

## B. SUMMARY OF FOREIGN LAWS AND REGULATIONS

### 1. Salient Provisions of the Laws of Singapore

The following summarises the salient provisions of the laws of Singapore as at the date hereof. The summaries below are for general guidance only and do not constitute legal advice, nor must they be used as a substitute for, or specific legal advice, on the corporate law of Singapore. The summaries below are not meant to be a comprehensive or exhaustive description of all the obligations, rights and privileges of Shareholders imposed or conferred by the corporate laws of Singapore. In addition, prospective investors and/or Shareholders should also note that the laws applicable to Shareholders may change, whether as a result of proposed legislative reforms to the Singapore laws or otherwise. Prospective investors and/or Shareholders should consult their own legal advisors for specific legal advice concerning their legal obligations under the relevant laws.

## **REPORTING OBLIGATIONS OF SHAREHOLDERS**

### **1.1 Obligation to notify Company of substantial shareholding and change in substantial shareholding**

#### **Section 81 of the Companies Act**

A person has a substantial shareholding in a company if he has an interest or interests in one (1) or more voting shares in the company, and the total votes attached to that share, or those shares, is not less than 5.0% of the total votes attached to all the voting shares in the company.

#### **Section 82 of the Companies Act**

A substantial shareholder of a company is required to notify the company of his interests in the voting shares in the company within two (2) business days after becoming a substantial shareholder.

#### **Sections 83 and 84 of the Companies Act**

A substantial shareholder is required to notify the company of any change in the percentage level of his shareholding or his ceasing to be a substantial shareholder, within two (2) business days after he is aware of such change.

The reference to changes in “percentage level” means any changes in a substantial shareholder’s interest in the company which results in his interest,

following such change, increasing or decreasing to the next discrete 1.0% threshold. For example, an increase in interests in the company from 5.1% to 5.9% need not be notified, but an increase from 5.9% to 6.1% will have to be notified.

### **Consequence of non-compliance**

Section 89 of the Companies Act provides for the consequences of non-compliance with Sections 82, 83 and 84. Under Section 89, a person who fails to comply shall be guilty of an offence and shall be liable on conviction to a fine not exceeding S\$5,000 and in the case of a continuing offence to a further fine of S\$500 for every day during which the offence continues after conviction.

Section 90 provides for a defence to a prosecution for failing to comply with Sections 82, 83 or 84. It is a defence if the defendant proves that his failure was due to his not being aware of a fact or occurrence the existence of which was necessary to constitute the offence and that he:

- (a) was not so aware on the date of the summons; or
- (b) became so aware less than seven (7) days before the date of the summons.

However, a person will conclusively be presumed to have been aware of a fact or occurrence at a particular time:

- (i) of which he would, if he had acted with reasonable diligence in the conduct of his affairs, have been aware at that time; or
- (ii) of which an employee or agent of the person, being an employee or agent having duties or acting in relation to his master's or principal's interest or interests in a share or shares in the company concerned, was aware or would, if he had acted with reasonable diligence in the conduct of his master's or principal's affairs, have been aware at that time.

## **1.2 Powers of the court with respect to defaulting substantial shareholders**

### **Section 91 of the Companies Act**

Under Section 91 of the Companies Act, where a substantial shareholder fails to comply with Sections 82, 83 or 84, the Court may, on the application of the Minister, whether or not the failure still continues, make one (1) or more of the following orders:

- (a) an order restraining the substantial shareholder from disposing of any interest in shares in the company in which he is or has been a substantial shareholder;

(b) an order restraining a person who is, or is entitled to be registered as, the holder of shares referred to in paragraph (a) from disposing of any interest in those shares;

(c) an order restraining the exercise of any voting or other rights attached to any share in the company in which the substantial shareholder has or has had an interest;

(d) an order directing the company not to make payment, or to defer making payment, of any sum due from the company in respect of any share in which the substantial shareholder has or has had an interest;

(e) an order directing the sale of all or any of the shares in the company in which the substantial shareholder has or has had an interest;

(f) an order directing the company not to register the transfer or transmission of specified shares;

(g) an order that any exercise of the voting or other rights attached to specified shares in the company in which the substantial shareholder has or has had an interest be disregarded;

(h) for the purposes of securing compliance with any other order made under Section 91, an order directing the company or any other person to do or refrain from doing a specified act.

Any order made under Section 91 may include such ancillary or consequential provisions as the Court thinks just.

The Court shall not make an order other than an order restraining the exercise of voting rights, if it is satisfied that:

(a) the failure of the substantial shareholder to comply was due to his inadvertence or mistake or to his not being aware of a relevant fact or occurrence; and

(b) that in all the circumstances, the failure ought to be excused.

Any person who contravenes or fails to comply with an order made under Section 91 that is applicable to him shall be guilty of an offence and shall be liable on conviction to a fine not exceeding S\$5,000 and, in the case of a continuing offence, to a further fine of S\$500 for every day during which the offence continues after conviction.

### **1.3 Obligation to notify the SGX-ST of substantial shareholding and change in substantial shareholding**

#### **Sections 135, 136 and 137 of the SFA**

A substantial shareholder is also required under Sections 135, 136 and 137 of the SFA to notify the company in writing, when the shareholder becomes a substantial shareholder, of changes to the percentage level of his substantial shareholding, or of his ceasing to be a substantial shareholder. Any person who fails to comply with these sections is guilty of an offence and shall be liable on conviction to a fine not exceeding S\$250,000 or to imprisonment for a term not exceeding two (2) years or to both (for an individual) and, in the case of a continuing offence, to a further fine not exceeding S\$25,000 for every day or part thereof during which the offence continues after conviction.

### **1.4 Duty of director or chief executive officer to notify corporation of his interests**

#### **Sections 133 and 134 of the SFA**

Section 133 of the SFA stipulates that every director and chief executive officer of a corporation shall give notice in writing to the corporation of particulars of, inter alia, shares in the corporation; or a related corporation of the corporation, which he holds, or in which he has an interest and the nature and extent of that interest, within two (2) business days after:

- (a) the date on which the director or chief executive officer becomes such a director or chief executive officer; or
- (b) the date on which the director or chief executive officer becomes a holder of, or acquires an interest in, the shares, whichever last occurs.

Under Section 134, any director or chief executive officer of a corporation who intentionally or recklessly contravenes Section 133 in relation to the disclosure of shares held in the corporation, or furnishes any information which he knows is false or misleading in a material particular or is reckless as to whether it is, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding S\$250,000 or to imprisonment for a term not exceeding two (2) years or to both and, in the case of a continuing offence, to a further fine not exceeding S\$25,000 for every day or part thereof during which the offence continues after conviction.

### **1.5 Power of corporation to require disclosure of beneficial interest in its voting shares**

Any corporation may, under Section 137F of the SFA, require any member of the corporation within such reasonable time as is specified in the notice (which shall comply with the requirements stipulated by the Monetary Authority of Singapore):

- (a) to inform it whether he holds any voting shares in the corporation as beneficial owner or as trustee; and
- (b) if he holds them as trustee, to indicate so far as he can the persons for whom he holds them (either by name or by other particulars sufficient to enable those persons to be identified) and the nature of their interest.

Whenever a corporation receives information from a person pursuant to a requirement imposed on him under Section 137F with respect to shares held by a member of the corporation, it shall be under an obligation to inscribe against the name of that member in a separate part of the register kept by it under Section 137C:

- (i) the fact that the requirement was imposed and the date on which it was imposed; and
- (ii) the information received pursuant to the requirement.

Any person who intentionally or recklessly contravenes the requirement to comply with the notice, or in purported compliance with the requirement, furnishes any information which he knows is false or misleading in a material particular or is reckless as to whether it is, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding S\$250,000 or to imprisonment for a term not exceeding two (2) years or to both (for an individual) and, in the case of a continuing offence, to a further fine not exceeding S\$25,000 for every day or part thereof during which the offence continues after conviction.

## **1.6 Duty of corporation to make disclosure**

### **Section 137G of the SFA**

Where a corporation has been notified in writing by a director or chief executive officer of the corporation or a substantial shareholder in respect of a change in the particulars of his shareholdings, the corporation shall announce or otherwise disseminate the information stated in the notice to the securities market operated by the securities exchange on whose official list any or all of the shares of the corporation are listed, as soon as practicable and in any case, no later than the end of the business day following the day on which the corporation received the notice.

Any corporation that intentionally or recklessly contravenes this duty of disclosure; or in purported compliance, announces or disseminates any information knowing that it is false or misleading in a material particular or reckless as to whether it is, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding S\$250,000 and, in the case of a continuing offence, to a further fine not exceeding S\$25,000 for every day or part thereof during which the offence continues after conviction.

## **1.7 Duty not to furnish false statements to securities exchange, futures exchange, designated clearing house and the Securities Industry Council**

### **Section 330 of the SFA**

Under Section 330 of the SFA, any person who, with intent to deceive, makes or furnishes, or knowingly and wilfully authorises or permits the making or furnishing of, any false or misleading statement or report to any securities exchange, futures exchange, licensed trade repository, approved clearing house or recognised clearing house or any officers thereof relating to, inter alia, dealing in securities shall be guilty of an offence and shall be liable on conviction to a fine not exceeding S\$50,000 or to imprisonment for a term not exceeding two (2) years or to both.

Section 330 further provides that any person who, with intent to deceive, makes or furnishes or knowingly and wilfully authorises or permits the making or furnishing of, any false or misleading statement or report to the Securities Industry Council or any of its officers, relating to any matter or thing required by the Securities Industry Council in the exercise of its functions under the SFA shall be guilty of an offence and shall be liable on conviction to a fine not

exceeding S\$50,000 or to imprisonment for a term not exceeding two (2) years or to both.

Note: Under Section 4(10)(a) of the SFA, a person who holds securities as a bare trustee will not be regarded as having an interest in those securities. Accordingly, if HKSCC Nominees and other CCASS Participants hold shares as bare trustees, such holdings will not give rise to any disclosure obligation as detailed above by HKSCC Nominees and other CCASS Participants. The ultimate beneficial owner will be obliged to comply with the above disclosure and reporting requirements in connection with their respective shareholdings.

## **PROHIBITED CONDUCT IN RELATION TO TRADING IN THE SECURITIES OF THE COMPANY**

### **2.1 Prohibitions against false trading and market manipulation**

#### **Section 197 of the SFA**

Section 197 of the SFA prohibits a person from:

- (a) any activities for the purpose of creating a false or misleading appearance of:
  - (i) active trading in any securities on a securities market; or
  - (ii) with respect to the market for, or price of, any securities on a securities market;
- (b) any activities that create, or is likely to create, a false or misleading appearance of active trading in any securities on a securities market, or with respect to the market for, or the price of, such securities:
  - (i) he knows that doing that thing, causing that thing to be done or engaging in that course of conduct, as the case may be, will create, or will be likely to create, that false or misleading appearance; or
  - (ii) he is reckless as to whether doing that thing, causing that thing to be done or engaging in that course of conduct, as the case may be, will create, or will be likely to create, that false or misleading appearance; or
- (c) the purchase or sale of any securities that do not involve a change in the beneficial ownership of those securities, or by any fictitious transaction or

device, maintain, inflate, depress, or cause fluctuations in, the market price of any securities.

Under Section 197(3), the purpose of a person's conduct is deemed to be the creation of a false or misleading appearance of active trading in securities on a securities market if he:

- (a) effects, takes part in, is concerned in or carries out, directly or indirectly, any transaction of purchase or sale of any securities, being a transaction that does not involve any change in the beneficial ownership of the securities;
- (b) makes or causes to be made an offer to sell any securities at a specified price where he has made or caused to be made or proposes to make or to cause to be made, or knows that a person associated with him has made or caused to be made or proposes to make or to cause to be made, an offer to purchase the same number, or substantially the same number, of securities at a price that is substantially the same as the first-mentioned price; or
- (c) makes or causes to be made an offer to purchase any securities at a specified price where he has made or caused to be made or proposes to make or to cause to be made, or knows that a person associated with him has made or caused to be made or proposes to make or to cause to be made, an offer to sell the same number, or substantially the same number, of securities at a price that is substantially the same as the firstmentioned price,

unless he establishes that the purpose or purposes for which he did the act was not, or did not include, the purpose of creating a false or misleading appearance of active trading in securities on a securities market.

Section 197(5) provides that a purchase or sale of securities does not involve a change in the beneficial ownership if a person who had an interest in the securities before the purchase or sale, or a person associated with the first-mentioned person in relation to those securities, has an interest in the securities after the purchase or sale.

Section 197(6) provides a defence to proceedings against a person in relation to a purchase or sale of securities that did not involve a change in the beneficial ownership of those securities. It is a defence if the person establishes that the purpose or purposes for which he purchased or sold the securities was not, or did not include, the purpose of creating a false or misleading appearance with respect to the market for, or the price of, securities.



## **2.2 Prohibition against securities market manipulation Section 198 of the SFA**

Under Section 198(1) of the SFA, no person shall carry out directly or indirectly, two (2) or more transactions in securities of a corporation, being transactions that have, or are likely to have, the effect of raising, lowering, maintaining or stabilising the price of the securities with intent to induce other persons to purchase them.

Section 198(3)(a) provides that transactions in securities of a corporation includes the making of:

- (a) an offer to purchase or sell such securities of the corporation; and
- (b) an invitation, however expressed, that directly or indirectly invites a person to offer to purchase or sell such securities of the corporation.

## **2.3 Prohibition against the manipulation of the market price of securities by the dissemination of misleading information and the dissemination of information about illegal transactions**

### **Sections 199 and 202 of the SFA**

Section 199 of the SFA prohibits the making of false or misleading statements. Under this provision, a person shall not make a statement, or disseminate information, that is false or misleading in a material particular and is likely to:

- (a) induce other persons to subscribe for securities;
- (b) induce the sale or purchase of securities by other persons; or
- (c) have the effect of raising, lowering, maintaining or stabilising the market price of securities,

if, when he makes the statement or disseminates the information, he either does not care whether the statement or information is true or false, or knows or ought reasonably to have known that the statement or information is false or misleading in a material particular.

Section 202 of the SFA prohibits the dissemination of information about illegal transactions. This provision prohibits the circulation or dissemination of any statement or information to the effect that the price of any securities of a corporation will or is likely to rise, fall or be maintained by reason of

transactions entered into in contravention of Sections 197 to 201 of the SFA. This prohibition applies where the person who is circulating or disseminating the information or statements:

- (i) is the person who entered or purports to enter into the illegal transaction; or
- (ii) is associated with the person who entered or purports to enter into the illegal transaction; or
- (iii) is the person, or associated with the person, who has received or expects to receive (whether directly or indirectly) any consideration or benefit of circulating or disseminating the information or statements.

#### **2.4 Prohibition against fraudulently inducing persons to deal in securities**

##### **Section 200 of the SFA**

Section 200 of the SFA prohibits a person from inducing or attempting to induce another person to deal in securities, by:

- (a) making or publishing any statement, promise or forecast that he knows or ought reasonably to have known to be misleading, false or deceptive;
- (b) any dishonest concealment of material facts;
- (c) the reckless making or publishing of any statement, promise or forecast that is misleading, false or deceptive; or
- (d) recording or storing in, or by means of, any mechanical, electronic or other device information that he knows to be false or misleading in a material particular, unless it is established that, at the time when the person so recorded or stored the information, he had no reasonable grounds for expecting that the information would be available to any other person.

#### **2.5 Prohibition against employment of manipulative and deceptive devices**

##### **Section 201 of the SFA**

Section 201 of the SFA prohibits a person from, directly or indirectly, in connection with the subscription, purchase or sale of any securities:

- (a) employing any device, scheme or artifice to defraud;
- (b) engaging in any act, practice or course of business which operates as a fraud or deception, or is likely to operate as a fraud or deception, upon any person;
- (c) making any statement he knows to be false in a material particular; or
- (d) omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

## **2.6 Prohibition against insider trading**

### **Sections 218 and 219 of the SFA**

Sections 218 and 219 of the SFA prohibit persons from dealing in securities of a corporation if the person knows or reasonably ought to know that he is in possession of information that is not generally available, and if it were generally available, might have a material effect on the price or value of securities of that corporation. Such persons include officers and substantial shareholders of a corporation or a related corporation, and persons who occupy a position reasonably expected to give him access to inside information by virtue of professional or business relationship with the corporation or a related corporation, or by being an officer of a substantial shareholder in that corporation or in a related corporation.

For an alleged contravention of Section 218 or 219, Section 220 makes it clear that it is not necessary for the prosecution or the plaintiff to prove that the accused person or defendant intended to use the information referred to in Section 218(1)(a) or (1A)(a) or 219(1)(a) in contravention of Section 218 or 219, as the case may be.

### **Section 216 of the SFA**

Section 216 sets out when a reasonable person would be taken to expect information to have a material effect on the price or value of securities. Section 216 provides that a reasonable person would be taken to expect information to have a material effect on the price or value of securities if the information would, or would be likely to, influence persons who commonly invest in securities in deciding whether or not to subscribe for, buy or sell the first-mentioned securities.

## **2.7 Penalties**

### **Section 232 of the SFA**

Section 232 of the SFA provides that the Monetary Authority of Singapore may, with the consent of the Public Prosecutor, bring an action in a court against the offender to seek an order for a civil penalty in respect of any contravention. If the court is satisfied on the balance of probabilities that the contravention resulted in the gain of a profit or avoidance of a loss by the offender, the court may make an order against him for the payment of a civil penalty of a sum:

- (a) not exceeding 3 times the amount of the profit that the person gained; or the amount of the loss that he avoided, as a result of the contravention; or
- (b) equal to S\$50,000 if the person is not a corporation, or S\$100,000 if the person is a corporation,

whichever is the greater.

If the court is satisfied on a balance of probabilities that the contravention did not result in the gain of a profit or avoidance of a loss by the offender, the court may make an order against him for the payment of a civil penalty of a sum not less than S\$50,000 and not more than S\$2 million.

### **Section 204 of the SFA**

Any person who contravenes Sections 197 to 203 of the SFA is guilty of an offence and shall be liable on conviction to a fine not exceeding S\$250,000 or to imprisonment for a term not exceeding seven (7) years or to both under Section 204 of the SFA.

Section 204 further provides that no proceedings shall be instituted against a person for the offence after a court has made an order against him for the payment of a civil penalty under Section 232 of the SFA, or if the person has entered into an agreement with the Monetary Authority of Singapore to pay, with or without admission of liability, a civil penalty under Section 232(5) in respect of that contravention.

## **Section 221 of the SFA**

Any person who contravenes Sections 218 or 219 of the SFA, is guilty of an offence and shall be liable on conviction to a fine not exceeding S\$250,000 or to imprisonment for a term not exceeding seven (7) years or to both under Section 221 of the SFA.

Section 221 further provides that no proceedings shall be instituted against a person for an offence in respect of a contravention of Section 218 or 219 after a court has made an order against him for the payment of a civil penalty under Section 232 of the SFA, or if the person has entered into an agreement with the Monetary Authority of Singapore to pay, with or without admission of liability, a civil penalty under Section 232(5) in respect of that contravention.

## **TAKEOVER OBLIGATIONS**

### **3.1 Offences and obligations relating to takeovers**

#### **Section 140 of the SFA**

Section 140 of the SFA provides that a person shall not give notice or publicly announce that he intends to make a take-over offer if he has:

- (a) no intention to make a take-over offer; or
- (b) no reasonable or probable grounds for believing that he will be able to perform his obligations if the take-over offer is accepted or approved, as the case may be.

A person who contravenes Section 140 is guilty of an offence and shall be liable on conviction to a fine not exceeding S\$250,000 or to imprisonment for a term not exceeding seven (7) years or to both.

### **3.2 Obligations under the Singapore Code on Take-overs and Mergers (the “Singapore Code”) and the consequences of non-compliance**

#### **Obligations under the Singapore Code**

The Singapore Code regulates the acquisition of ordinary shares of public companies and contains certain provisions that may delay, deter or prevent a future takeover or change in control of the Company. Any person acquiring an interest, either on his own or together with parties acting in concert with him, in 30.0% or more of the Company’s voting Shares, or, if such person holds,

either on his own or together with parties acting in concert with him, between 30.0% and 50.0% (both inclusive) of the Company's voting Shares, and if he (or parties acting in concert with him) acquires additional voting Shares representing more than 1.0% of the Company's voting Shares in any six month period, must, except with the consent of the Securities Industry Council in Singapore, extend a takeover offer for the remaining voting Shares in accordance with the provisions of the Singapore Code.

"Persons acting in concert" comprise individuals or companies who, pursuant to an agreement or understanding (whether formal or informal), co-operate, through the acquisition by any of them of Shares in a company, to obtain or consolidate effective control of that company. Without prejudice to the general application of this definition, the following individuals and companies are presumed to be acting in concert with each other (unless the contrary is established). They are as follows:

- (a) a company and its related companies, the associated companies of any of the company and its related companies, companies whose associated companies include any of these companies and any person who has provided financial assistance (other than a bank in the ordinary course of business) to any of the foregoing for the purchase of voting rights;
- (b) a company and its directors (including their close relatives, related trusts and companies controlled by any of the directors, their close relatives and related trusts);
- (c) a company and its pension funds and employee share schemes;
- (d) a person with any investment company, unit trust or other fund whose investment such person manages on a discretionary basis, but only in respect of the investment account which such person manages;
- (e) a financial or other professional adviser and its clients in respect of Shares held by the adviser and persons controlling, controlled by or under the same control as the adviser;
- (f) directors of a company (including their close relatives, related trusts and companies controlled by any of such directors, their close relatives and related trusts) which is subject to an offer or where the directors have reason to believe a bona fide offer for the company may be imminent;
- (g) partners; and
- (h) an individual and his close relatives, related trusts, any person who is accustomed to act in accordance with his instructions and companies controlled by the individual, his close relatives, his related trusts or any person who is accustomed to act in accordance with his instructions and any person who has provided financial assistance (other than a bank in the ordinary course of business) to any of the foregoing for the purchase of voting rights.

In the event that one of the abovementioned thresholds is reached, the person acquiring an interest (the “Offeror”) must make a public announcement stating, inter alia, the terms of the offer and its identity. The Offeror must post an offer document not earlier than 14 days and not later than 21 days from the date of the offer announcement. An offer must be kept open for at least 28 days after the date on which the offer document was posted.

If a revised offer is proposed, the Offeror is required to give a written notice to the offeree company and its shareholders, stating the modifications made to the matters set out in the offer document. The revised offer must be kept open for at least 14 days from the date of posting of the written notification of the revision to shareholders. Where the consideration is varied, shareholders who agree to sell before the variation are also entitled to receive the increased consideration.

A mandatory offer must be in cash or be accompanied by a cash alternative at not less than the highest price paid by the offeror or parties acting in concert with the offeror within the six months preceding the acquisition of Shares that triggered the mandatory offer obligation.

Under the Singapore Code, where effective control of a company is acquired or consolidated by a person, or persons acting in concert, a general offer to all other shareholders is normally required. An offeror must treat all shareholders of the same class in an offeree company equally. A fundamental requirement is that shareholders in the company subject to the takeover offer must be given sufficient information, advice and time to consider and decide on the offer.

### **3.3 Consequences of non-compliance with the requirements under the Singapore Code**

The Singapore Code is non-statutory in that it does not have the force of law. Therefore, as provided in Section 139(8) of the SFA, a failure of any party concerned in a take-over offer or a matter connected therewith to observe any of the provisions of the Singapore Code shall not of itself render that party liable to criminal proceedings.

However, the failure of any party to observe any of the provisions of the Singapore Code may, in any civil or criminal proceedings, be relied upon by any party to the proceedings as tending to establish or to negate any liability which is in question in the proceedings.

Section 139 further provides that the Securities Industry Council has the power, in the exercise of its functions, to enquire into any matter or thing related to the securities industry and may, for this purpose, summon any person to give evidence on oath or affirmation or produce any document or material necessary for the purpose of the enquiry.

### **3.4 Compulsory Acquisition under the Companies Act**

Following the conclusion of an offer, pursuant to section 215 of the Companies Act, if an offeror acquires 90.0% of the shares of the offeree company, it may, by notice to the dissenting shareholders, sell its shares to it. In calculating the 90% threshold, shares held or acquired by the Offeror, its related corporations and their respective nominees are excluded. The notice must be sent within two months of the satisfaction of the 90% threshold. The shareholder whose shares are thus to be acquired may apply to Court for an order that the offeror is not entitled to acquire the shares, or specifying different acquisition. Where an offeror could acquire the holdings of minority shareholders but does not, a minority shareholder may serve a notice requiring the offeror to do so within three (3) months from the date of receipt of notice from offeror of the fact that the offeror has acquired 90% of the shares of the offeree company. The offeror is then obliged to acquire the shareholder's shares on the same terms as the other shares were acquired during the offer.

## **MINORITY RIGHTS**

### **Section 216 of the Companies Act**

The rights of minority shareholders of Singapore-incorporated companies are protected under Section 216 of the Companies Act, which gives the Singapore courts a general power to make any order, upon application by any shareholder of the Company, as they think fit to remedy any of the following situations:

- (a) the affairs of the Company are being conducted or the powers of the Board are being exercised in a manner oppressive to, or in disregard of the interests of, one or more of the shareholders; or
- (b) the Company has taken an action, or threatens to take an action, or the shareholders pass a resolution, or propose to pass a resolution, which unfairly discriminates against, or is otherwise prejudicial to, one or more of the shareholders, including the applicant.

Singapore courts have wide discretion as to the reliefs they may grant and those reliefs are in no way limited to those listed in the Companies Act itself. Without prejudice to the foregoing, Singapore courts may:



- (i) direct or prohibit any act or cancel or vary any transaction or resolution;
- (ii) regulate the conduct of the affairs of the company in the future;
- (iii) authorise civil proceedings to be brought in the name of, or on behalf of, the company by a person or persons and on such terms as the court may direct;
- (iv) provide for the purchase of the shares of the company by other members of the company or by the company itself;
- (v) in the case of a purchase of shares by the company provide for a reduction accordingly of the company's capital;
- (vi) order the amendment of the company's constitution; or
- (vii) provide that the company be wound up.

## **EXCHANGE CONTROLS**

There are no Singapore governmental laws, decrees, regulations or other legislation that may affect the following:

- (a) the import or export of capital, including the availability of cash and cash equivalents for use by the Group; and
- (b) the remittance of dividends, interest or other payments to non-resident holders of a company's securities.

## **MEMBERS' REQUISITION TO CONVENE EXTRAORDINARY GENERAL MEETINGS**

### **Section 176 of the Companies Act**

Section 176 of the Companies Act provides that the directors shall, on the requisition of members holding at the date of the deposit of the requisition not less than 10.0% of the total number of paid-up shares as at the date of the deposit carries the right of voting at general meetings or, in the case of a company not having a share capital, of members representing not less than 10.0% of the total voting rights of all members having at that date a right to vote at general meetings, immediately proceed duly to convene an extraordinary general meeting of the company to be held as soon as practicable but in any case not later than two (2) months after the receipt by the company of the requisition.

For the purpose of section 176 of the Companies Act, any of the Company's paid-up shares as treasury Shares shall be disregarded.

### **Section 183 of the Companies Act**

Section 183 of the Companies Act provides that a company is under a duty, on the requisition in writing of such number of members, to:

- (a) give to members of such company entitled to receive notice of the next annual general meeting notice of any resolution which may properly be moved and is intended to be moved at that meeting; and
- (b) circulate to such members any statement of not more than 1,000 words with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting.

The number of members as required for such a requisition shall be any number of members representing not less than 5.0% of the total voting rights of all members having at the date of the requisition a right to vote at the meeting to which the requisition relates; or not less than 100 members holding shares in the company on which there has been paid up an average sum, per member, of not less than S\$500.

## 2. Singapore taxation

Where Singapore tax laws are discussed, these are merely an outline of the implications of such laws. The summary does not purport to be a comprehensive description of all the tax considerations that may be relevant to a decision to purchase, own or dispose of the Shares and does not purport to apply to all categories of prospective investors, some of whom may be subject to special rules.

Prospective investors should consult their own tax advisers concerning the application of Singapore tax laws to their particular situation as well as any consequences of the purchase, ownership and disposition of the Shares arising under the laws of any other taxing jurisdiction.

### **Corporate income tax**

Corporate taxpayers (whether Singapore tax resident or non-Singapore tax resident) are generally subject to Singapore income tax on all Singapore source income, and on foreign source income received or deemed received in Singapore (unless specified conditions for exemption are satisfied). Foreign income in the form of dividends, branch profits and service fee income received or deemed received in Singapore by a Singapore tax resident corporate taxpayer may however be exempt from Singapore tax if specific conditions are met.

The prevailing corporate income tax rate is 17.0% with partial tax exemption for normal chargeable income of up to S\$200,000 as follows:

- (i) 75.0% exemption of up to the first S\$10,000 and
- (ii) 50.0% exemption of up to the next S\$190,000.

If a newly incorporated Singapore tax resident company (whose principal activity is not that of investment holding or that of developing properties for sale, investment, or both) is not limited by guarantee, its total share capital is beneficially held directly by no more than 20 individual shareholders throughout the basis period for that year of assessment and at least one individual is holding at least 10.0% of the total number of issued ordinary shares throughout the basis period for that year of assessment, then the following exemptions for normal chargeable income will apply for the first three (3) years of assessment:

- (i) 75.0% exemption of up to the first S\$100,000; and
- (ii) 50.0% exemption of up to the next S\$100,000.

A company is regarded as a tax resident in Singapore for a year of assessment if its business is exercised in Singapore.

### **Dividend distributions**

Dividends paid by a Singapore tax resident company would be considered as sourced from Singapore. Dividends received from a Singapore tax resident company by either Singapore tax resident or non-Singapore tax resident shareholders are not subject to Singapore withholding tax.

Under the one-tier corporate tax system in Singapore, the tax paid by a Singapore tax resident company is a final tax and the after-tax profits of the company can be distributed to its shareholders as tax exempt (one-tier) dividends.

As the Company is a Singapore tax resident company, the dividends distributed by the Company will be tax exempt (one-tier) dividends. The dividends will be exempt from Singapore income tax in the hands of the shareholders, regardless of whether the shareholder is a company or an individual and whether or not the shareholder is a Singapore tax resident.

## **Gains on disposal of the Shares**

Singapore does not impose tax on capital gains. There are no specific laws or regulations which deal with the characterisation of whether a gain is revenue or capital in nature. The characterisation would usually depend on the facts and circumstances surrounding the purchase and sale of a particular asset. In general, gains or profits derived from the disposal of the Shares acquired for long-term investment purposes should be considered as capital gains and not subject to Singapore tax.

On the other hand, gains may be construed to be of an income nature and subject to Singapore income tax if they arise from or are otherwise connected with activities which the Comptroller regards as the carrying on of a trade or business of dealing in shares in Singapore.

For any disposal of the ordinary Shares from 1 June 2012 to 31 December 2027 (both dates inclusive) by a company, upfront “non-taxation” certainty may however be granted on any gains derived by the divesting company if immediately prior to the date of share disposal, the divesting company has held at least 20% of the Shares for a continuous period of at least 24 months.

For share disposals that do not satisfy the above conditions, the tax treatment on any gains/losses that may arise from the disposal of shares (i.e. whether the gains/losses are capital or revenue in nature) would continue to be determined based on a consideration of the specific facts and circumstances of the case and by reference to established case law principles.

In addition, corporate shareholders who apply, or who are required to apply, the Singapore Financial Reporting Standards (International) 9 – Recognition and Measurement (“**SFRS(I) 9**”) for the purposes of Singapore income tax may be required to recognise revenue gains or losses (i.e. excluding capital gains or losses) in accordance with the provisions of SFRS(I) 9 (as modified by the applicable provisions of Singapore income tax law) even though no sale or disposal of the Shares have been made.

## **Stamp Duty**

No stamp duty is payable on the subscription and issuance of the Shares. Stamp duty is also not applicable to electronic transfers of the Shares through the CDP.

Where existing Shares evidenced in certificated form are acquired in Singapore, stamp duty is payable on the instrument of transfer of the Shares. For the sale of Shares executed before 22 February 2014, stamp duty is payable at the rate

of S\$0.20 for every S\$100.00 or any part thereof of the amount of consideration or market value of the Shares. As for the sale of Shares executed on and after 22 February 2014, stamp duty is payable at 0.2% of the amount of the consideration or market value of the Shares. The purchaser is liable for the stamp duty charge, unless otherwise agreed by the parties to the transaction.

No stamp duty is payable if no instrument of transfer is executed (such as in the case of scripless shares, the transfer of which does not require an instrument of transfer to be executed) or if the instrument of transfer is executed outside of Singapore. However, stamp duty may be payable if the instrument of transfer which is executed outside Singapore is subsequently brought into Singapore.

### **Estate duty**

Singapore estate duty was abolished with effect from 15 February 2008.

### **Goods and services tax (“GST”)**

The sale of the Shares by a GST-registered investor belonging in Singapore through a SGX-ST member or to another person belonging in Singapore is an exempt supply not subject to GST.

Any GST (for example, GST on brokerage) incurred by the GST-registered investor in connection with the making of this exempt supply will generally become an additional cost to the investor unless the investor satisfies certain conditions prescribed under the GST legislation or by the Comptroller of GST.

Where the Shares are sold by a GST-registered investor to a person belonging outside Singapore (and who is outside Singapore at the time of supply), the sale is a taxable supply subject to GST at zero rate. Consequently, any GST (for example, GST on brokerage) incurred by him in the making of this zero-rated supply for the purpose of his business will, subject to the provisions of the GST legislation, be recoverable as an input tax credit in his GST returns.

Investors should seek their own tax advice on the recoverability of GST incurred on expenses in connection with the purchase and sale of the Shares.

Services such as brokerage and handling services rendered by a GST-registered person to an investor belonging in Singapore in connection with the investor's purchase or sale of the Shares will be subject to GST at the prevailing rate (currently 7.0%). Similar services rendered contractually to an investor belonging outside Singapore are subject to GST at zero-rate provided that the investor is not physically present in Singapore at the time the services are

performed and the services do not directly benefit a person who belongs in Singapore.

### **Tax Treaties between Hong Kong and Singapore**

There is no comprehensive double tax treaty entered into between Hong Kong and Singapore.