipt business, shall be the successor of the Depository without the execution or filing of any document or any further act.

13. Reports. On or before the first date on which the Company makes any communication available to holders of Deposited Securities or any securities regulatory authority or stock exchange, by publication or otherwise, the Company shall transmit to the Depository a copy thereof in English or with an English translation or summary. The Company has delivered to the Depository, the Custodian and any Transfer Office, a copy of all provisions of or governing the Shares and any other Deposited Securities issued by the Company or any affiliate of the Company and, promptly upon any change thereto, the Company shall deliver to the Depository, the Custodian and any Transfer Office, a copy (in English or with an English translation) of such provisions as so changed. The Depository and its agents may rely upon the Company's delivery of all such communications, information and provisions for all purposes of this Deposit Agreement and the Depository shall have no liability for the accuracy or completeness of any thereof.

14. Additional Shares. The Company agrees with the Depositary that neither the Company nor any company controlling, controlled by or under common control with the Company shall issue additional Shares, rights to subscribe for Shares, securities convertible into or exchangeable for Shares or rights to subscribe for any such securities or shall deposit any Shares under this Deposit Agreement, except under circumstances complying in all respects with the Securities Act of 1933. At the reasonable request of the Depositary where it deems necessary in the case of any such issuance, subscription, conversion, exchange or deposit, the Company will furnish the Depositary with legal opinions, in forms and from counsels reasonably acceptable to the Depositary, dealing with such issues requested by the Depositary. The Depositary will use reasonable efforts to comply with written instructions of the Company not to accept for deposit hereunder any Shares identified in such instructions at such times and under such circumstances as may reasonably be specified in such instructions in order to facilitate the Company's compliance with securities laws in the United States.

15. Indemnification. The Company shall indemnify, defend and save harmless each of the Depositary, the Custodian and their respective directors, officers, employees, agents and affiliates against any loss, liability or expense (including reasonable fees and expenses of counsel) which may arise out of acts performed or omitted, in connection with the provisions of this Deposit Agreement and of the ADRs, as the same may be amended, modified or supplemented from time to time in accordance herewith (i) by either the Depositary or a Custodian or their respective directors, officers, employees, agents and affiliates, except, subject to the penultimate paragraph of this Section 15, for any liability or expense directly arising out of the negligence or willful misconduct of the Depositary or its directors, officers or affiliates acting in their capacities as such hereunder, or (ii) by the Company or any of its directors, officers, employees, agents and affiliates.

The indemnities set forth in the preceding paragraph shall also apply to any liability or expense which may arise out of any misstatement or alleged misstatement or omission or alleged omission in any registration statement, proxy statement, prospectus (or placement memorandum), or preliminary prospectus (or preliminary placement memorandum) relating to the offer or sale of ADSs, except to the extent any such liability or expense arises out of (i) information relating to the Depositary or its agents (other than the Company), as applicable, furnished in writing by the Depositary and not changed or altered by the Company expressly for use in any of the foregoing documents or (ii) if such information is provided, the failure to state a material fact necessary to make the information provided not misleading.

Except as provided in the next succeeding paragraph, the Depositary shall indemnify, defend and save harmless the Company against any direct loss, liability or expense (including reasonable fees and expenses of counsel) incurred by the Company in respect of this Deposit Agreement to the extent such loss, liability or expense is due to the negligence or willful misconduct of the Depositary.



Notwithstanding any other provision of this Deposit Agreement or the ADRs to the contrary, neither the Company nor the Depositary, nor any of their agents shall be liable to the other for any indirect, special, punitive or consequential damages (excluding reasonable fees and expenses of counsel) or lost profits (collectively “Special Damages”) of any form incurred by any of them or any other person or entity, whether or not foreseeable and regardless of the type of action in which such a claim may be brought; provided, however, that to the extent Special Damages arise from or out of a claim brought by a third party (including, without limitation, Holders) against the Depositary or any of its agents acting under the Deposit Agreement, the Depositary and its agents shall be entitled to full indemnification from the Company for all such Special Damages, unless such Special Damages are found to have been a direct result of the gross negligence or willful misconduct of the Depositary.

The obligations set forth in this Section 15 shall survive the termination of this Deposit Agreement and the succession or substitution of any indemnified person.

16. Notices. Notice to any Holder shall be deemed given when first mailed, first class postage prepaid, to the address of such Holder on the ADR Register or received by such Holder. Failure to notify a Holder or any defect in the notification to a Holder shall not affect the sufficiency of notification to other Holders or to the beneficial owners of ADSs held by such other Holders. Notice to the Depositary or the Company shall be deemed given when first received by it at the address or facsimile transmission number set forth in (a) or (b), respectively, or at such other address or facsimile transmission number as either may specify to the other by written notice:

- (a) JPMorgan Chase Bank, N.A.  
4 New York Plaza, Floor 12  
New York, New York, 10004  
Attention: Depositary Receipts Group  
Fax: (212) 552-1950
  
- (b) GDS Holdings Limited  
F5, South Tower, No.20, Lane 91, E’shan Rd, Pudong New District, Shanghai,  
200127, China  
Attention: Zhiyong Li  
Fax: +8621 20330202

17. Miscellaneous. This Deposit Agreement is for the exclusive benefit of the Company, the Depositary, the Holders, and their respective successors hereunder, and, except to the extent specifically set forth in Section 15 of this Deposit Agreement, shall not give any legal or equitable right, remedy or claim whatsoever to any other person. The Holders and owners of ADRs from time to time shall be parties to this Deposit Agreement and shall be bound by all of the provisions hereof. If any such provision is invalid, illegal or unenforceable in any respect, the remaining provisions shall in no way be affected thereby. This Deposit Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one instrument. Delivery of an executed signature page of this Deposit Agreement by facsimile or other electronic transmission (including “.pdf”, “.tif” or similar format) shall be effective as delivery of a manually executed counterpart hereof.



18. Consent to Jurisdiction; Appointment of Agent for Service of Process. (a) The Company irrevocably agrees that any legal suit, action or proceeding against the Company brought by the Depository or any Holder, arising out of or based upon this Deposit Agreement or the transactions contemplated hereby, may be instituted in any state or federal court in New York, New York, and irrevocably waives any objection which it may now or hereafter have to the laying of venue of any such proceeding, and irrevocably submits to the non-exclusive jurisdiction of such courts in any such suit, action or proceeding. The Company also irrevocably agrees that any legal suit, action or proceeding against the Depository brought by the Company, arising out of or based upon this Deposit Agreement or the transactions contemplated hereby, may only be instituted in a state or federal court in New York, New York. Notwithstanding the foregoing, any action against the Company based on this Deposit Agreement or the transactions contemplated hereby may be instituted by the Depository in any competent court in the Cayman Islands, Hong Kong, the People's Republic of China and/or the United States, or by the Depository through the commencement of an arbitration pursuant to Section 18(b) of this Deposit Agreement. The Company has appointed Law Debenture Corporate Services Inc., 400 Madison Avenue, 4th Floor, New York, New York 10017, as its authorized agent (the "Authorized Agent") upon which process may be served in any such action or proceeding arising out of or based on this Deposit Agreement or the transactions contemplated hereby which may be instituted in any state or federal court in New York, New York by the Depository or any Holder, and waives any other requirements of or objections to personal jurisdiction with respect thereto. Subject to the Company's rights to replace the Authorized Agent with another entity in the manner required were the Authorized Agent to have resigned, such appointment shall be irrevocable. The Company represents and warrants that the Authorized Agent has agreed to act as said agent for service of process, and the Company agrees to take any and all action, including the filing of any and all documents and instruments, that may be necessary to continue such appointment in full force and effect as aforesaid. The Company further hereby irrevocably consents and agrees to the service of any and all legal process, summons, notices and documents in any suit, action or proceeding against the Company, by service by mail of a copy thereof upon the Authorized Agent (whether or not the appointment of such Authorized Agent shall for any reason prove to be ineffective or such Authorized Agent shall fail to accept or acknowledge such service), with a copy mailed to the Company by registered or certified air mail, postage prepaid, to its address provided in Section 16(b) hereof. The Company agrees that the failure of the Authorized Agent to give any notice of such service to it shall not impair or affect in any way the validity of such service or any judgment or award rendered in any action or proceeding based thereon. If, for any reason, the Authorized Agent named above or its successor shall no longer serve as agent of the Company to receive service of process, notice or papers, the Company shall promptly appoint a successor that is a legal entity with offices in New York, New York, so as to serve and will promptly advise the Depository thereof and shall promptly appoint a successor acceptable to the Depository to serve as Authorized Agent hereunder. In the event the Company fails to continue such designation and appointment in full force and effect as aforesaid, the Company hereby waives personal service of process upon it and consents that any such service of process may be made by certified or registered mail, return receipt requested, directed to the Company at its address last specified for notices hereunder, and service so made shall be deemed completed five (5) days after the same shall have been so mailed.

(b) **Optional Arbitration.** Notwithstanding anything in this Deposit Agreement to the contrary, each of the parties hereto (i.e. the Company, the Depository and all Holders from time to time of ADRs issued hereunder (and any persons holding interests in ADSs)) agrees that: (i) the Depository may, in its sole discretion, elect to institute any action, controversy, claim or dispute directly or indirectly based on, arising out of or relating to this Deposit Agreement or the ADRs or the transactions contemplated hereby or thereby, including without limitation any question regarding its or their existence, validity, interpretation, performance or termination (a “Dispute”) against any other party or parties hereto (including, without limitation, Disputes brought against Holders and owners of interests in ADSs), by having the Dispute referred to and finally resolved by an arbitration conducted under the terms set out below, and (ii) the Depository may in its sole discretion require, by written notice to the relevant party or parties, that any Dispute, legal suit, action or proceeding brought by any party or parties hereto (including, without limitation, Disputes, legal suits, actions or proceedings brought by Holders and owners of interests in ADSs) against the Depository shall be referred to and finally settled by an arbitration conducted under the terms set out below. Any such arbitration shall at the Depository’s election be conducted either in New York, New York in accordance with the Commercial Arbitration Rules of the American Arbitration Association or in Hong Kong following the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL) with the Hong Kong International Arbitration Centre serving as the appointing authority, and the language of any such arbitration shall be English. A notice of arbitration may be mailed to the Company at its address last specified for notices under this Deposit Agreement, and, if applicable, to any Holders at their addresses on the ADR Register. In any case where the Depository exercises its right to arbitrate hereunder, arbitration of the Dispute shall be mandatory and any pending litigation arising out of or related to such Dispute shall be stayed. Judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The number of arbitrators shall be three, each of whom shall be disinterested in the dispute or controversy, shall have no connection with any party thereto, and shall be an attorney experienced in international securities transactions. Each of the Company and the Depository shall appoint one arbitrator and the two arbitrators shall select a third arbitrator who shall serve as chairperson of the tribunal. If a Dispute shall involve more than two parties, the parties shall attempt to align themselves in two sides (i.e., claimant and respondent), each of which shall appoint one arbitrator as if there were only two parties to such Dispute. If either or both parties fail to select an arbitrator, or if such alignment (in the event there are more than two parties) shall not have occurred, within thirty (30) calendar days after the Depository serves the arbitration demand or the two arbitrators fail to select a third arbitrator within thirty (30) calendar days of the selection of the second arbitrator, the American Arbitration Association in the case of an arbitration in New York, or the Hong Kong International Arbitration Centre in the case of an arbitration in Hong Kong, shall appoint the remaining arbitrator or arbitrators in accordance with its rules. The parties and the American Arbitration Association and/or the Hong Kong International Arbitration Centre, as the case may be, may appoint the arbitrators from among the nationals of any country, whether or not the appointing party or any other party to the arbitration is a national of that country. The arbitrators shall have no authority to award damages against any party not measured by the prevailing party’s actual damages and shall have no authority to award any consequential, special or punitive damages against any party and may not, in any event, make any ruling, finding or award that does not conform to the terms and conditions of this Deposit Agreement. In all cases, the fees of the arbitrators and other costs incurred by the parties in connection with such arbitration shall be paid by the party (or parties) that is (or are) unsuccessful in such arbitration. No party hereto shall be entitled to join or consolidate disputes by or against others in any arbitration, or to include in any arbitration any dispute as a representative or member of a class, or act in any arbitration in the interest of the general public or in a private attorney general capacity.

(c) Actions by Holders etc. By holding an ADS or an interest therein, Holders and owners of ADSs each irrevocably agree that any legal suit, action or proceeding against or involving the Company or the Depositary, arising out of or based upon this Deposit Agreement, the ADSs or the transactions contemplated herein, therein or hereby, may only be instituted in a state or federal court in New York, New York, and by holding an ADS or an interest therein each irrevocably waives any objection which it may now or hereafter have to the laying of venue of any such proceeding, and irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Notwithstanding the foregoing, the Depositary may refer any such action to arbitration in accordance with the provisions of the Deposit Agreement and, upon such referral, any such action instituted by Holders and/or owners shall be finally decided in such arbitration rather than in such court.

(d) To the extent that the Company or any of its properties, assets or revenues may have or may hereafter be entitled to, or have attributed to it, any right of immunity, on the grounds of sovereignty or otherwise, from any legal action, suit or proceeding (including any arbitration), from the giving of any relief in respect thereof, from setoff or counterclaim, from the jurisdiction of any court, from service of process, from attachment upon or prior to judgment, from attachment in aid of execution or judgment, or from execution of judgment, or other legal process or proceeding for the giving of any relief or for the enforcement of any judgment or arbitral award, in any jurisdiction in which proceedings may at any time be commenced, with respect to its obligations, liabilities or other matters under or arising out of or in connection with the Shares or Deposited Securities, the ADSs, the ADRs or this Deposit Agreement, the Company, to the fullest extent permitted by law, hereby irrevocably and unconditionally waives, and agrees not to plead or claim, any such immunity and consents to such relief and enforcement.

(e) Waiver. EACH PARTY TO THIS DEPOSIT AGREEMENT (INCLUDING, FOR AVOIDANCE OF DOUBT, EACH HOLDER AND BENEFICIAL OWNER AND/OR HOLDER OF INTERESTS IN ADRS) HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING AGAINST THE DEPOSITARY AND/OR THE COMPANY DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THE SHARES OR OTHER DEPOSITED SECURITIES, THE ADSs OR THE ADRs, THE DEPOSIT AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREIN OR THEREIN, OR THE BREACH HEREOF OR THEREOF (WHETHER BASED ON CONTRACT, TORT, COMMON LAW OR ANY OTHER THEORY).

IN WITNESS WHEREOF, GDS HOLDINGS LIMITED and JPMORGAN CHASE BANK, N.A. have duly executed this Deposit Agreement as of the day and year first above set forth and all holders of ADRs shall become parties hereto upon acceptance by them of ADRs issued in accordance with the terms hereof.

GDS HOLDINGS LIMITED

By: \_\_\_\_\_  
Name:  
Title

JPMORGAN CHASE BANK, N.A.

By: \_\_\_\_\_  
Name:  
Title: Executive Director

EXHIBIT A  
ANNEXED TO AND INCORPORATED IN  
DEPOSIT AGREEMENT

[FORM OF FACE OF ADR]

\_\_\_\_\_  
Number

No. of ADSs:

Each ADS represents  
Eight Shares

CUSIP:

AMERICAN DEPOSITARY RECEIPT

evidencing

AMERICAN DEPOSITARY SHARES

representing

CLASS A ORDINARY SHARES

of

GDS HOLDINGS LIMITED

(Incorporated under the laws of the Cayman Islands)

JPMORGAN CHASE BANK, N.A., a national banking association organized under the laws of the United States of America, as depositary hereunder (the “Depositary”), hereby certifies that \_\_\_\_\_ is the registered owner (a “Holder”) of American Depositary Shares (“ADSs”), each (subject to paragraph (13)) representing eight Class A ordinary share (including the rights to receive Shares described in paragraph (1), “Shares” and, together with any other securities, cash or property from time to time held by the Depositary in respect or in lieu of deposited Shares, the “Deposited Securities”), of GDS Holdings Limited, a corporation organized under the laws of the Cayman Islands (the “Company”), deposited under the Deposit Agreement dated as of [DATE], 2016 (as amended from time to time, the “Deposit Agreement”) among the Company, the Depositary and all Holders from time to time of American Depositary Receipts issued thereunder (“ADRs”), each of whom by accepting an ADR becomes a party thereto. The Deposit Agreement and this ADR (which includes the provisions set forth on the reverse hereof) shall be governed by and construed in accordance with the laws of the State of New York.

(1) Issuance and Pre-Release of ADSs. This ADR is one of the ADRs issued under the Deposit Agreement. Subject to the other provisions hereof, the Depositary may so issue ADRs for delivery at the Transfer Office (as hereinafter defined) only against deposit of: (a) Shares in a form satisfactory to the Custodian; (b) rights to receive Shares from the Company or any registrar, transfer agent, clearing agent or other entity recording Share ownership or transactions; or (c) in accordance with the next paragraph hereof.

In its capacity as Depositary, the Depositary shall not lend Shares or ADSs; provided, however, that the Depositary may (i) issue ADSs prior to the receipt of Shares and (ii) deliver Shares prior to the receipt of ADSs for withdrawal of Deposited Securities, including ADSs which were issued under (i) above but for which Shares may not have been received (each such transaction a “Pre-Release”). The Depositary may receive ADSs in lieu of Shares under (i) above (which ADSs will promptly be canceled by the Depositary upon receipt by the Depositary) and receive Shares in lieu of ADSs under (ii) above. Each such Pre-Release will be subject to a written agreement whereby the person or entity (the “Applicant”) to whom ADSs or Shares are to be delivered (a) represents that at the time of the Pre-Release the Applicant or its customer owns the Shares or ADSs that are to be delivered by the Applicant under such Pre-Release, (b) agrees to indicate the Depositary as owner of such Shares or ADSs in its records and to hold such Shares or ADSs in trust for the Depositary until such Shares or ADSs are delivered to the Depositary or the Custodian, (c) unconditionally guarantees to deliver to the Depositary or the Custodian, as applicable, such Shares or ADSs, and (d) agrees to any additional restrictions or requirements that the Depositary deems appropriate. Each such Pre-Release will be at all times fully collateralized with cash, U.S. government securities or such other collateral as the Depositary deems appropriate, terminable by the Depositary on not more than five (5) business days’ notice and subject to such further indemnities and credit regulations as the Depositary deems appropriate. The Depositary will normally limit the number of ADSs and Shares involved in such Pre-Release at any one time to thirty percent (30%) of the ADSs outstanding (without giving effect to ADSs outstanding under (i) above), provided, however, that the Depositary reserves the right to change or disregard such limit from time to time as it deems appropriate. The Depositary may also set limits with respect to the number of ADSs and Shares involved in Pre-Release with any one person on a case-by-case basis as it deems appropriate. The Depositary may retain for its own account any compensation received by it in conjunction with the foregoing. Collateral provided in connection with Pre-Release transactions, but not the earnings thereon, shall be held for the benefit of the Holders (other than the Applicant).

Every person depositing Shares under the Deposit Agreement represents and warrants that (a) such Shares and the certificates therefor are duly authorized, validly issued and outstanding, fully paid, nonassessable and legally obtained by such person (b) all pre-emptive and comparable rights, if any, with respect to such Shares have been validly waived or exercised, (c) the person making such deposit is duly authorized so to do, (d) the Shares presented for deposit are free and clear of any lien, encumbrance, security interest, charge, mortgage or adverse claim and (e) such Shares (A) are not “restricted securities” as such term is defined in Rule 144 under the Securities Act of 1933 (“Restricted Securities”) unless at the time of deposit the requirements of paragraphs (c), (e), (f) and (h) of Rule 144 shall not apply and such Shares may be freely transferred and may otherwise be offered and sold freely in the United States or (B) have been registered under the Securities Act of 1933. To the extent the person depositing Shares is an “affiliate” of the Company as such term is defined in Rule 144, the person also represents and warrants that upon the sale of the ADSs, all of the provisions of Rule 144 which enable the Shares to be freely sold (in the form of ADSs) will be fully complied with and, as a result thereof, all of the ADSs issued in respect of such Shares will not be on the sale thereof, Restricted Securities. Such representations and warranties shall survive the deposit and withdrawal of Shares and the issuance and cancellation of ADSs in respect thereof and the transfer of such ADSs. The Depositary will not knowingly accept for deposit under the Deposit Agreement any Shares required to be registered under the Securities Act of 1933 and not so registered; the Depositary may refuse to accept for such deposit any Shares identified by the Company in order to facilitate the Company’s compliance with the requirements of the Securities Act of 1933 or the Rules promulgated thereunder.



(2) Withdrawal of Deposited Securities. Subject to paragraphs (4) and (5), upon surrender of (i) a certificated ADR in a form satisfactory to the Depositary at the Transfer Office or (ii) proper instructions and documentation in the case of a Direct Registration ADR, the Holder hereof is entitled to delivery at, or to the extent in dematerialized form from, the Custodian's office of the Deposited Securities at the time represented by the ADSs evidenced by this ADR, provided that the Depositary may deliver Shares prior to the receipt of ADSs for withdrawal of Deposited Securities, including ADSs which were issued under (1) above but for which Shares may not have been received (until such ADSs are actually deposited, "Pre-released Shares") only if all the conditions in (1) above related to such Pre-Release are satisfied). At the request, risk and expense of the Holder hereof, the Depositary may deliver such Deposited Securities at such other place as may have been requested by the Holder. Notwithstanding any other provision of the Deposit Agreement or this ADR, the withdrawal of Deposited Securities may be restricted only for the reasons set forth in General Instruction I.A.(1) of Form F-6 (as such instructions may be amended from time to time) under the Securities Act of 1933.

(3) Transfers of ADRs. The Depositary or its agent will keep, at a designated transfer office (the "Transfer Office"), (a) a register (the "ADR Register") for the registration, registration of transfer, combination and split-up of ADRs, and, in the case of Direct Registration ADRs, shall include the Direct Registration System, which at all reasonable times will be open for inspection by Holders and the Company for the purpose of communicating with Holders in the interest of the business of the Company or a matter relating to the Deposit Agreement and (b) facilities for the delivery and receipt of ADRs. The term ADR Register includes the Direct Registration System. Title to this ADR (and to the Deposited Securities represented by the ADSs evidenced hereby), when properly endorsed (in the case of ADRs in certificated form) or upon delivery to the Depositary of proper instruments of transfer, is transferable by delivery with the same effect as in the case of negotiable instruments under the laws of the State of New York; provided that the Depositary, notwithstanding any notice to the contrary, may treat the person in whose name this ADR is registered on the ADR Register as the absolute owner hereof for all purposes and neither the Depositary nor the Company will have any obligation or be subject to any liability under the Deposit Agreement to any holder of an ADR, unless such holder is the Holder thereof. Subject to paragraphs (4) and (5), this ADR is transferable on the ADR Register and may be split into other ADRs or combined with other ADRs into one ADR, evidencing the aggregate number of ADSs surrendered for split-up or combination, by the Holder hereof or by duly authorized attorney upon surrender of this ADR at the Transfer Office properly endorsed (in the case of ADRs in certificated form) or upon delivery to the Depositary of proper instruments of transfer and duly stamped as may be required by applicable law; provided that the Depositary may close the ADR Register at any time or from time to time when deemed expedient by it or, in the case of the issuance book portion of the ADR Register, when reasonably requested by the Company solely in order to enable the Company to comply with applicable law. At the request of a Holder, the Depositary shall, for the purpose of substituting a certificated ADR with a Direct Registration ADR, or vice versa, execute and deliver a certificated ADR or a Direct Registration ADR, as the case may be, for any authorized number of ADSs requested, evidencing the same aggregate number of ADSs as those evidenced by the certificated ADR or Direct Registration ADR, as the case may be, substituted.

(4) Certain Limitations. Prior to the issue, registration, registration of transfer, split-up or combination of any ADR, the delivery of any distribution in respect thereof, or, subject to the last sentence of paragraph (2), the withdrawal of any Deposited Securities, and from time to time in the case of clause (b)(ii) of this paragraph (4), the Company, the Depositary or the Custodian may require: (a) payment with respect thereto of (i) any stock transfer or other tax or other governmental charge, (ii) any stock transfer or registration fees in effect for the registration of transfers of Shares or other Deposited Securities upon any applicable register and (iii) any applicable charges as provided in paragraph (7) of this ADR; (b) the production of proof satisfactory to it of (i) the identity of any signatory and genuineness of any signature and (ii) such other information, including without limitation, information as to citizenship, residence, exchange control approval, beneficial ownership of any securities, compliance with applicable law, regulations, provisions of or governing Deposited Securities and terms of the Deposit Agreement and this ADR, as it may deem necessary or proper; and (c) compliance with such regulations as the Depositary may establish consistent with the Deposit Agreement. The issuance of ADRs, the acceptance of deposits of Shares, the registration, registration of transfer, split-up or combination of ADRs or, subject to the last sentence of paragraph (2), the withdrawal of Deposited Securities may be suspended, generally or in particular instances, when the ADR Register or any register for Deposited Securities is closed or when any such action is deemed advisable by the Depositary.

(5) Taxes. If any tax or other governmental charges (including any penalties and/or interest) shall become payable by or on behalf of the Custodian or the Depositary with respect to this ADR, any Deposited Securities represented by the ADSs evidenced hereby or any distribution thereon, including, without limitation, any Chinese Enterprise Income Tax owing if the Circular Guoshuifa [2009] No. 82 issued by the Chinese State Administration of Taxation (SAT) or any other circular, edict, order or ruling, as issued and as from time to time amended, is applied or otherwise, such tax or other governmental charge shall be paid by the Holder hereof to the Depositary and by holding or having held an ADR the Holder and all prior Holders hereof, jointly and severally, agree to indemnify, defend and save harmless each of the Depositary and its agents in respect thereof. The Depositary may refuse to effect any registration, registration of transfer, split-up or combination hereof or, subject to the last sentence of paragraph (2), any withdrawal of such Deposited Securities until such payment is made. The Depositary may also deduct from any distributions on or in respect of Deposited Securities, or may sell by public or private sale for the account of the Holder hereof any part or all of such Deposited Securities (after attempting by reasonable means to notify the Holder hereof prior to such sale), and may apply such deduction or the proceeds of any such sale in payment of such tax or other governmental charge, the Holder hereof remaining liable for any deficiency, and shall reduce the number of ADSs evidenced hereby to reflect any such sales of Shares. In connection with any distribution to Holders, the Company will remit to the appropriate governmental authority or agency all amounts (if any) required to be withheld and owing to such authority or agency by the Company; and the Depositary and the Custodian will remit to the appropriate governmental authority or agency all amounts (if any) required to be withheld and owing to such authority or agency by the Depositary or the Custodian. If the Depositary determines that any distribution in property other than cash (including Shares or rights) on Deposited Securities is subject to any tax that the Depositary or the Custodian is obligated to withhold, the Depositary may dispose of all or a portion of such property in such amounts and in such manner as the Depositary deems necessary and practicable to pay such taxes, by public or private sale, and the Depositary shall distribute the net proceeds of any such sale or the balance of any such property after deduction of such taxes to the Holders entitled thereto. Each Holder of an ADR or an interest therein agrees to indemnify the Depositary, the Company, the Custodian and any of their respective officers, directors, employees, agents and affiliates against, and hold each of them harmless from, any claims by any governmental authority with respect to taxes, additions to tax, penalties or interest arising out of any refund of taxes, reduced rate of withholding at source or other tax benefit obtained.

(6) Disclosure of Interests. To the extent that the provisions of or governing any Deposited Securities may require disclosure of or impose limits on beneficial or other ownership of Deposited Securities, other Shares and other securities and may provide for blocking transfer, voting or other rights to enforce such disclosure or limits, Holders and all persons holding ADRs agree to comply with all such disclosure requirements and ownership limitations and to comply with any reasonable Company instructions in respect thereof. The Company reserves the right to instruct Holders to deliver their ADSs for cancellation and withdrawal of the Deposited Securities so as to permit the Company to deal directly with the Holder thereof as a holder of Shares and Holders agree to comply with such instructions. The Depositary agrees to cooperate with the Company in its efforts to inform Holders of the Company's exercise of its rights under this paragraph and agrees to consult with, and provide reasonable assistance without risk, liability or expense on the part of the Depositary, to the Company on the manner or manners in which it may enforce such rights with respect to any Holder.

(7) Charges of Depositary. The Depositary may charge, and collect from, (i) each person to whom ADSs are issued, including, without limitation, issuances against deposits of Shares, issuances in respect of Share Distributions, Rights and Other Distributions (as such terms are defined in paragraph (10)), issuances pursuant to a stock dividend or stock split declared by the Company, or issuances pursuant to a merger, exchange of securities or any other transaction or event affecting the ADSs or the Deposited Securities, and (ii) each person surrendering ADSs for withdrawal of Deposited Securities or whose ADSs are cancelled or reduced for any other reason, U.S.\$5.00 for each 100 ADSs (or portion thereof) issued, delivered, reduced, cancelled or surrendered (as the case may be). The Depositary may sell (by public or private sale) sufficient securities and property received in respect of Share Distributions, Rights and Other Distributions prior to such deposit to pay such charge. The following additional charges shall be incurred by the Holders, by any party depositing or withdrawing Shares or by any party surrendering ADSs and/or to whom ADSs are issued (including, without limitation, issuances pursuant to a stock dividend or stock split declared by the Company or an exchange of stock regarding the ADSs or the Deposited Securities or a distribution of ADSs pursuant to paragraph (10)), whichever is applicable (i) a fee of U.S.\$0.05 or less per ADS for any Cash distribution made pursuant to the Deposit Agreement, (ii) a fee of U.S.\$1.50 per ADR or ADRs for transfers made pursuant to paragraph (3) hereof, (iii) a fee for the distribution or sale of securities pursuant to paragraph (10) hereof, such fee being in an amount equal to the fee for the execution and delivery of ADSs referred to above which would have been charged as a result of the deposit of such securities (for purposes of this paragraph (7) treating all such securities as if they were Shares) but which securities or the net cash proceeds from the sale thereof are instead distributed by the Depositary to Holders entitled thereto, (iv) an aggregate fee of U.S.\$0.05 per ADS per calendar year (or portion thereof) for

services performed by the Depositary in administering the ADRs (which fee may be charged on a periodic basis during each calendar year and shall be assessed against Holders as of the record date or record dates set by the Depositary during each calendar year and shall be payable at the sole discretion of the Depositary by billing such Holders or by deducting such charge from one or more cash dividends or other cash distributions), and (v) a fee for the reimbursement of such fees, charges and expenses as are incurred by the Depositary and/or any of its agents (including, without limitation, the Custodian and expenses incurred on behalf of Holders in connection with compliance with foreign exchange control regulations or any law or regulation relating to foreign investment) in connection with the servicing of the Shares or other Deposited Securities, the sale of securities (including, without limitation, Deposited Securities), the delivery of Deposited Securities or otherwise in connection with the Depositary's or its Custodian's compliance with applicable law, rule or regulation (which fees and charges shall be assessed on a proportionate basis against Holders as of the record date or dates set by the Depositary and shall be payable at the sole discretion of the Depositary by billing such Holders or by deducting such charge from one or more cash dividends or other cash distributions). The Company will pay all other charges and expenses of the Depositary and any agent of the Depositary (except the Custodian) pursuant to agreements from time to time between the Company and the Depositary, except (i) stock transfer or other taxes and other governmental charges (which are payable by Holders or persons depositing Shares), (ii) SWIFT, cable, telex and facsimile transmission and delivery charges incurred at the request of persons depositing, or Holders delivering Shares, ADRs or Deposited Securities (which are payable by such persons or Holders), (iii) transfer or registration fees for the registration or transfer of Deposited Securities on any applicable register in connection with the deposit or withdrawal of Deposited Securities (which are payable by persons depositing Shares or Holders withdrawing Deposited Securities; there are no such fees in respect of the Shares as of the date of the Deposit Agreement), and (iv) in connection with the conversion of foreign currency into U.S. dollars, JPMorgan Chase Bank, N.A. ("JPMorgan") shall deduct out of such foreign currency the fees, expenses and other charges charged by it and/or its agent (which may be a division, branch or affiliate) so appointed in connection with such conversion. JPMorgan and/or its agent may act as principal for such conversion of foreign currency. Such charges may at any time and from time to time be changed by agreement between the Company and the Depositary. For further details see <https://www.adr.com>.

The Depositary anticipates reimbursing the Company for certain expenses incurred by the Company that are related to the establishment and maintenance of the ADR program upon such terms and conditions as the Company and the Depositary may agree from time to time. The Depositary may make available to the Company a set amount or a portion of the Depositary fees charged in respect of the ADR program or otherwise upon such terms and conditions as the Company and the Depositary may agree from time to time.

The right of the Depositary to receive payment of fees, charges and expenses as provided above shall survive the termination of the Deposit Agreement. As to any Depositary, upon the resignation or removal of such Depositary, such right shall extend for those fees, charges and expenses incurred prior to the effectiveness of such resignation or removal.

(8) Available Information. The Deposit Agreement, the provisions of or governing Deposited Securities and any written communications from the Company, which are both received by the Custodian or its nominee as a holder of Deposited Securities and made generally available to the holders of Deposited Securities, are available for inspection by Holders at the offices of the Depository and the Custodian and at the Transfer Office. The Depository will distribute copies of such communications (or English translations or summaries thereof) to Holders when furnished by the Company. The Company is subject to the periodic reporting requirements of the Securities Exchange Act of 1934 and accordingly files certain reports with the United States Securities and Exchange Commission (the "Commission"). Such reports and other information may be inspected and copied through the Commission's EDGAR system or at public reference facilities maintained by the Commission located at the date hereof at 100 F Street, NE, Washington, DC 20549.

(9) Execution. This ADR shall not be valid for any purpose unless executed by the Depository by the manual or facsimile signature of a duly authorized officer of the Depository.

Dated:

JPMORGAN CHASE BANK, N.A., as Depository

By.....  
Authorized Officer

The Depository's office is located at 4 New York Plaza, Floor 12, New York, New York, 10004.



[FORM OF REVERSE OF ADR]

(10) Distributions on Deposited Securities. Subject to paragraphs (4) and (5), to the extent practicable, the Depositary will distribute to each Holder entitled thereto on the record date set by the Depositary therefor at such Holder's address shown on the ADR Register, in proportion to the number of Deposited Securities (on which the following distributions on Deposited Securities are received by the Custodian) represented by ADSs evidenced by such Holder's ADRs: (a) Cash. Any U.S. dollars available to the Depositary resulting from a cash dividend or other cash distribution or the net proceeds of sales of any other distribution or portion thereof authorized in this paragraph (10) ("Cash"), on an averaged or other practicable basis, subject to (i) appropriate adjustments for taxes withheld, (ii) such distribution being impermissible or impracticable with respect to certain Holders, and (iii) deduction of the Depositary's and/or its agents' fees and expenses in (1) converting any foreign currency to U.S. dollars by sale or in such other manner as the Depositary may determine to the extent that it determines that such conversion may be made on a reasonable basis, (2) transferring foreign currency or U.S. dollars to the United States by such means as the Depositary may determine to the extent that it determines that such transfer may be made on a reasonable basis, (3) obtaining any approval or license of any governmental authority required for such conversion or transfer, which is obtainable at a reasonable cost and within a reasonable time and (4) making any sale by public or private means in any commercially reasonable manner. (b) Shares. (i) Additional ADRs evidencing whole ADSs representing any Shares available to the Depositary resulting from a dividend or free distribution on Deposited Securities consisting of Shares (a "Share Distribution") and (ii) U.S. dollars available to it resulting from the net proceeds of sales of Shares received in a Share Distribution, which Shares would give rise to fractional ADSs if additional ADRs were issued therefor, as in the case of Cash. (c) Rights. (i) Warrants or other instruments in the discretion of the Depositary representing rights to acquire additional ADRs in respect of any rights to subscribe for additional Shares or rights of any nature available to the Depositary as a result of a distribution on Deposited Securities ("Rights"), to the extent that the Company timely furnishes to the Depositary evidence satisfactory to the Depositary that the Depositary may lawfully distribute the same (the Company has no obligation to so furnish such evidence), or (ii) to the extent the Company does not so furnish such evidence and sales of Rights are practicable, any U.S. dollars available to the Depositary from the net proceeds of sales of Rights as in the case of Cash, or (iii) to the extent the Company does not so furnish such evidence and such sales cannot practicably be accomplished by reason of the nontransferability of the Rights, limited markets therefor, their short duration or otherwise, nothing (and any Rights may lapse). (d) Other Distributions. (i) Securities or property available to the Depositary resulting from any distribution on Deposited Securities other than Cash, Share Distributions and Rights ("Other Distributions"), by any means that the Depositary may deem equitable and practicable, or (ii) to the extent the Depositary deems distribution of such securities or property not to be equitable and practicable, any U.S. dollars available to the Depositary from the net proceeds of sales of Other Distributions as in the case of Cash. The Depositary reserves the right to utilize a division, branch or affiliate of JPMorgan Chase Bank, N.A. to direct, manage and/or execute any public and/or private sale of securities hereunder. Such division, branch and/or affiliate may charge the Depositary a fee in connection with such sales, which fee is considered an expense of the Depositary contemplated above and/or under paragraph (7) hereof. Any U.S. dollars available will be distributed by checks drawn on a bank in the United States for whole dollars and cents. Fractional cents will be withheld without liability and dealt with by the Depositary in accordance with its then current practices. All purchases and sales of securities will be handled by the Depositary in accordance with its then current policies, which are currently set forth in the "Depositary Receipt Sale and Purchase of Security" section of <https://www.adr.com/Investors/FindOutAboutDRs>, the location and contents of which the Depositary shall be solely responsible for.



(11) Record Dates. The Depositary may, after consultation with the Company if practicable, fix a record date (which, to the extent applicable, shall be as near as practicable to any corresponding record date set by the Company) for the determination of the Holders who shall be responsible for the fee assessed by the Depositary for administration of the ADR program and for any expenses provided for in paragraph (7) hereof as well as for the determination of the Holders who shall be entitled to receive any distribution on or in respect of Deposited Securities, to give instructions for the exercise of any voting rights, to receive any notice or to act in respect of other matters and only such Holders shall be so entitled or obligated.

(12) Voting of Deposited Securities. Subject to the next sentence, as soon as practicable after receipt of notice of any meeting at which the holders of Shares are entitled to vote, or of solicitation of consents or proxies from holders of Shares or other Deposited Securities, the Depositary shall fix the ADS record date in accordance with paragraph (11) above in respect of such meeting or solicitation of consent or proxy. The Depositary shall, if requested by the Company in writing in a timely manner (the Depositary having no obligation to take any further action if the request shall not have been received by the Depositary at least 30 days prior to the date of such vote or meeting) and at the Company's expense and provided no legal prohibitions exist, distribute to Holders a notice stating (a) such information as is contained in such notice and any solicitation materials, (b) that each Holder on the record date set by the Depositary therefor will, subject to any applicable provisions of Cayman Island law, be entitled to instruct the Depositary as to the exercise of the voting rights, if any, pertaining to the Deposited Securities represented by the ADSs evidenced by such Holder's ADRs and (c) the manner in which such instructions may be given or deemed given in accordance with the next paragraph, including instructions to give a discretionary proxy to a person designated by the Company. Upon actual receipt by the ADR department of the Depositary of instructions of a Holder on such record date in the manner and on or before the time established by the Depositary for such purpose, the Depositary shall endeavor insofar as practicable and permitted under the provisions of or governing Deposited Securities to vote or cause to be voted the Deposited Securities represented by the ADSs evidenced by such Holder's ADRs in accordance with such instructions. The Depositary will not itself exercise any voting discretion in respect of any Deposited Securities.

To the extent the Depositary has been provided with at least 40 days' notice of the proposed meeting, if such instructions are not so timely received by the Depositary from any Holder, such Holder shall be deemed, and the Depositary is instructed to deem such Holder, to have instructed the Depositary to give a discretionary proxy to a person designated by the Company to vote the Deposited Securities represented by the American Depositary Shares evidenced by such Holder's Receipts as to which such instructions are so given, provided that no such instruction shall be deemed given and no discretionary proxy shall be given (a) if the Company informs the Depositary in writing (and the Company agrees to provide the Depositary with such information promptly in writing) that (i) it does not wish such proxy to be given, (ii) substantial opposition exists with respect to any agenda item for which the proxy would be given or (iii) the agenda item in question, if approved, would materially or adversely affect the rights of holders of Shares and (b) unless, with respect to such meeting, the Depositary has been provided with an opinion of counsel to the Company, in form and substance satisfactory to the Depositary, to the effect that (a) the granting of such discretionary proxy does not subject the Depositary to any reporting obligations in the Cayman Islands, (b) the granting of such proxy will not result in a violation of Cayman Island law, rule, regulation or permit, (c) the voting arrangement and deemed instruction as contemplated herein will be given effect under Cayman Island law, and (d) the granting of such discretionary proxy will not under any circumstances result in the Shares represented by the ADSs being treated as assets of the Depositary under Cayman Island law.

There is no guarantee that Holders generally or any Holder in particular will receive the notice described above with sufficient time to enable such Holder to return any voting instructions to the Depositary in a timely manner. Notwithstanding anything contained in the Deposit Agreement or any ADR, the Depositary may, to the extent not prohibited by law or regulations, or by the requirements of the stock exchange on which the ADSs are listed, in lieu of distribution of the materials provided to the Depositary in connection with any meeting of, or solicitation of consents or proxies from, holders of Deposited Securities, distribute to the Holders a notice that provides Holders with, or otherwise publicizes to Holders, instructions on how to retrieve such materials or receive such materials upon request (i.e., by reference to a website containing the materials for retrieval or a contact for requesting copies of the materials). Holders are strongly encouraged to forward their voting instructions as soon as possible. Voting instructions will not be deemed received until such time as the ADR department responsible for proxies and voting has received such instructions notwithstanding that such instructions may have been physically received by JPMorgan Chase Bank, N.A., as Depositary, prior to such time.

The Depositary has been advised by the Company that, notwithstanding Cayman Islands law, the Memorandum and Articles of Association of the Company, each as in effect as of the date of the Deposit Agreement, does not permit voting at any meeting of shareholders of the Company by show of hands. Should the Company's Memorandum and Articles of Association change, then, in the event that voting on any resolution or matter is conducted on a show of hands basis, the Depositary will refrain from voting and the voting instructions received by the Depositary from Holders shall lapse. The Depositary will not demand a poll or join in demanding a poll, whether or not requested to do so by Holders of ADSs.

(13) Changes Affecting Deposited Securities. Subject to paragraphs (4) and (5), the Depositary may, in its discretion, and shall if reasonably requested by the Company, amend this ADR or distribute additional or amended ADRs (with or without calling this ADR for exchange) or cash, securities or property on the record date set by the Depositary therefor to reflect any change in par value, split-up, consolidation, cancellation or other reclassification of Deposited Securities, any Share Distribution or Other Distribution not distributed to Holders or any cash, securities or property available to the Depositary in respect of Deposited Securities from (and the Depositary is hereby authorized to surrender any Deposited Securities to any person and, irrespective of whether such Deposited Securities are surrendered or otherwise cancelled by operation of law, rule, regulation or otherwise, to sell by public or private sale any property received in connection with) any recapitalization, reorganization, merger, consolidation, liquidation, receivership, bankruptcy or sale of all or substantially all the assets of the Company, and to the extent the Depositary does not so amend this ADR or make a distribution to Holders to reflect any of the foregoing, or the net proceeds thereof, whatever cash, securities or property results from any of the foregoing shall constitute Deposited Securities and each ADS evidenced by this ADR shall automatically represent its pro rata interest in the Deposited Securities as then constituted. Promptly upon the occurrence of any of the aforementioned changes affecting Deposited Securities, the Company shall notify the Depositary in writing of such occurrence and as soon as practicable after receipt of such notice from the Company, may instruct the Depositary to give notice thereof, at the Company's expense, to Holders in accordance with the provisions hereof. Upon receipt of such instruction, the Depositary shall give notice to the Holders in accordance with the terms thereof, as soon as reasonably practicable.

(14) Exoneration. The Depositary, the Company, their agents and each of them shall: (a) incur no liability (i) if any present or future law, rule, regulation, fiat, order or decree of the United States, the Cayman Islands, The People's Republic of China (including the Hong Kong Special Administrative Region, the People's Republic of China) or any other country or jurisdiction, or of any governmental or regulatory authority or any securities exchange or market or automated quotation system, the provisions of or governing any Deposited Securities, any present or future provision of the Company's charter, any act of God, war, terrorism, nationalization, expropriation, currency restrictions, work stoppage, strike, civil unrest, revolutions, rebellions, explosions, computer failure or circumstance beyond its direct and immediate control shall prevent or delay, or shall cause any of them to be subject to any civil or criminal penalty in connection with, any act which the Deposit Agreement or this ADR provides shall be done or performed by it or them (including, without limitation, voting pursuant to paragraph (12) hereof), or (ii) by reason of any exercise or failure to exercise any discretion given it in the Deposit Agreement or this ADR (including, without limitation, any failure to determine that any distribution or action may be lawful or reasonably practicable); (b) assume no liability except to perform its obligations to the extent they are specifically set forth in this ADR and the Deposit Agreement without gross negligence or willful misconduct; (c) in the case of the Depositary and its agents, be under no obligation to appear in, prosecute or defend any action, suit or other proceeding in respect of any Deposited Securities or this ADR; (d) in the case of the Company and its agents hereunder

be under no obligation to appear in, prosecute or defend any action, suit or other proceeding in respect of any Deposited Securities or this ADR, which in its opinion may involve it in expense or liability, unless indemnity satisfactory to it against all expense (including fees and disbursements of counsel) and liability be furnished as often as may be required; or (e) not be liable for any action or inaction by it in reliance upon the advice of or information from legal counsel, accountants, any person presenting Shares for deposit, any Holder, or any other person believed by it to be competent to give such advice or information. The Depositary shall not be liable for the acts or omissions made by, or the insolvency of, any securities depository, clearing agency or settlement system. The Depositary shall not be responsible for, and shall incur no liability in connection with or arising from, the insolvency of any Custodian that is not a branch or affiliate of JPMorgan Chase Bank, N.A. The Depositary shall not have any liability for the price received in connection with any sale of securities, the timing thereof or any delay in action or omission to act nor shall it be responsible for any error or delay in action, omission to act, default or negligence on the part of the party so retained in connection with any such sale or proposed sale. Notwithstanding anything to the contrary contained in the Deposit Agreement (including the ADRs), subject to the penultimate sentence of this paragraph (14), the Depositary shall not be responsible for, and shall incur no liability in connection with or arising from, any act or omission to act on the part of the Custodian except to the extent that the Custodian has (i) committed fraud or willful misconduct in the provision of custodial services to the Depositary or (ii) failed to use reasonable care in the provision of custodial services to the Depositary as determined in accordance with the standards prevailing in the jurisdiction in which the Custodian is located. The Depositary, its agents and the Company may rely and shall be protected in acting upon any written notice, request, direction, instruction or document believed by them to be genuine and to have been signed, presented or given by the proper party or parties. The Depositary shall be under no obligation to inform Holders or any other holders of an interest in any ADSs about the requirements of Cayman Island or People's Republic of China (including the Hong Kong Special Administrative Region, the People's Republic of China) law, rules or regulations or any changes therein or thereto. The Depositary and its agents will not be responsible for any failure to carry out any instructions to vote any of the Deposited Securities, for the manner in which any such vote is cast or for the effect of any such vote. The Depositary may rely upon instructions from the Company or its counsel in respect of any approval or license required for any currency conversion, transfer or distribution. The Depositary and its agents may own and deal in any class of securities of the Company and its affiliates and in ADRs. Notwithstanding anything to the contrary set forth in the Deposit Agreement or an ADR, the Depositary and its agents may fully respond to any and all demands or requests for information maintained by or on its behalf in connection with the Deposit Agreement, any Holder or Holders, any ADR or ADRs or otherwise related hereto or thereto to the extent such information is requested or required by or pursuant to any lawful authority, including without limitation laws, rules, regulations, administrative or judicial process, banking, securities or other regulators. None of the Depositary, the Custodian or the Company shall be liable for the failure by any Holder or beneficial owner to obtain the benefits of credits on the basis of non-U.S. tax paid against such Holder's or beneficial owner's income tax liability. The Depositary and the Company shall not incur any liability for any tax consequences that may be incurred by Holders and beneficial owners on account of their ownership of the ADRs or ADSs. The Depositary shall not incur any liability

for the content of any information submitted to it by or on behalf of the Company for distribution to the Holders or for any inaccuracy of any translation thereof, for any investment risk associated with acquiring an interest in the Deposited Securities, for the validity or worth of the Deposited Securities, for the credit-worthiness of any third party, for allowing any rights to lapse upon the terms of the Deposit Agreement or for the failure or timeliness of any notice from the Company. The Depository shall not be liable for any acts or omissions made by a successor depository whether in connection with a previous act or omission of the Depository or in connection with any matter arising wholly after the removal or resignation of the Depository. The Company has agreed to indemnify the Depository and its agents under certain circumstances. Neither the Depository nor any of its agents shall be liable to Holders or beneficial owners of interests in ADSs for any indirect, special, punitive or consequential damages (including, without limitation, legal fees and expenses) or lost profits, in each case of any form incurred by any person or entity, whether or not foreseeable and regardless of the type of action in which such a claim may be brought. No disclaimer of liability under the Securities Act of 1933 is intended by any provision hereof.

(15) Resignation and Removal of Depository; the Custodian. The Depository may resign as Depository by written notice of its election so to do delivered to the Company, such resignation to take effect upon the appointment of a successor depository and its acceptance of such appointment as provided in the Deposit Agreement. The Depository may at any time be removed by the Company by no less than 120 days prior written notice of such removal, to become effective upon the later of (i) the 120th day after delivery of the notice to the Depository and (ii) the appointment of a successor depository and its acceptance of such appointment as provided in the Deposit Agreement. The Depository may appoint substitute or additional Custodians and the term "Custodian" refers to each Custodian or all Custodians as the context requires.

(16) Amendment. Subject to the last sentence of paragraph (2), the ADRs and the Deposit Agreement may be amended by the Company and the Depository, provided that any amendment that imposes or increases any fees or charges (other than stock transfer or other taxes and other governmental charges, transfer or registration fees, SWIFT, cable, telex or facsimile transmission costs, delivery costs or other such expenses), or that shall otherwise prejudice any substantial existing right of Holders, shall become effective 30 days after notice of such amendment shall have been given to the Holders. Every Holder of an ADR at the time any amendment to the Deposit Agreement so becomes effective shall be deemed, by continuing to hold such ADR, to consent and agree to such amendment and to be bound by the Deposit Agreement as amended thereby. In no event shall any amendment impair the right of the Holder of any ADR to surrender such ADR and receive the Deposited Securities represented thereby, except in order to comply with mandatory provisions of applicable law. Any amendments or supplements which (i) are reasonably necessary (as agreed by the Company and the Depository) in order for (a) the ADSs to be registered on Form F-6 under the Securities Act of 1933 or (b) the ADSs or Shares to be traded solely in electronic book-entry form and (ii) do not in either such case impose or increase any fees or charges to be borne by Holders, shall be deemed not to prejudice any substantial rights of Holders. Notwithstanding the foregoing, if any governmental body or regulatory body should adopt new laws, rules or regulations which would require amendment or supplement of the Deposit Agreement or the form of ADR to ensure compliance therewith, the Company and the Depository may amend or supplement the Deposit Agreement and the ADR at any time in accordance with such changed laws, rules or regulations. Such amendment or supplement to the Deposit Agreement



in such circumstances may become effective before a notice of such amendment or supplement is given to Holders or within any other period of time as required for compliance. Notice of any amendment to the Deposit Agreement or form of ADRs shall not need to describe in detail the specific amendments effectuated thereby, and failure to describe the specific amendments in any such notice shall not render such notice invalid, provided, however, that, in each such case, the notice given to the Holders identifies a means for Holders to retrieve or receive the text of such amendment (i.e., upon retrieval from the Commission's, the Depository's or the Company's website or upon request from the Depository).

(17) Termination. The Depository may, and shall at the written direction of the Company, terminate the Deposit Agreement and this ADR by mailing notice of such termination to the Holders at least 30 days prior to the date fixed in such notice for such termination; provided, however, if the Depository shall have (i) resigned as Depository hereunder, notice of such termination by the Depository shall not be provided to Holders unless a successor depository shall not be operating hereunder within 60 days of the date of such resignation, or (ii) been removed as Depository hereunder, notice of such termination by the Depository shall not be provided to Holders unless a successor depository shall not be operating hereunder on the 120th day after the Company's notice of removal was first provided to the Depository. After the date so fixed for termination, (a) all Direct Registration ADRs shall cease to be eligible for the Direct Registration System and shall be considered ADRs issued on the ADR Register and (b) the Depository shall use its reasonable efforts to ensure that the ADSs cease to be DTC eligible so that neither DTC nor any of its nominees shall thereafter be a Holder. At such time as the ADSs cease to be DTC eligible and/or neither DTC nor any of its nominees is a Holder, the Depository shall (a) instruct its Custodian to deliver all Deposited Securities to the Company along with a general stock power that refers to the names set forth on the ADR Register and (b) provide the Company with a copy of the ADR Register (which copy may be sent by email or by any means permitted under the notice provisions of the Deposit Agreement). Upon receipt of such Deposited Securities and the ADR Register, the Company shall use its best efforts to issue to each Holder a Share certificate representing the Shares represented by the ADSs reflected on the ADR Register in such Holder's name and to deliver such Share certificate to the Holder at the address set forth on the ADR Register. After providing such instruction to the Custodian and delivering a copy of the ADR Register to the Company, the Depository and its agents will perform no further acts under the Deposit Agreement and this ADR and shall cease to have any obligations under the Deposit Agreement and/or the ADRs. After the Company receives the copy of the ADR Register and the Deposited Securities, the Company shall be discharged from all obligations under the Deposit Agreement except (i) to distribute the Shares to the Holders entitled thereto and (ii) for its obligations to the Depository and its agents.

(18) Appointment. Each Holder and each person holding an interest in ADSs, upon acceptance of any ADSs (or any interest therein) issued in accordance with the terms and conditions of the Deposit Agreement shall be deemed for all purposes to (a) be a party to and bound by the terms of the Deposit Agreement and the applicable ADR(s), and (b) appoint the Depository its attorney-in-fact, with full power to delegate, to act on its behalf and to take any and all actions contemplated in the Deposit Agreement and the applicable ADR(s), to adopt any and all procedures necessary to comply with applicable law and to take such action as the Depository in its sole discretion may deem necessary or appropriate to carry out the purposes of the Deposit Agreement and the applicable ADR(s), the taking of such actions to be the conclusive determinant of the necessity and appropriateness thereof.



(19) Waiver. EACH PARTY TO THE DEPOSIT AGREEMENT (INCLUDING, FOR AVOIDANCE OF DOUBT, EACH HOLDER AND BENEFICIAL OWNER AND/OR HOLDER OF INTERESTS IN ADRS) HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING AGAINST THE DEPOSITARY AND/OR THE COMPANY DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THE SHARES OR OTHER DEPOSITED SECURITIES, THE ADSs OR THE ADRs, THE DEPOSIT AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREIN OR THEREIN, OR THE BREACH HEREOF OR THEREOF (WHETHER BASED ON CONTRACT, TORT, COMMON LAW OR ANY OTHER THEORY).

(20) Jurisdiction. By holding an ADS or an interest therein, Holders and owners of ADSs each irrevocably agree that any legal suit, action or proceeding against or involving the Company or the Depositary, arising out of or based upon the Deposit Agreement, the ADSs or the transactions contemplated therein, herein or hereby, may only be instituted in a state or federal court in New York, New York, and by holding an ADS or an interest therein each irrevocably waives any objection which it may now or hereafter have to the laying of venue of any such proceeding, and irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Notwithstanding the above and anything in the Deposit Agreement to the contrary, in the Deposit Agreement each of the parties thereto (i.e. the Company, the Depositary and all Holders from time to time of ADRs issued thereunder (and any persons holding interests in ADSs)) have agreed that: (i) the Depositary may, in its sole discretion, elect to institute any action, controversy, claim or dispute directly or indirectly based on, arising out of or relating to the Deposit Agreement or the ADRs or the transactions contemplated hereby or thereby, including without limitation any question regarding its or their existence, validity, interpretation, performance or termination (a “Dispute”) against any other party or parties (including, without limitation, Disputes brought against Holders and owners of interests in ADSs), by having the Dispute referred to and finally resolved by an arbitration conducted under the terms set out below, and (ii) the Depositary may in its sole discretion require, by written notice to the relevant party or parties, that any Dispute, legal suit, action or proceeding brought by any party or parties (including, without limitation, Disputes, legal suits, actions or proceedings brought by Holders and owners of interests in ADSs) against the Depositary shall be referred to and finally settled by an arbitration conducted under the terms set out in the Deposit Agreement. Any such arbitration shall at the Depositary’s election be conducted either in New York, New York in accordance with the Commercial Arbitration Rules of the American Arbitration Association or in Hong Kong following the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL) with the Hong Kong International Arbitration Centre serving as the appointing authority, and the language of any such arbitration shall be English.