

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

We are an exempted company incorporated in the Cayman Islands with limited liability and our affairs are governed by our memorandum and articles of association, and the Cayman Companies Act and the common law of the Cayman Islands.

As of the date of the Prospectus, our authorized share capital was US\$100,000 divided into 32,000,000,000 Shares of par value US\$0.000003125 per Share.

The following are summaries of material provisions of our Articles, as currently in effect, and the Cayman Companies Act insofar as they relate to the material terms of our Shares.

### **Summary of Our Constitution**

#### ***Memorandum of Association***

Our Memorandum of Association, as currently in effect, states, among other things, that the liability of our members is limited, that the objects for which we are established are unrestricted and we shall have full power and authority to carry out any object not prohibited by the Cayman Companies Act or any other law of the Cayman Islands.

Our Memorandum of Association is available for inspection at the address specified in Appendix V in the section headed “Documents Available for Inspection.”

#### ***Articles of Association***

Our Articles of Association, as currently in effect, include provisions to the following effect:

#### ***Shares***

##### ***General***

A shareholder shall only be entitled to a share certificate if our directors resolve that share certificates shall be issued. We may not issue shares to bearer.

##### ***Dividends***

The holders of our Shares are entitled to such dividends as may be declared by our board. In addition, our shareholders may by ordinary resolution declare a dividend, but no dividend may exceed the amount recommended by our directors.

Any dividend unclaimed after a period of six years from the date of declaration of such dividend may be forfeited by our board and, if so forfeited, shall revert to us.

##### ***Voting Rights***

Each Share is entitled to one vote on all matters upon which our Shares are entitled to vote.

Voting at any meeting of shareholders is by poll.

An ordinary resolution to be passed by our shareholders requires the affirmative vote of a simple majority of the votes cast by our shareholders entitled to vote who are present in person or by proxy at a general meeting, while a special resolution requires the affirmative vote of no less than three-fourths of the votes cast by our shareholders entitled to vote who are present in person or by proxy at a general meeting (except for certain matters described below which require a higher affirmative vote, in which cases the required majority to pass a special resolution shall be 95%, and for certain types of winding up of us, in which case the required majority to pass a special resolution shall be 100%). Both ordinary resolutions and special resolutions may also be passed by a unanimous written resolution signed by all shareholders, as permitted by our Articles.

Our Articles provide that a special resolution shall be required, and that for the purposes of any such special resolution, the affirmative vote of no less than 95% of votes cast by our shareholders entitled to vote who are present in person or by proxy at a general meeting shall be required to approve any amendments to any provisions of our Articles that relate to or have an impact upon:

- the right of the Alibaba Partnership to nominate directors to our board as described below under “– Nomination, Election and Removal of Directors;”
- the affirmative shareholder vote necessary to approve or authorize a merger or change of control if the Alibaba Partnership’s right to nominate directors is adversely impacted by such merger or change of control;
- the procedures regarding the election, appointment and removal of directors or the size of our board; and
- any alteration of the voting rights with respect to the above.

### *Transfer of Shares*

Subject to the restrictions contained in our Articles as set out below, any of our shareholders may transfer all or any of his or her Shares by an instrument of transfer in any usual or common form or any other form approved by our board, executed by or on behalf of the transferor (and, if in respect of a nil or partly paid up share, or if so required by our directors, by or on behalf of the transferee).

Our board may, in its absolute discretion, decline to register any transfer of any Share that has not been fully paid up or is subject to a company lien. Our board may also decline to register any transfer of any Share unless:

- the instrument of transfer is lodged with us, accompanied by the certificate for our Shares to which it relates and such other evidence as our board may reasonably require to show the right of the transferor to make the transfer;
- the instrument of transfer is in respect of only one class of Shares;
- the instrument of transfer is properly stamped, if required;
- the Share transferred is fully paid and free of any lien in favor of us;
- any fee related to the transfer has been paid to us; and
- the transfer is not to more than four joint holders.

If our directors refuse to register a transfer, they are required, within three months after the date on which the instrument of transfer was lodged, to send to each of the transferor and the transferee notice of such refusal.

### *Liquidation*

On our winding up, if the assets available for distribution among the holders of our Shares shall be more than sufficient to repay the whole of the share capital at the commencement of the winding up, the surplus will be distributed among the holders of our Shares on a pro rata basis in proportion to the par value of the Shares held by them. If our assets available for distribution are insufficient to repay all of the paid-up capital, the assets will be distributed so that the losses are borne by the holders of our Shares in proportion to the par value of our Shares held by them.

The liquidator may, with the sanction of a special resolution of our shareholders and any other sanction required by the Cayman Companies Act, divide amongst our shareholders in species or in kind the whole or any part of our assets, and may for that purpose value any assets and determine how the division shall be carried out as between our shareholders or different classes of shareholders.

### *Calls on Shares and Forfeiture of Shares*

Our board may from time to time make calls upon shareholders for any amounts unpaid on their Shares. Shares that have been called upon and remain unpaid are subject to forfeiture.

### *Redemption, Repurchase and Surrender of Shares*

We may issue shares on terms that such shares are subject to redemption, at our option or at the option of the holders thereof, on such terms and in such manner as may be determined by our board. Subject to the provisions of the Cayman Companies Act, we may, by agreement with the relevant shareholder, repurchase our own shares (including any redeemable shares) provided that the manner and terms of such purchase have been approved by our directors or by an ordinary resolution by our shareholders (provided further that no repurchase may be made contrary to the terms or manner recommended by the directors). In addition, we may accept the surrender of any fully paid share for no consideration.

### *Variations of Rights of Shares*

If at any time, our share capital is divided into different classes of shares, all or any of the rights attached to any class of shares may be varied with the consent in writing of the holders of not less than three-fourths of the shares of that class or with the sanction of a special resolution passed at a general meeting of the holders of the shares of that class. The rights conferred upon the holders of the shares of any class issued with preferred or other rights will not, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking *pari passu* with such existing class of shares.

Notwithstanding the foregoing, our board may issue preferred shares, without further action by the shareholders. See “– Directors’ Power to Issue Shares.”

## *Nomination, Election and Removal of Directors*

Our Articles provide that persons standing for election as directors at a duly constituted general meeting with requisite quorum shall be elected by an ordinary resolution of our shareholders, which requires the affirmative vote of a simple majority of the votes cast on the resolution by our shareholders entitled to vote who are present in person or by proxy at the meeting. Our Articles further provide that our board is divided into three groups designated as Group I, Group II and Group III with as nearly equal a number of directors in each group as possible. Each director of each group shall, upon the expiration of his or her term, be eligible for re-election at the next following annual general meeting to hold office for a three-year term and until such director's successor has been duly elected. Our Articles provide that, unless otherwise determined by shareholders in a general meeting, our board shall consist of not less than nine directors, for so long as SoftBank has the right to nominate a director and when SoftBank no longer has such right, not less than seven. Our Articles further provide that our board should be comprised of no fewer than five directors. We have no provisions relating to retirement of directors upon reaching any age limit.

Our Articles provide that the Alibaba Partnership shall have the right to nominate such number of persons who shall stand for election as directors as may be required to ensure that directors nominated or appointed by the Alibaba Partnership shall constitute a simple majority of the total number of directors on our board, with as equal a number of such nominated directors assigned to each group of directors as possible. Our Articles further provide that the Alibaba Partnership's nomination rights are conditioned on the Alibaba Partnership being governed by the partnership agreement in effect as of the completion of the offering of our ADSs in 2014, or as may be amended in accordance with its terms from time to time. Any amendment to the provisions in the partnership agreement relating to the purpose of the partnership, or to the manner in which the Alibaba Partnership exercises its right to nominate a simple majority of our directors, will be subject to the approval of the majority of our directors who are not nominees or appointees of the Alibaba Partnership and are "independent directors" within the meaning of Section 303A of the Corporate Governance Rules of the New York Stock Exchange.

A nominating and corporate governance committee of our board shall have the right to determine the persons who shall stand for election as directors for the remainder of the places available for election to our board, subject to the right of SoftBank to nominate one person to stand for election so long as SoftBank owns at least 15% of our outstanding shares pursuant to the Articles. Each of the compensation committee and the nominating and corporate governance committee shall consist of at least three directors and the majority of the committee members shall be independent within the meaning of Section 303A of the Corporate Governance Rules of the New York Stock Exchange. The audit committee shall consist of at least three directors, all of whom shall be independent within the meaning of Section 303A of the Corporate Governance Rules of the New York Stock Exchange and shall meet the criteria for independence set forth in Rule 10A-3 of the U.S. Exchange Act by the end of the one year transition period for companies following an initial public offering. The director nominated by SoftBank is entitled to receive notices and materials for all meetings of our committees and upon notice to the relevant committee, to join as an observer in meetings of the audit committee, the compensation committee, the nominating and corporate governance committee and other board committees we may establish.

In the event that the appointment of any person standing for election as a director fails to be approved by a simple majority of votes cast at a duly constituted general meeting, the party that nominated such person to stand for election shall have the power to appoint a different person to our board to be a director until the next annual general meeting of shareholders after such appointment. Such appointment shall become effective upon the nominating party giving a written notice (duly signed by the general partner of the Alibaba Partnership, or by majority of the members of the nominating and corporate governance committee, or by an authorized representative of SoftBank, as the case may be) to us, without the requirement for any further vote or approval by our shareholders or our board. In the event of a casual vacancy on our board due to the resignation, death or removal of a director, the party that nominated or appointed such director shall have the right to appoint a person to our board to be a director until the next annual general meeting of shareholders after such appointment. Our board may expand the maximum number of directors on our board, subject to any maximum number determined from time to time by our shareholders at a general meeting. The Alibaba Partnership shall be entitled to appoint such number of additional directors to our board as may be necessary to ensure that the directors nominated or appointed by the Alibaba Partnership comprise a simple majority of our board (such additional directors shall be designated as Alibaba Partnership nominated directors). If at any time our board consists of less than a simple majority of directors nominated or appointed by the Alibaba Partnership for any reason, including because a director previously nominated by the Alibaba Partnership ceases to be a member of our board or because the Alibaba Partnership had previously not fully exercised its right to nominate or appoint a simple majority of our board, the Alibaba Partnership shall be entitled (in its sole discretion) to appoint such number of additional directors to the board as necessary to ensure that the directors nominated or appointed by the Alibaba Partnership comprise a simple majority of our board. The nominating and corporate governance committee shall be entitled to appoint any other directors up to the maximum number of directors on our board, if any (designated as nominating and corporate governance committee nominated directors). The Alibaba Partnership and the nominating and corporate governance committee shall have the right to appoint persons to our board as Alibaba Partnership nominated directors and nominating and corporate governance committee nominated directors, respectively, until the next annual general meeting of shareholders after such appointment.

A director will be removed from office automatically if, among other things, the director (1) dies or becomes bankrupt or makes any arrangement or composition with his creditors generally; or (2) is found of unsound mind; or (3) resigns his office by notice in writing to us. In addition, directors nominated or appointed by the Alibaba Partnership are, so long as the Alibaba Partnership is governed by the partnership agreement in effect or as may be amended in accordance with its terms from time to time, subject to removal, with or without cause, only by the Alibaba Partnership, and director nominated or appointed by SoftBank will be subject to removal, with or without cause, only by SoftBank. So long as the Alibaba Partnership is governed by the partnership agreement in effect or as may be amended in accordance with its terms from time to time, any director nominated or appointed by the nominating and corporate governance committee may be removed for cause by a vote of the majority of our board upon the recommendation of the nominating and corporate governance committee. After such time, any director may be removed by ordinary resolution, with or without cause.

There is no shareholding qualification for directors nor is there any specified age limit for directors.

### *Proceedings of Our Board*

Our Articles provide that our business is to be managed and conducted by our board. The quorum necessary for a board meeting may be fixed by our board and, unless so fixed at another number, will be a majority of the directors.

Our Articles provide that our board may from time to time at its discretion exercise all our powers to raise capital or borrow money, to mortgage or charge all or any part of our undertaking, property and assets (present and future) and uncalled capital and, subject to the Cayman Companies Act, issue debentures, bonds and other securities, whether outright or as collateral security for any debt, liability or obligation of us or of any third party.

### *Changes in Capital*

Our shareholders may from time to time by ordinary resolution:

- increase the share capital by such sum, to be divided into shares of such classes and amount, as the resolution shall prescribe;
- consolidate and divide all or any of our share capital into shares of a larger amount than our existing shares;
- sub-divide our existing shares, or any of them into shares of a smaller amount, provided that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in case of the share from which the reduced share is derived; or
- 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 our share capital by the amount of the shares so canceled.

Our shareholders may by special resolution, subject to any confirmation or consent required by the Cayman Companies Act, reduce our share capital or any capital redemption reserve in any manner permitted by law.

### *Restrictive Provisions*

Under our Articles, in connection with any change of control, merger or sale, the partners of the Alibaba Partnership and other holders of our Shares shall receive the same consideration with respect to their Shares in connection with any such transaction. In addition, our Articles provide that the Alibaba Partnership may not transfer or otherwise delegate or give a proxy to any third party with respect to its right to nominate directors and that the consent of the independent members of our board who are not nominees of the Alibaba Partnership shall be needed for any amendment of the partnership agreement relating to the purpose of the partnership or the manner in which the partnership exercises its rights to nominate or appoint a majority of our board.



### *Directors' Power to Issue Shares*

Under our Articles, our board is empowered to issue or allot shares or grant options, with or without preferred, deferred, qualified or other special rights or restrictions. In particular, pursuant to our Articles, our board has the authority, without further action by the shareholders, to issue all or any part of our capital and to fix the designations, powers, preferences, privileges, and relative participating, optional or special rights and the qualifications, limitations or restrictions therefrom, including dividend rights, conversion rights, voting rights, terms of redemption and liquidation preferences, any or all of which may be greater than the rights of our Shares. Our board, without shareholder approval, may issue preferred shares with voting, conversion or other rights that could adversely affect the voting power and other rights of holders of our Shares.

### *Directors' Borrowing Powers*

Our directors may exercise all of our powers to borrow money and to mortgage or charge its undertaking, property and uncalled capital or any part thereof, to issue debentures, debenture stock and other securities whenever money is borrowed or as security for any debt, liability or obligation of us or of any third party.

### *Disclosure of interest in contracts with us or any of our subsidiaries*

Our Articles provide that a director who has a direct or indirect interest in any contract, business or arrangement in which we or our affiliates is a party or becomes a party to (an “**Interested director**”), shall declare the nature of his interest at a meeting of the directors.

A general notice given to the directors by any director to the effect that he is affiliated with any specified person and is to be regarded as interested in any contract which may later be made with that person shall be deemed a sufficient declaration of interest in regard to any contract so made.

An Interested director shall be counted in the quorum but shall not be entitled to vote in respect of any contract or proposed contract or arrangement in which he is interested. Except with the prior approval of a majority of the non-Interested directors, we will not, and will cause each of our subsidiaries not to, enter into or engage in any transaction or agreement to which we or any of our subsidiaries, on the one hand, and any such Interested director or person affiliated with such Interested director, on the other hand, are parties or receive any direct or indirect economic or other benefits (except to the extent of their pro rata share in benefits accruing to other shareholders).

### *Remuneration of directors*

Our Articles provide that the remuneration of our directors shall be determined by our board. No independent quorum is required.

### *Restriction on Ownership of Securities*

There are no provisions in our Articles relating to restriction on ownership of our Shares or securities.

### *Lien on Our shares*

Our Articles provide that we have a first and paramount lien on every share (whether or not fully paid) for all amounts (whether presently payable or not) payable at a fixed time or called in respect of that share. We also have a first and paramount lien on every share registered in the name of a person indebted or under liability to us (whether he is the sole registered holder of a share or one of two or more joint holders) for all amounts owing by him or his estate to us (whether or not presently payable). Our directors may at any time declare a share to be wholly or in part exempt from these requirements. Our lien on a share extends to any amount payable in respect of it.

### *Suspension of Registration of Transfers*

Our registration of transfers may, on 14 days' notice being given by advertisement in such one or more newspapers or by electronic means, be suspended and the our Register of Members closed at such times and for such periods as our directors may, in their absolute discretion, from time to time determine, provided always that such registration of transfer shall not be suspended nor our Register of Members closed for more than 30 days in any year.

### *General Meeting*

We may in each year hold a general meeting as annual general meeting and shall specify the meeting as such in the notices calling it. The annual general meeting shall be held at such time and place as may be determined by our directors.

### *Shareholder Requisition of General Meeting*

A shareholders' requisition is a requisition of shareholders holding at the date of deposit of the requisition in aggregate not less than one-third of the voting rights of such of the issued Shares as at that date of the deposit carries the right of voting at our general meetings.

Our Articles provide that, the shareholders who requisition a meeting (i) may propose only ordinary resolutions to be considered and voted upon at such meeting; and (ii) shall have no right to propose any resolutions with respect to the election, appointment or removal of directors or with respect to the size of our board.

Save as the right set out above, our shareholders have no right to propose resolutions to be considered or voted upon at our annual general meetings or extraordinary general meetings.

### *Notice of General Meeting*

At least 10 days' advance notice but not more than 60 days' advance notice shall be given for any general meeting. Every notice shall be exclusive of the day on which it is given or deemed to be given and of the day for which it is given and shall specify the place (except in the case of a virtual meeting), the day and the hour of the meeting as determined by our board and the general nature of the business and shall be given in the manner hereinafter mentioned or in such other manner if any as may be prescribed by our board, provided that our general meeting shall, whether or not the notice specified above has been given and whether or not the provisions of our Articles regarding general meetings have been complied with, be deemed to have been duly convened if it is so agreed: (a) in the case of an annual general meeting by all shareholders (or their proxies) entitled to attend and vote thereat; and (b) in the case of an extraordinary general meeting by a majority in number of our shareholders (or their proxies) having a right to attend and vote at the meeting, being a majority together holding not less than 95% in par value of our shares giving that right.



## *Quorum of General Meeting*

No business shall be transacted at any general meeting unless a quorum of shareholders is present at the time when the meeting proceeds to business. The quorum required for a general meeting of shareholders is the presence of at least one shareholder entitled to vote, holding in aggregate not less than one-third of the voting power of our shares in issue carrying a right to vote at such meeting.

## *Claims Against us*

Unless otherwise determined by a majority of our board, in the event that (i) any shareholder (the “**Claiming Party**”) initiates or asserts any claim or counterclaim (“**Claim**”) or joins, offers substantial assistance to or has a direct financial interest in any Claim against us and (ii) the Claiming Party (or the third party that received substantial assistance from the Claiming Party or in whose Claim the Claiming Party had a direct financial interest) does not obtain a judgment on the merits in which the Claiming Party prevails, then each Claiming Party shall, to the fullest extent permissible by law, be obligated jointly and severally to reimburse us for all fees, costs and expenses (including, but not limited to, all reasonable attorneys’ fees and other litigation expenses) that we may incur in connection with such Claim.

## **Summary of Cayman Islands Company Act and Taxation**

### *Introduction*

The Cayman Companies Act is derived, to a large extent, from the older Companies Acts of England, although there are significant differences between the Cayman Companies Act and the current Companies Act of England. Set out below is a summary of certain provisions of the Cayman Companies Act, although this does not purport to contain all applicable qualifications and exceptions or to be a complete review of all matters of corporate law and taxation which may differ from equivalent provisions in jurisdictions with which interested parties may be more familiar.

### *Incorporation*

We were incorporated in the Cayman Islands as an exempted company with limited liability on 28 June 1999 under the Cayman Companies Act. As such, its operations must be conducted mainly outside the Cayman Islands. We are 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 size of its authorized share capital.

### *Share Capital*

The Cayman Companies Act permits a company to issue ordinary shares, preference shares, redeemable shares or any combination thereof.

The Cayman Companies Act 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 premia on those shares shall be transferred to an account called the “share premium account.” At the option of a company, these provisions may not apply to premia 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 Cayman Companies Act provides that the share premium account may be applied by a company, subject to the provisions, if any, of its memorandum and articles

of association, in such manner as the company may from time to time determine including, but without limitation:

- paying distributions or dividends to members;
- paying up unissued shares of the company to be issued to members as fully paid bonus shares;
- in the redemption and repurchase of shares (subject to the provisions of section 37 of the Cayman Companies Act);
- writing-off the preliminary expenses of the company;
- writing-off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company; and
- providing for the premium payable on redemption or purchase of any 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 Cayman Companies Act provides that, subject to confirmation by the Grand Court of the Cayman Islands, a company limited by shares or a company limited by guarantee and having a share capital may, if so authorized by its articles of association, by special resolution reduce its share capital in any way.

Subject to the detailed provisions of the Cayman Companies Act, a company limited by shares or a company limited by guarantee and having a share capital may, if so authorized 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. In addition, such a company may, if authorized to do so by its articles of association, purchase its own shares, including any redeemable shares. The manner of such a purchase must be authorized either by the articles of association or by an ordinary resolution of the company. The articles of association may provide that the manner of purchase may be determined by the directors 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 member of the company holding 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.

There is no statutory restriction in the Cayman Islands on the provision of financial assistance by a company 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 to act 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.

## ***Dividends and Distributions***

With the exception of section 34 of the Cayman Companies Act, there are no statutory provisions relating to the payment of dividends. Based upon English case law which is likely to be persuasive in the Cayman Islands in this area, dividends may be paid only out of profits. In addition, section 34 of the Cayman Companies Act 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 (see "– Share Capital" above for details).

## ***Shareholder Suits***

The Cayman Islands courts can be expected to follow English case law precedents. The rule in *Foss v. Harbottle* (and the exceptions thereto which permit a minority shareholder to commence a class 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 where the wrongdoers are themselves in control of the company, and (c) an action which requires a resolution with a qualified (or special) majority which has not been obtained) has been applied and followed by the courts in the Cayman Islands.

## ***Protection of Minorities***

In the case of a company (not being a bank) having a share capital divided into shares, the Grand Court of the Cayman Islands 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 Grand Court shall direct.

Any shareholder of a company may petition the Grand Court of the Cayman Islands 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.

Claims against a company by its shareholders must, as a general rule, 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.

The English common law rule that the majority will not be permitted to commit a fraud on the minority has been applied and followed by the courts of the Cayman Islands.

## ***Disposal of Assets***

The Cayman Companies Act contains no specific restrictions on the powers of directors to dispose of assets of a company. As a matter of general law, in the exercise of those powers, the directors must discharge their duties of care and to act in good faith, for a proper purpose and in the interests of the company.

## ***Accounting and Auditing Requirements***

The Cayman Companies Act requires that a company shall cause to be kept proper books of account with respect to:

- all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;
- all sales and purchases of goods by the company; and
- 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.

## ***Register of Members***

An exempted company may, subject to the provisions of its articles of association, maintain its principal register of members and any branch registers at such locations, whether within or without the Cayman Islands, as its directors may from time to time think fit. There is no requirement under the Cayman Companies Act 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.

## ***Inspection of Books and Records***

Under the Cayman Companies Act, any person may, upon the payment of a fee, inspect a list of the current directors and alternate directors (if applicable) of the Company made available by the Registrar of Companies of the Cayman Islands. Members of a company will have no general right under the Cayman Companies Act 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 of association.

## ***Special Resolutions***

The Cayman Companies Act provides that a resolution is a special resolution when it has been passed by a majority of at least two-thirds of such members as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting of which notice specifying the intention to propose the resolution as a special resolution has been duly given, except that a company may in its articles of association specify that the required majority shall be a number greater than two-thirds, and may additionally so provide that such majority (being not less than two-thirds) may differ as between matters required to be approved by a special resolution. Written resolutions signed by all the members entitled to vote for the time being of the company may take effect as special resolutions if this is authorized by the articles of association of the company.

### ***Subsidiary Owning Shares in Parent***

The Cayman Companies Act does not prohibit a Cayman Islands company acquiring and holding shares in its parent company provided its objects so permit. The directors of any subsidiary making such acquisition must discharge their duties of care and to act in good faith, for a proper purpose and in the interests of the subsidiary.

### ***Mergers and Consolidations***

The Cayman Companies Act permits mergers and consolidations between Cayman Islands companies and between Cayman Islands companies and non-Cayman Islands companies. For these purposes, (a) “merger” means the merging of two or more constituent companies and the vesting of their undertaking, property and liabilities in one of such companies as the surviving company, and (b) “consolidation” means the combination of two or more constituent companies into a consolidated company and the vesting of the undertaking, property and liabilities of such companies to the consolidated company. In order to effect such a merger or consolidation, the directors of each constituent company must approve a written plan of merger or consolidation, which must then be authorized by (a) a special resolution of each constituent company and (b) such other authorization, if any, as may be specified in such constituent company’s articles of association. The written plan of merger or consolidation must be filed with the Registrar of Companies of the Cayman Islands together with a declaration as to the solvency of the consolidated or surviving company, a list of the assets and liabilities of each constituent company and an undertaking that a copy of the certificate of merger or consolidation will be given to the members and creditors of each constituent company and that notification of the merger or consolidation will be published in the Cayman Islands Gazette. Dissenting shareholders have the right to be paid the fair value of their shares (which, if not agreed between the parties, will be determined by the Cayman Islands court) if they follow the required procedures, subject to certain exceptions. Court approval is not required for a merger or consolidation which is effected in compliance with these statutory procedures.

### ***Reconstructions***

There are statutory provisions which facilitate reconstructions and amalgamations approved by a majority in number representing 75% in value of shareholders or creditors, depending on the circumstances, as are present at a meeting called for such purpose and thereafter sanctioned by the Grand Court of the Cayman Islands. Whilst a dissenting shareholder would have the right to express to the Grand Court his view that the transaction for which approval is sought would not provide the shareholders with a fair value for their shares, the Grand 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 and if the transaction were approved and consummated the dissenting shareholder would have no rights comparable to the appraisal rights (i.e. the right to receive payment in cash for the judicially determined value of his shares) ordinarily available, for example, to dissenting shareholders of United States corporations.

## ***Take-overs***

Where an offer is made by a company for the shares of another company and, within four months of the offer, the holders of not less than 90% of the shares which are the subject of the offer accept, the offeror may at any time within two months after the expiration of the said four months, by notice require the dissenting shareholders to transfer their shares on the terms of the offer. A dissenting shareholder may apply to the Grand Court of the Cayman Islands within one month of the notice objecting to the transfer. The burden is on the dissenting shareholder to show that the Grand 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.

## ***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 Cayman Islands courts to be contrary to public policy (e.g. for purporting to provide indemnification against the consequences of committing a crime).

## ***Liquidation***

A company may be placed in liquidation compulsorily by an order of the court, or voluntarily (a) by a special resolution of its members if the company is solvent, or (b) by an ordinary resolution of its members if the company is insolvent. The liquidator's duties are to collect the assets of the company (including the amount (if any) due from the contributories (shareholders)), settle the list of creditors and discharge the company's liability to them, ratably if insufficient assets exist to discharge the liabilities in full, and to settle the list of contributories and divide the surplus assets (if any) amongst them in accordance with the rights attaching to the shares.

## ***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.

## ***Taxation***

Pursuant to section 6 of the Tax Concessions Act (2018 Revision) of the Cayman Islands, we may obtain an undertaking from the Financial Secretary of the Cayman Islands:

- (a) that no law which is enacted in the Cayman Islands imposing any tax to be levied on profits, income, gains or appreciations shall apply to us or our operations; and
- (b) in addition, that no tax to be levied on profits, income, gains or appreciations or which is in the nature of estate duty or inheritance tax shall be payable:
  - (i) on or in respect of our shares, debentures or other obligations; or
  - (ii) by way of the withholding in whole or in part of any relevant payment as defined in section 6(3) of the Tax Concessions Act (2018 Revision).



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 us levied by the Government of the Cayman Islands save 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 not party to any double tax treaties that are applicable to any payments made by or to us.

### ***Exchange Control***

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

### **Material United States Federal Income Tax Considerations**

The following summary describes the material United States federal income tax consequences of the ownership of our ordinary shares and ADSs as of the date hereof. The discussion set forth below is applicable only to United States Holders. Except where noted, this summary deals only with ordinary shares and ADSs held as capital assets. As used herein, the term “United States Holder” means a beneficial owner of an ordinary share or ADS that is for United States federal income tax purposes:

- an individual citizen or resident of the United States;
- a corporation (or other entity treated as a corporation for United States federal income tax purposes) created or organized in or under the laws of the United States, any state thereof or the District of Columbia;
- an estate the income of which is subject to United States federal income taxation regardless of its source; or
- a trust if it is subject to the primary supervision of a court within the United States and one or more United States persons has or have the authority to control all substantial decisions of the trust, or if it has a valid election in effect under applicable United States Treasury regulations to be treated as a United States person.

This summary does not represent a detailed description of the United States federal income tax consequences applicable to you if you are subject to special treatment under the United States federal income tax laws, including if you are:

- a dealer in securities or currencies;
- a financial institution;
- a regulated investment company;
- a real estate investment trust;
- an insurance company;
- a tax-exempt organization;
- a person holding our ordinary shares or ADSs as part of a hedging, integrated or conversion transaction, a constructive sale or a straddle;
- a trader in securities that has elected the mark-to-market method of accounting for your securities;
- a person liable for alternative minimum tax;
- a person who owns or is deemed to own 10% or more of our stock (by vote or value);

- a person required to accelerate the recognition of any item of gross income with respect to our ordinary shares or ADSs as a result of such income being recognized on an applicable financial statement;
- a partnership or other pass-through entity for United States federal income tax purposes; or
- a person whose “functional currency” is not the U.S. dollar.

The discussion below is based upon the provisions of the Internal Revenue Code of 1986, as amended (the “**Code**”), and regulations, rulings and judicial decisions thereunder as of the date hereof, and the relevant authorities may be replaced, revoked or modified so as to result in United States federal income tax consequences different from those discussed below. In addition, this summary is based, in part, upon representations made by the depositary to us and assumes that the Deposit Agreement, and all other related agreements, will be performed in accordance with their terms.

If a partnership holds our ordinary shares or ADSs, the tax treatment of a partner will generally depend upon the status of the partner and the activities of the partnership. If you are a partner of a partnership holding our ordinary shares or ADSs, you should consult your tax advisors.

This summary does not contain a detailed description of all the United States federal income tax consequences to you in light of your particular circumstances and does not address the Medicare tax on net investment income, or the effects of any state, local or non-United States tax laws. If you are considering the purchase, ownership or disposition of our ordinary shares or ADSs, you should consult your own tax advisors concerning the United States federal income tax consequences to you in light of your particular situation as well as any consequences arising under the laws of any other taxing jurisdiction.

## ***ADSs***

If you hold ADSs, for United States federal income tax purposes, you generally will be treated as the owner of the underlying ordinary shares that are represented by the ADSs. Accordingly, deposits or withdrawals of ordinary shares for ADSs will not be subject to United States federal income tax.

## ***Taxation of Dividends***

Subject to the discussion under “– Passive Foreign Investment Company” below, the gross amount of distributions on the ADSs or ordinary shares (including any amounts withheld to reflect PRC withholding taxes) will be taxable as dividends, to the extent paid out of our current or accumulated earnings and profits, as determined under United States federal income tax principles. The income (including withheld taxes) will be includable in your gross income as ordinary income on the day actually or constructively received by you, in the case of the ordinary shares, or by the depositary, in the case of ADSs. The dividends will not be eligible for the dividends received deduction allowed to corporations under the Code. The following discussion assumes that all dividends will be paid in U.S. dollars.

With respect to non-corporate United States investors, certain dividends received from a qualified foreign corporation may be subject to reduced rates of taxation. A foreign corporation is treated as a qualified foreign corporation with respect to dividends received from that corporation on ordinary shares (or ADSs backed by such shares) that are readily tradable on an established securities market in the United States. United States Treasury Department guidance indicates that our ADSs (which are listed on the NYSE) are readily tradable on an established securities market in the

United States. Thus, we believe that dividends we pay on our ordinary shares that are represented by ADSs will meet the conditions required for the reduced tax rates. Since we do not expect that our ordinary shares will be listed on an established securities market in the United States, we do not believe that dividends that we pay on our ordinary shares that are not represented by ADSs currently meet the conditions required for these reduced tax rates. There can be no assurance that our ADSs will be considered readily tradable on an established securities market in subsequent years. A qualified foreign corporation also includes a foreign corporation that is eligible for the benefits of certain income tax treaties with the United States. In the event that we were deemed to be a PRC resident enterprise under the EIT Law, although no assurance can be given, we might be eligible for the benefits of the income tax treaty between the United States and the PRC, which is hereinafter referred to as the Treaty, and if we were eligible for such benefits, dividends we pay on our ordinary shares, regardless of whether the shares are represented by ADSs, would be eligible for the reduced rates of taxation. Non-corporate United States Holders that do not meet a minimum holding period requirement during which they are not protected from the risk of loss or that elect to treat the dividend income as “investment income” pursuant to Section 163(d)(4) of the Code will not be eligible for the reduced rates of taxation regardless of our status as a qualified foreign corporation. In addition, the rate reduction will not apply to dividends if the recipient of a dividend is obligated to make related payments with respect to positions in substantially similar or related property. This disallowance applies even if the minimum holding period has been met. You should consult your own tax advisors regarding the application of these rules given your particular circumstances.

Non-corporate United States Holders will not be eligible for reduced rates of taxation on any dividends received from us if we are a passive foreign investment company (“**PFIC**”) in the taxable year in which the dividends are paid or in the preceding taxable year. See “– Passive Foreign Investment Company” below.

In the event that we were deemed to be a PRC resident enterprise under the EIT Law, you might be subject to PRC withholding taxes on dividends paid to you with respect to the ADSs or ordinary shares. In that case, subject to certain conditions and limitations, PRC withholding taxes on dividends would be treated as foreign taxes eligible for credit against your United States federal income tax liability. For purposes of calculating the foreign tax credit, dividends paid on the ADSs or ordinary shares will be treated as foreign-source income and will generally constitute passive category income. However, in certain circumstances, if you have held the ADSs or ordinary shares for less than a specified minimum period during which you are not protected from risk of loss, or are obligated to make payments related to the dividends, you will not be allowed a foreign tax credit for any PRC withholding taxes imposed on dividends paid on the ADSs or ordinary shares. If you are eligible for Treaty benefits, any PRC taxes on dividends will not be creditable against your United States federal income tax liability to the extent withheld at a rate exceeding the applicable Treaty rate.

The rules governing the foreign tax credit are complex. You are urged to consult your tax advisor regarding the availability of the foreign tax credit under your particular circumstances.

To the extent that the amount of any distribution exceeds our current and accumulated earnings and profits for a taxable year, as determined under United States federal income tax principles, the distribution will first be treated as a tax-free return of capital, causing a reduction in the adjusted basis of the ADSs or ordinary shares (thereby increasing the amount of gain, or decreasing the amount of loss, to be recognized by you on a subsequent disposition of the ADSs or ordinary shares), and the balance in excess of adjusted basis will be taxed as capital gain recognized on

a sale or exchange, as described below under “– Taxation of Capital Gains.” Consequently, any distributions in excess of our current and accumulated earnings and profits would generally not give rise to foreign source income and you would generally not be able to use the foreign tax credit arising from any PRC withholding tax imposed on those distributions unless the credit can be applied (subject to applicable limitations) against United States federal income tax due on other foreign source income in the appropriate category for foreign tax credit purposes. However, we do not expect to keep earnings and profits in accordance with United States federal income tax principles. Therefore, you should expect that a distribution will generally be treated as a dividend (as discussed above).

Distributions of ADSs, ordinary shares or rights to subscribe for ordinary shares that are received as part of a pro rata distribution to all of our shareholders generally will not be subject to United States federal income tax.

Consequently, these distributions generally will not give rise to foreign source income and you generally will not be able to use the foreign tax credit arising from any PRC withholding tax imposed on the distributions unless the credit can be applied (subject to applicable limitations) against United States federal income tax due on other foreign source income in the appropriate category for foreign tax credit purposes.

### ***Passive Foreign Investment Company***

Based on the projected composition of our income and assets and the valuation of our assets, including goodwill, we do not expect to be a PFIC for our current taxable year, and we do not expect to become one in the future, although there can be no assurance in this regard.

In general, we will be a PFIC for any taxable year in which:

- at least 75% of our gross income is passive income; or
- at least 50% of the value (determined on a quarterly basis) of our assets is attributable to assets that produce or are held for the production of passive income.

For this purpose, passive income generally includes dividends, interest, royalties and rents (other than royalties and rents derived in the active conduct of a trade or business and not derived from a related person). If we own at least 25% (by value) of the stock of another corporation, we will be treated, for purposes of the PFIC tests, as owning our proportionate share of the other corporation's assets and receiving our proportionate share of the other corporation's income. Although we do not expect to be a PFIC, it is not entirely clear how the contractual arrangements between us and our variable interest entities will be treated for purposes of the PFIC rules. If it were determined that we do not own the stock of our variable interest entities for United States federal income tax purposes (for instance, because the relevant PRC authorities do not respect these arrangements), we may be treated as a PFIC.

The determination of whether we are a PFIC is made annually. Accordingly, it is possible that we may become a PFIC in the current or any future taxable year due to changes in our asset or income composition. Because we have valued our goodwill based on the market value of our ADSs, a decrease in the price of our ADSs may also result in our becoming a PFIC. If we are a PFIC for any taxable year during which you hold our ADSs or ordinary shares, you will be subject to special tax rules discussed below.

If we are a PFIC for any taxable year during which you hold our ADSs or ordinary shares and you do not make a timely mark-to-market election (as discussed below), you will be subject to special tax rules with respect to any “excess distribution” received and any gain realized from a sale or other disposition, including a pledge, of ADSs or ordinary shares. Distributions received in a taxable year that are greater than 125% of the average annual distributions received during the shorter of the three preceding taxable years or your holding period for the ADSs or ordinary shares will be treated as excess distributions. Under these special tax rules:

- the excess distribution or gain will be allocated ratably over your holding period for the ADSs or ordinary shares;
- the amount allocated to the current taxable year, and any taxable year prior to the first taxable year in which we were a PFIC, will be treated as ordinary income; and
- the amount allocated to each other year will be subject to tax at the highest tax rate in effect for that year and the interest charge generally applicable to underpayments of tax will be imposed on the resulting tax attributable to each relevant year.

In addition, non-corporate United States Holders will not be eligible for reduced rates of taxation on any dividends received from us if we are a PFIC in the taxable year in which the dividends are paid or in the preceding taxable year. You will generally be required to file Internal Revenue Service Form 8621 if you hold our ADSs or ordinary shares in any year in which we are classified as a PFIC.

If we were a PFIC for any taxable year during which you hold our ADSs or ordinary shares and any of our non-United States subsidiaries was also a PFIC, a United States Holder would be treated as owning a proportionate amount (by value) of the shares of the lower-tier PFIC for purposes of the application of these rules. You are urged to consult your tax advisors about the application of the PFIC rules to any of our subsidiaries.

In certain circumstances, in lieu of being subject to the excess distribution rules discussed above, you may make an election to include gain on the stock of a PFIC as ordinary income under a mark-to-market method, provided that the stock is regularly traded on a qualified exchange. Under current law, the mark-to-market election may be available to United States Holders of ADSs since the ADSs are listed on the NYSE, which constitutes a qualified exchange, provided the ADSs are “regularly traded” for purposes of the mark-to-market election (for which no assurance can be given). It should also be noted that only the ADSs and not the ordinary shares are listed on the NYSE. Consequently, if you are a United States Holder of ordinary shares that are not represented by ADSs, you generally will not be eligible to make a mark-to-market election if we are or were to become a PFIC.

If you make an effective mark-to-market election, you will include in each year that we are a PFIC as ordinary income the excess of the fair market value of your ADSs at the end of the year over your adjusted tax basis in the ADSs. You will be entitled to deduct as an ordinary loss in each relevant year the excess of your adjusted tax basis in the ADSs over their fair market value at the end of the year, but only to the extent of the net amount previously included in income as a result of the mark-to-market election. If you make an effective mark-to-market election, in each year that we are a PFIC any gain you recognize upon the sale or other disposition of your ADSs will be treated as ordinary income and any loss will be treated as ordinary loss, but only to the extent of the net amount previously included in income as a result of the mark-to-market election.



Your adjusted tax basis in the ADSs will be increased by the amount of any income inclusion and decreased by the amount of any deductions under the mark-to-market rules. If you make a mark-to-market election it will be effective for the taxable year for which the election is made and all subsequent taxable years unless the ADSs are no longer regularly traded on a qualified exchange or the Internal Revenue Service consents to the revocation of the election. You are urged to consult your tax advisor about the availability of the mark-to-market election, and whether making the election would be advisable in your particular circumstances.

Alternatively, you can sometimes avoid the rules described above by electing to treat a PFIC as a “qualified electing fund” under Section 1295 of the Code. However, this option is not available to you because we do not intend to comply with the requirements necessary to permit you to make this election.

You are urged to consult your tax advisors concerning the United States federal income tax consequences of holding ADSs or ordinary shares if we are considered a PFIC in any taxable year.

### ***Taxation of Capital Gains***

For United States federal income tax purposes, you will recognize taxable gain or loss on any sale or exchange of ADSs or ordinary shares in an amount equal to the difference between the amount realized for the ADSs or ordinary shares and your tax basis in the ADSs or ordinary shares, both as determined in U.S. dollars. Subject to the discussion under “– Passive Foreign Investment Company” above, this gain or loss will generally be capital gain or loss. If, however, the sale or exchange is for an amount denominated in a non-U.S. currency and there is a fluctuation in the relevant U.S. dollar/non-U.S. currency exchange rate between the sale or exchange date and the settlement date, accrual basis taxpayers may be subject to special rules that would result in ordinary exchange gain or loss to the extent of such exchange rate fluctuation. Capital gains of individuals derived with respect to capital assets held for more than one year are eligible for reduced rates of taxation. The deductibility of capital losses is subject to limitations. Any gain or loss recognized by you will generally be treated as United States source gain or loss. However, if we were treated as a PRC resident enterprise for EIT Law purposes and PRC tax were imposed on any gain, and if you are eligible for the benefits of the Treaty, you may elect to treat this gain as PRC source gain under the Treaty. If you are not eligible for the benefits of the Treaty or you fail to make the election to treat any gain as PRC source, then you may not be able to use the foreign tax credit arising from any PRC tax imposed on the disposition of our ADSs or ordinary shares unless the credit can be applied (subject to applicable limitations) against tax due on other income derived from foreign sources. You will be eligible for the benefits of the Treaty if, for purposes of the Treaty, you are a resident of the United States, and you meet other requirements specified in the Treaty. Because the determination of whether you qualify for the benefits of the Treaty is fact-intensive and depends upon your particular circumstances, you are specifically urged to consult your tax advisors regarding your eligibility for the benefits of the Treaty. You are also urged to consult your tax advisor regarding the tax consequences in case any PRC tax is imposed on gain on a disposition of our ADSs or ordinary shares, including the availability of the foreign tax credit and the election to treat any gain as PRC source, under your particular circumstances.

You should note that any Hong Kong stamp duty will not be treated as a creditable foreign tax for United States federal income tax purposes, although you may be entitled to deduct any such stamp duty, subject to applicable limitations under the Code.



## ***Information Reporting and Backup Withholding***

In general, information reporting will apply to dividends in respect of our ADSs or ordinary shares and the proceeds from the sale, exchange or other disposition of our ADSs or ordinary shares that are paid to you within the United States (and in certain cases, outside the United States), unless you are an exempt recipient. A backup withholding tax may apply to these payments if you fail to provide a taxpayer identification number or certification of exempt status or, in the case of dividend payments, if you fail to report in full dividend and interest income.

Any amounts withheld under the backup withholding rules will be allowed as a refund or a credit against your United States federal income tax liability provided the required information is furnished to the Internal Revenue Service in a timely manner.

Under the Hiring Incentives to Restore Employment Act of 2010, certain United States Holders are required to report information relating to ADSs or ordinary shares, subject to limited exceptions (including an exception for ADSs or ordinary shares held in accounts maintained by certain financial institutions), by attaching a complete Internal Revenue Service Form 8938, Statement of Specified Foreign Financial Assets, with their tax return for each year in which they hold ADSs or ordinary shares. You are urged to consult your own tax advisors regarding information reporting requirements relating to your ownership of the ADSs or ordinary shares.