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## **APPENDIX V SUMMARY OF CERTAIN LEGAL AND REGULATORY MATTERS**

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### **1. PRC LAWS AND REGULATIONS**

#### **A. The PRC Legal System**

The PRC legal system is based on the PRC Constitution (the “Constitution”) and is made up of written laws, administrative regulations, local regulations, autonomy regulations, separate regulations, rules and regulations of State Council departments, rules and regulations of local governments and international treaties of which the PRC government is a signatory. Court judgments do not constitute legally binding precedents, although they are used for the purposes of judicial reference and guidance.

The National People’s Congress of the PRC (the “NPC”) and the Standing Committee of the NPC are empowered to exercise the legislative power of the PRC. The NPC has the power to enact and amend the laws governing criminal and civil matters, state organs and other aspects. The Standing Committee of the NPC is empowered to enact and amend laws other than those required to be enacted by the NPC, and may supplement and amend the laws enacted by the NPC during the adjournment of the NPC, provided that such supplements and amendments shall not be in conflict with the basic principles of such laws.

The State Council is the highest organ of state administration and has the power to formulate administrative regulations based on the Constitution and laws.

The people’s congresses of provinces, autonomous regions and municipalities directly under the control of the central government and their standing committees may formulate local regulations based on the specific circumstances and actual needs of their respective administrative areas, subject to the Constitution, laws and administrative regulations. The people’s congresses of larger cities and their standing committees may formulate local regulations based on the specific circumstances and actual needs of such cities, subject to the Constitution, laws, administrative regulations and local regulations of the relevant provinces or autonomous regions, and implement the same upon approval from the respective standing committees of the people’s congresses of provinces or autonomous regions. The standing committees of the people’s congresses of provinces or autonomous regions shall examine the legality of local regulations submitted for approval, and such approval should be granted within four months if they are not in conflict with the Constitution, laws, administrative regulations and local regulations of the province or autonomous region concerned. Where conflicts with the rules and regulations of the government of the province or autonomous region concerned are identified in the examination of local regulations of larger cities by the standing committee of the people’s congresses of provinces or autonomous regions, a decision should be made to resolve the issue. “Larger cities” refer to cities where the governments of provinces or autonomous regions are located, cities where special economic zones are located and larger cities as approved by the State Council.

The people’s congresses of ethnic autonomous regions have the power to enact autonomous regulations and special rules in the light of the political, economic and cultural characteristics of ethnic groups in the region. The autonomous regulations or special rules enacted by an autonomous region shall be effective upon approval by the Standing Committee of the NPC. The autonomous regulations or special rules enacted by an autonomous prefecture or autonomous county shall be effective upon approval by the standing committee of the people’s congress of the province, autonomous region or municipality concerned. The autonomous regulations or special rules under the laws or administrative regulations may be applied, *mutatis mutandis*, pursuant to the characteristics of the ethnic groups, so long as they do not contravene the basic principles of such laws or administrative regulations, but no adaptations shall be made to the provisions of the Constitution, the Law on Regional National Autonomy (民族區域自治法) and other relevant laws or administrative regulations specifically enacted for the ethnic autonomous regions.

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The ministries, commissions, the PBOC, the audit office and the institutions of all businesses with administrative functions directly under the State Council may formulate rules and regulations within the jurisdiction of their respective departments based on the laws and administrative regulations, decisions and rulings of the State Council. Provisions of departmental rules and regulations should relate to the enforcement of the laws and administrative regulations or the decisions and rulings of the State Council. The governments of provinces, autonomous regions, municipalities directly under the control of the central government and larger cities may formulate rules and regulations based on the laws, administrative regulations and local regulations of such provinces, autonomous regions and municipalities.

The power to interpret laws is vested in the Standing Committee of the NPC. According to the Resolution of the Standing Committee of the NPC Providing an Improved Interpretation of the Law passed on 10 June 1981, the Supreme People's Court has the power to provide general interpretation of the application of laws and orders in judicial proceedings. The power to interpret the application of laws and orders which are not in judicial proceedings is vested in the State Council and the competent authorities. The standing committees of the people's congresses of provinces, autonomous regions or municipalities directly under the control of the central government shall give interpretation or implement regulations where further explanation or supplementary regulations is required for regional regulations. The government of provinces, autonomous regions or municipalities directly under the control of the central government shall give interpretation of the application of laws and regulations of their respective regions.

### **B. The PRC Judicial System**

Under the Constitution and the Law of Organization of the People's Courts of the PRC, the PRC judicial system is made up of the Supreme People's Court, the local people's courts, military courts and other special people's courts. The local people's courts are divided into three levels, namely, the basic people's courts, the intermediate people's courts and the higher people's courts. The basic people's courts are further divided into criminal, civil and economic divisions. The intermediate people's courts have divisions similar to those of the basic people's courts and other special divisions (such as the intellectual property division). These two levels of people's courts are subject to supervision of people's courts at higher levels. The people's procuratorates also have the power to exercise legal supervision over the civil proceedings of people's courts of the same level and lower levels. The Supreme People's Court is the highest judicial organ of the PRC. It supervises the administration of justice by the people's courts at all levels.

The people's courts adopt a two-tier trial system in the trial of cases. A party to the case concerned may appeal against the judgment or ruling of the first instance of a people's court. The people's procuratorate may appeal to the people's court at the next higher level in accordance with procedures stipulated by the laws. In the absence of any appeal by any parties to the case and any protest by the people's procuratorate within the stipulated period, the judgment or ruling of the people's court shall be final. Judgments or rulings of the second instance of the intermediate people's courts, the higher people's courts and the Supreme People's Court as well as the judgments or rulings of the first instance of the Supreme People's Court shall be final and legally binding. If, however, the Supreme People's Court or a people's court at a higher level finds an error in a final and binding judgment which has taken effect in any people's court at a lower level, or the presiding judge of a people's court finds an error in a final and binding judgment which has taken effect in the court over which he presides in the confirmed facts or the application of laws, a retrial of the case may be conducted according to the judicial supervision procedures.

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The Civil Procedure Law of the PRC (the “Civil Procedure Law”) adopted on 9 April 1991 and amended on 28 October 2007 and 31 August 2012 prescribes the provisions for instituting a civil action, the jurisdiction of the people’s courts, the procedures to be followed for conducting a civil action, the judicial procedures, and the procedures for enforcement of a civil judgment or ruling. All parties to a civil action conducted within the PRC must comply with the Civil Procedure Law. A civil case is generally heard by a court located in the defendant’s place of domicile. The parties to disputes involving contracts or other property rights may also, by written agreement and subject to the provisions of level jurisdiction and exclusive jurisdiction, select the people’s courts with its locality with effective connection of the disputes, such as the defendant’s place of domicile, the place of performance of the contract, the place of execution of the contract, the plaintiff’s place of domicile or the place of the object of the action. A foreign national or foreign enterprise is generally given the same litigation rights and obligations as a citizen or legal person of the PRC. Should a court of a foreign country limit the litigation rights of PRC citizens and enterprises, the PRC courts may apply the same limitations to the citizens and enterprises of that foreign country. If any party to a civil action refuses to comply with a judgment or ruling made by a people’s court or an award made by an arbitration tribunal in the PRC, the other party may apply to the people’s court for the enforcement of the same within a stipulated period. Specific time limits are imposed on the rights to apply for such enforcement. The time limit is two years. The legal provisions related to the termination or suspension of legal proceedings are applicable to the termination or suspension of the time limit. If a party fails to satisfy a judgment which the court has granted approval to enforce within the stipulated time, the court will, upon application of the other party, mandatorily enforce the judgment.

A party seeking to enforce a judgment or ruling of a people’s court against a party who is not personally or whose property is not within the PRC may apply to a foreign court with jurisdiction over the case for recognition and enforcement of such judgment or ruling. Similarly, if the PRC has entered into a treaty relating to judicial enforcement with the relevant foreign country or a relevant international treaty, a foreign judgment or ruling may also be recognized and enforced according to PRC enforcement procedures by a PRC court based on the equity principle unless the people’s court considers that the recognition or enforcement of a judgment or ruling will violate the basic legal principles of the PRC or its sovereignty or national security, or social and public interest.

### **C. The Company Law**

The Company Law of the People’s Republic of China (the “PRC Company Law”) was adopted by the Standing Committee of the Eighth NPC at its Fifth Session on 29 December 1993 and came into effect on 1 July 1994. It was amended on 25 December 1999 and on 28 August 2004 and revised on 27 October 2005 and on 29 December 2013. The revised PRC Company Law came into effect on 1 March 2014.

The Special Provisions of the State Council Concerning the Floatation and Listing Abroad of Stocks by Limited Stock Companies (the “Special Regulations”) were passed at the 22nd Standing Committee Meeting of the State Council on 4 July 1994 and promulgated and implemented on 4 August 1994. The Special Regulations are formulated in respect of the overseas share subscription and listing of joint stock limited companies. The Mandatory Provisions prescribe provisions which must be incorporated in the articles of association of joint stock limited companies to be listed on overseas stock exchanges. Accordingly, the Mandatory Provisions have been incorporated in our Articles of Association. References to a “company” made in this Appendix are to a joint stock limited company established under the PRC Company Law with H shares.

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Set out below is a summary of the major provisions of the PRC Company Law, the Special Regulations and the Mandatory Provisions.

### ***General***

A “joint stock limited company” is a corporate legal person incorporated under the PRC Company Law with independent legal person properties and entitlements to such legal person properties. The liability of the company is limited to the full amount of its assets and the liability of its shareholders is limited to the extent of the shares held by them.

### ***Incorporation***

A company may be incorporated by promotion or subscription. A company may be incorporated by a minimum of two but no more than 200 promoters, and at least half of the promoters must have residence within the PRC. For company established by promotion, the registered capital is the total capital registered under the relevant companies registration authorities and being subscribed for by the promoters. Shares in the company shall not be offered to other persons unless the share capital subscribed for by the promoters has been paid up. For company established by subscription, the registered capital is the amount of its total paid-up capital as registered with the relevant companies registration authorities.

For companies incorporated by way of promotion, the promoters shall subscribe in writing for shares required to be subscribed for by them under the articles of association and the payment shall be made in accordance with the articles of association. Procedures relating to the transfer of titles for non-monetary assets shall be duly completed if such assets are to be contributed as capital. Promoters who fail to pay up their capital contributions in accordance with the foregoing provision shall assume liabilities for breach of contract in accordance with the covenants laid down in the promoters’ agreement. After the promoters have paid up their respective capital contributions as set out in the articles of association, a board of directors and a supervisory committee shall be elected and the board of directors shall apply for registration of incorporation by filing the articles of association with the company registration authorities, together with other documents required by the law or administrative regulations.

Where companies are incorporated by subscription, not less than 35% of their total shares must be subscribed for by the promoters, unless otherwise provided by the law or administrative regulations. A promoter who offers shares to the public must publish a share offer prospectus and draft a share subscription form to be signed and sealed by subscribers, specifying the number and amount of shares to be subscribed for and the subscribers’ addresses. The subscribers shall pay up the amounts for the number of shares they have subscribed for. Where a promoter is offering shares to the public, such offer shall be underwritten by securities houses established by law, in relation to which underwriting agreements shall be signed. A promoter offering shares to the public shall also sign an agreement with a bank in relation to the receipt of subscription amounts. The receiving bank shall receive and keep in custody the subscription amounts, issue receipts to subscribers who have paid the subscription amounts and furnish evidence of receipt of subscription amounts to relevant authorities. After the subscription amounts for the share issuance have been paid in full, a capital verification institution established by law must be engaged to conduct capital verification and furnish a report thereon. The promoters shall convene an inauguration meeting

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within 30 days. The inauguration meeting shall be formed by the subscribers. Where shares issued remain undersubscribed by the cut-off date stipulated in the share offering prospectus, or where the promoter fails to convene an inauguration meeting within 30 days after subscription amounts for the shares issued have been fully paid up, the subscribers may demand the promoter to return the subscription amounts so paid up together with interest at bank rates for a deposit for the same term. Within 30 days after the conclusion of the inauguration meeting, the board of directors shall apply to the registration authority for registration of the establishment of the company. A company is formally established and has the status of a legal person after the approval of registration has been given by the relevant administration bureau for industry and commerce and a business license has been issued.

A company's promoter shall individually and collectively be liable for:

- (i) the debts and expenses incurred from incorporation if the company cannot be incorporated;
- (ii) the repayment of subscription moneys to the subscribers together with interest at bank rates for a deposit for the same term if the company cannot be incorporated; and
- (iii) damages suffered by the company as a result of the default of the promoters in the course of incorporation of the company.

According to the Provisional Regulations Concerning the Issue and Trading of Shares promulgated by the State Council on 22 April 1993 (which is only applicable to issue and trading of shares in the PRC and their related activities), if a company is established by means of subscription, the promoters of such company are required to assume joint responsibility for the accuracy of the contents of the prospectus and to ensure that the prospectus does not contain any misleading statement or omit any material information.

### *Share capital*

The promoter may make capital contribution in currencies, or non-monetary assets such as in kind or intellectual property rights or land use rights which can be appraised by monetary value and transferred lawfully, save for assets prohibited to be contributed as capital by the law or administrative regulations. If a capital contribution is made with non-monetary assets, a valuation and verification of the asset contributed must be carried out without any over-valuation or under-valuation, subject to any provisions of the law or administrative regulations on valuation.

A company may issue registered or bearer share certificates. The Special Regulations and the Mandatory Provisions provide that shares issued to foreign investors and listed overseas be issued in registered form and shall be denominated in Renminbi and subscribed for in foreign currency. Shares issued to foreign investors and investors from the territories of Hong Kong, Macau and Taiwan and listed in Hong Kong are classified as H shares, and those shares issued to investors within the PRC (other than the territories specified above) are known as domestic shares. Under the Special Regulations, upon approval of the CSRC, a company may agree, in the underwriting agreement in respect of an issue of H shares, to retain not more than 15% of the aggregate number of overseas listed foreign invested shares proposed to be issued after accounting for the number of underwritten shares. The share offering price may be equal to or greater than the par value, but may not be less than the par value.

***Increase in share capital***

According to the PRC Company Law, the issuance of shares shall be conducted in a fair and equitable manner. Shares in the same class shall rank pari passu with one another. Shares of the same class in the same offer shall be issued on the same terms and at the same price. The same price per share shall be paid by any organizations or individuals subscribing for shares.

Where a company is issuing new shares, resolutions shall be passed by the shareholders' general meeting or the board of directors in accordance with the articles of association in respect of the class and amount of the new shares, the issue price of the new shares, the commencement and end of the new share issue and the class and amount of new shares proposed to be issued to existing shareholders. When a company launches a public issue of new shares with the approval of the CSRC, a new share offering prospectus and financial accounting report must be published and a subscription form must be prepared. After the new share issue of the company has been paid up, the change must be registered with the company registration authorities and an announcement must be made. Where a company is issuing new shares to increase its registered capital, the subscription of new shares by shareholders shall be conducted in accordance with provisions on the payment of subscription amounts in relation to the incorporation of the company.

***Reduction of share capital***

A company may reduce its registered capital in accordance with the following procedures prescribed by the PRC Company Law:

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

***Repurchase of shares***

A Company may not purchase its own shares other than for one of the following purposes:

- (i) to reduce its registered share capital;
- (ii) to merge with another company that holds its shares;
- (iii) to grant shares to its employees as incentives; and
- (iv) to purchase its own shares by request of its shareholders who vote against a resolution regarding a merger and demerger in a shareholders' general meeting.

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The company's acquisition of its own shares on the grounds set out in paragraphs (i) to (iii) above shall require approval by way of a resolution of the shareholders' general meeting. Following the company's acquisition of its shares in accordance with the foregoing, such shares shall be cancelled within 10 days from the date of acquisition under paragraph (i) and transferred or cancelled within six months under paragraphs (ii) or (iv).

Shares acquired by the company in accordance with paragraph (iii) above shall not exceed 5% of the total number of issued shares of the company. Such acquisition shall be financed by funds appropriated from the company's profit after taxation, and the shares so acquired shall be transferred to the employees within one year.

### *Transfer of shares*

Shares held by shareholders may be transferred in accordance with the relevant laws and regulations. A shareholder may only effect a transfer of its shares on a stock exchange established in accordance with law or by any other way as required by the State Council. Registered shares may be transferred after the shareholders endorse their signatures on the back of the share certificates or in any other manner specified by the law or administrative regulations. Following the transfer, the company shall enter the name and address of the transferee into the share register. No changes of registration in the share register provided in the foregoing shall be effected during a period of 20 days prior to the convening of a shareholders' general meeting or five days prior to the record day for the purpose of determining entitlements to dividend distributions, subject to any legal provisions on the registration of changes in the share register of listed companies. The transfer of a bearer's share certificate shall become effective upon the delivery of such share certificate to the transferee by the shareholder.

Shares held by a promoter may not be transferred within one year after the company's establishment. Shares of the company issued prior to the public issue of shares shall not be transferred within one year from the date of the company's listing on a stock exchange. Directors, supervisors and the senior management of a company shall declare to the company their shareholdings in the company and any changes of such shareholdings. During their term of office, they shall transfer no more than 25% of the total shares they hold in the company per year. They shall not transfer the shares they hold within one year from the date of the company's listing on a stock exchange, nor within six months after they have resigned from their positions with the company. The articles of association of the company may lay down other restrictive provisions in respect of the transfer of shares in the company held by the directors, supervisors and the senior management of the company.

### *Shareholders*

Under the PRC Company Law, the rights of a shareholder include rights:

- (i) to receive return on capital, participate in significant decision-making and be able to choose the management;
- (ii) to petition the people's court to revoke any resolution passed at a general meeting or a meeting of board of directors that has been convened or whose voting has been conducted in a manner violating the law, or any resolution that is in violation of the articles of association, provided that such petition is submitted within 60 days of the passing of such resolution;

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- (iii) to transfer shares according to the applicable laws and regulations and the articles of associate of the company;
- (iv) to appoint a proxy to attend general meetings;
- (v) to inspect the articles of association, share register, counterfoil of company debentures, minutes of general meetings, board resolutions, resolutions of the supervisory committee and financial and accounting reports and to make proposals or enquiries in respect of the company's operations;
- (vi) to receive dividends in respect of the number of shares held;
- (vii) to receive residual properties of the company in proportion to their shareholdings upon the liquidation of the company; and
- (viii) any other shareholders' rights provided for in the articles of association of the company.

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

### *General meetings*

The general meeting of shareholders is the organ of authority of a company, which exercises its powers in accordance with the PRC Company Law. The general meeting may exercise its powers:

- (i) to decide on the company's operational directions and investment plans;
- (ii) to elect and remove the directors and supervisors (not being staff representative) and to decide on matters relating to the remuneration of directors and supervisors;
- (iii) to examine and approve reports of the board of directors;
- (iv) to examine and approve reports of the supervisory committee or supervisor;
- (v) to examine and approve the company's proposed annual financial budget and final accounts;
- (vi) to examine and approve the company's proposals for profit distribution plans and recovery of losses;
- (vii) to decide on any increase or reduction of the company's registered capital;
- (viii) to decide on the issue of bonds by the company;
- (ix) to decide on issues, such as merger, division, dissolution and liquidation of the company;
- (x) to amend the company's articles of association; and
- (xi) other authorities as provided for in the articles of association of the company.



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General meetings are required to be held once every year. An extraordinary general meeting is required to be held within 2 months after the occurrence of any of the following:

- (i) the number of directors is less than the number stipulated by the law or less than two-thirds of the number specified in the articles of association;
- (ii) the aggregate losses of the company which are not made up reach one-third of the company's total share capital;
- (iii) when shareholders alone or in aggregate holding 10% or more of the company's shares request the convening of an extraordinary general meeting;
- (iv) whenever the board of directors deems necessary;
- (v) when the supervisory committee so requests; or
- (vi) other circumstances as provided for in the articles of association of the company.

General meetings shall be convened by the board of directors, and presided over by the chairman of the board of directors. In the event that the chairman is incapable of performing or not performing his duties, the meeting shall be presided over by the vice chairman. In the event that the vice chairman is incapable of performing or not performing his duties, a director nominated by the majority of directors shall preside over the meeting. Where the board of directors is incapable of performing or not performing its duties of convening the general meeting, the supervisory committee shall convene and preside over such meeting in a timely manner. In case the supervisory committee fails to convene and preside over such meeting, shareholders alone or in aggregate holding more than 10% of the company's shares for 90 days consecutively may unilaterally convene and preside over such meeting.

Notice of the general meeting stating the time and venue of and matters to be considered at the meeting shall be given to all shareholders 20 days before the meeting. In accordance with the Mandatory Provisions, notice of the general meeting stating, among other things, matters to be considered at the meeting shall be given to all shareholders 45 days before the meeting. Shareholders intending to attend the meeting shall return the reply slip to the company within 20 days before the meeting. Notice of extraordinary general meetings shall be given to all shareholders 15 days prior to the meeting. For the issuance of bearer's share certificates, the time and venue of and matters to be considered at the meeting shall be announced 30 days before the meeting. Shareholders alone or in aggregate holding more than 3% of the company's shares may submit interim proposals to the board of directors in writing 10 days before the general meeting.

The board of directors shall notify other shareholders within 2 days after receiving such proposal and submit such interim proposal for review by the general meeting. Interim proposals shall be within the powers of the general meeting and shall carry specific subjects and matters for resolution. A general meeting shall not make any resolution in respect of any matters not set out in the two types of notices mentioned above. Holders of bearer's share certificate who wish to attend the general meeting shall deposit his share certificates with the company 5 days before the meeting, which share certificates shall remain in the custody of the company until the close of the general meeting.

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Shareholders present at a general meeting have one vote for each share they hold, save that shares held by the company are not entitled to any voting rights. Resolutions of the general meeting must be adopted by more than half of the voting rights held by shareholders present at the meeting, with the exception of matters relating to merger, division, dissolution of a company, increase or reduction of registered share capital, change of company form or amendments to the articles of association, which must be adopted by more than two-thirds of the voting rights held by the shareholders present at the meeting. Where the PRC Company Law and the articles of association provide that the transfer or acquisition of significant assets or the provision of external guarantees by a company must be approved by way of resolution of the general meeting, the directors shall convene a general meeting promptly to vote on the above matters. The accumulative voting system may be adopted pursuant to the provisions of the articles of association or a resolution of the general meeting for the election of directors and supervisors at the general meeting. Under the accumulative voting system, each share shall be entitled to votes equivalent to the number of directors or supervisors to be elected for the election of directors and supervisors at the general meeting, and shareholders may consolidate their voting rights when casting a vote. Minutes shall be prepared in respect of matters considered at the general meeting and the president of the meeting and directors attending the meeting shall sign to endorse such minutes. The minutes shall be kept together with the shareholders' attendance register and the proxy forms.

According to the Mandatory Provisions, the increase or reduction of share capital, the issue of shares of any class, warrants or other similar securities, and bonds, the liquidation of the company and any other matters in respect of which the shareholders are required to decide by ordinary resolution, must be approved through special resolutions by more than two-thirds of the voting rights held by shareholders present at the meeting.

There is no specific provision in the PRC Company Law regarding the number of shareholders constituting a quorum in a general meeting, although the Special Regulations and the Mandatory Provisions provide that a company's general meeting may be convened when written replies to the notice of that meeting from shareholders holding shares representing 50% of the voting rights in the company have been received 20 days before the proposed date, or if that 50% level is not achieved, the company shall within 5 days of the last day for receipt of the replies notify shareholders again by announcement of the matters to be considered at the meeting and the date and place of the meeting and the general meeting may be held thereafter.

The Mandatory Provisions require class meetings to be held in the event of a variation or derogation of the class rights of a shareholder class. Holders of domestic invested shares and holders of H shares are deemed to be different classes of shareholders for this purpose.

### *Directors*

A company shall have a board of directors, which shall consist of 5 to 19 members. Members of the board of directors may include staff representatives, who shall be democratically elected by the company's staff at the staff representative assembly, general staff meeting or otherwise. The term of a director shall be stipulated in the articles of association, provided that no term of office shall last for more than 3 years. A director may serve consecutive terms if re-elected. A director shall continue to perform his duties in accordance with the laws, administrative regulations and articles of association until a duly re-elected

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director takes office, if re-election is not conducted in a timely manner upon the expiry of his term of office or if the resignation of directors results in the number of directors being less than the quorum.

Under the PRC Company Law, the board of directors may exercise its powers:

- (i) to convene the general meetings and report on its work to the general meetings;
- (ii) to implement the resolutions passed by the shareholders in general meetings;
- (iii) to decide on the company's business plans and investment proposals;
- (iv) to formulate the company's annual financial budget and final accounts;
- (v) to formulate the company's profit distribution proposals and for recovery of losses;
- (vi) to formulate proposals for the increase or reduction of the company's registered capital and the issuance of the corporate bonds;
- (vii) to prepare plans for the merger, division or dissolution of the company or change in formation of the company;
- (viii) to decide on the company's internal management structure;
- (ix) to appoint or dismiss the company's general manager and decide on his/her remuneration and, based on the general manager's recommendation, to appoint or dismiss the deputy general managers and financial officers of the company and to decide on their remuneration;
- (x) to formulate the company's basic management system; and
- (xi) to exercise other powers under the articles of association of the company.

Meetings of the board of directors shall be convened at least twice a year. Notice of meeting shall be given to all directors and supervisors 10 days before the meeting. Interim board meetings may be convened by shareholders representing more than 10% of voting rights, more than one-third of the directors or the supervisory committee. The chairman shall convene and preside over such meeting within 10 days after receiving such proposal. The board of directors may provide for a different method of giving notice and notice period for convening an extraordinary meeting of the board of directors. Meetings of the board of directors shall be held only if more than half of the directors are present. According to the Mandatory Provisions, meetings of the board of directors shall be held if half or more of the directors are present. Resolutions of the board of directors require the approval of more than half of all directors. Each director shall have one vote for resolutions to be approved by the board of directors. Directors shall attend board meetings in person. If a director is unable to attend a board meeting, he may appoint another director by a written power of attorney specifying the scope of the authorization to attend the meeting on his behalf.

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

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

- (i) persons without civil capacity or with restricted civil capacity;
- (ii) persons who have committed the offence of corruption, bribery, taking of property, misappropriation of property or destruction of the socialist economic order, and have been sentenced to criminal punishment, where less than 5 years have elapsed since the date of completion of the sentence; or persons who have been deprived of their political rights due to criminal offence, where less than 5 years have elapsed since the date of the completion of implementation of this deprivation;
- (iii) persons who are directors, factory managers or managers of a company or enterprise which has become bankrupt and been liquidated and who are personally liable for the bankruptcy of such company or enterprise, where less than 3 years have elapsed since the date of the completion of the bankruptcy and liquidation of the company or enterprise;
- (iv) persons who were legal representatives of a company or enterprise which had its business license revoked or ordered for closure due to violation of laws and who are personally liable, where less than 3 years have elapsed since the date of the revocation of the business license;
- (v) persons who have a relatively large amount of debts due and outstanding.

The election or appointment of directors elected or appointed by the company in violation of the aforesaid provisions shall be null and void. Directors committing the above during their terms of office shall be removed from their posts by the company.

Other circumstances under which a person is disqualified from acting as a director of a company are set out in the Mandatory Provisions. The board of directors shall appoint a chairman and may appoint a vice chairman. The chairman and the vice chairman are elected with approval of more than half of all the directors. The chairman shall convene and preside over board meetings and examine the implementation of board resolutions. The vice chairman shall assist in the work of the chairman. In the event that the chairman is incapable of performing or not performing his duties, the duties shall be performed by the vice chairman. In the event that the vice chairman is incapable of performing or not performing his duties, a director nominated by the majority of directors shall perform his duties.

### *Supervisors*

A company shall have a supervisory committee composed of not less than 3 members. The supervisory committee is made up of representatives of the shareholders and an appropriate proportion of representatives of the company's staff. The actual proportion shall be stipulated in the articles of association, provided that the proportion of representatives of the company's staff shall not be less than one-third. Representatives of the company's staff at the supervisory committee shall be democratically elected by the company's staff at the staff representative assembly, general staff meeting or otherwise. The supervisory committee shall appoint a chairman and may appoint a vice chairman. The chairman and the vice chairman of the supervisory committee are elected with approval of more than half of all the supervisors.

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The chairman of the supervisory committee shall convene and preside over supervisory committee meetings. In the event that the chairman of the supervisory committee is incapable of performing or not performing his duties, the vice chairman of the supervisory committee shall convene and preside over supervisory committee meetings. In the event that the vice chairman of the supervisory committee is incapable of performing or not performing his duties, a supervisor nominated by the majority of supervisors shall convene and preside over supervisory committee meetings. Directors and senior management may not act concurrently as supervisors.

Each term of office of a supervisor is 3 years and he or she may serve consecutive terms if re-elected. A supervisor shall continue to perform his or her duties in accordance with the laws, administrative regulations and the company's articles of association until a duly re-elected supervisor takes office, if re-election is not conducted in a timely manner upon the expiry of his term of office or if the resignation of supervisors results in the number of supervisors being less than the quorum.

The supervisory committee may exercise its powers:

- (i) to review the company's financial position;
- (ii) to supervise the directors and senior management in their performance of their duties and to propose the removal of directors and senior management who have violated laws, regulations, the articles of association of the company or shareholders' resolutions;
- (iii) when the acts of a director or manager is detrimental to the company's interests, to require the director and senior management to correct these acts;
- (iv) to propose the convening of extraordinary general meetings and to convene and preside over shareholders' meetings when the board of directors fails to perform the duty of convening and presiding over shareholders' meeting under the PRC Company Law;
- (v) to propose any bills to shareholders' general meetings;
- (vi) to initiate proceedings against directors and senior management in accordance with the relevant requirements of the PRC Company Law;
- (vii) other powers specified in the articles of association of the company.

Supervisors may attend board meetings and make enquiries or proposals in respect of board resolutions. The supervisory committee may initiate investigations into any irregularities identified in the operation of the company and, where necessary, may engage an accountant to assist their work at the company's expense.

### ***Managers and senior management***

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

- (i) manage the production, business and administration of the company and arrange for the implementation of resolutions of the board of directors;

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

Other provisions of the company's articles of association on the general manager's powers shall also be complied with. The general manager shall be in attendance at board meetings. Managers who are not directors have no voting rights at board meetings.

According to the PRC Company Law, senior management shall mean the general manager, deputy general manager(s), financial controller, board secretaries of a listed company and other personnel as stipulated in the articles of association of the company.

### ***Duties of the directors, supervisors, general managers and other senior management***

Directors, supervisors, general manager(s), deputy general manager(s) and senior management of a company are required under the PRC Company Law to comply with the relevant laws, regulations and the articles of association of the company, and carry out their duties honestly and diligently. Directors, supervisors, managers and officers are prohibited from accepting bribes or other unlawful income and from misappropriating the company's properties. Directors and officers are prohibited from:

- (i) misappropriating of company funds;
- (ii) depositing of company funds into accounts under their own name or the name of other individuals;
- (iii) lending company funds to others or providing guarantees in favor of others supported by the company properties in violation of the articles of association or without approval of the shareholders' general meeting or the board of directors;
- (iv) entering into contracts or deals with the company in violation of the articles of association or without approval of the shareholders' general meeting or the board of directors;
- (v) using their positions and powers to procure business opportunities for themselves or others that should have otherwise been available to the company or operating for their own benefit or managing on behalf of others' businesses similar to that of the company without approval of the shareholders' general meeting;
- (vi) accepting for their own benefit commission from a third party dealing with the company;

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- (vii) unauthorized divulgence of confidential information of the company;
- (viii) other acts in violation of the fiduciary duty to the company.

Income generated by directors or senior management in violation of the foregoing provisions shall be reverted to the company.

A director, supervisor or member of senior management who contravenes any law, regulation or the company's articles of association in the performance of his duties resulting in any loss to the company shall be personally liable to the company.

Where a director, supervisor or member of the senior management is required to attend a shareholders' general meeting, such director, supervisor or member of the senior management shall attend the meeting and answer enquiries from shareholders. Directors and members of senior management shall furnish all truthful facts and information to the supervisory committee or the supervisor (for companies with limited liability that do not have supervisory committees) without impeding the discharge of duties by the supervisory committee or the supervisors.

Where a director or senior management who contravenes any law, regulation or the company's articles of association in the performance of his duties resulting in any loss to the company, shareholders holding alone or in aggregate more than 1% of the company's shares consecutively for 180 days may request in writing the supervisory committee to institute litigation at the people's court on their behalf. Where the supervisory committee violates the law or administrative regulations or the company's articles of association in the discharge of their duties resulting in losses to the company, the aforesaid shareholders may request in writing the board of directors to institute litigation at the people's court on their behalf. In the event that the supervisory committee or the board of directors refuses to institute litigation after receiving the written request of shareholders as provided in the foregoing, or fails to institute litigation within 30 days after receiving the request, or in case of emergency where failure to institute litigation immediately will result in irrecoverable damage to the company's interest, shareholders mentioned in the foregoing shall have the power to institute litigation directly at the people's court in their own name for the company's benefit. For other parties who infringe the lawful interests of the company resulting in losses to the company, shareholders may institute litigation at the people's court in accordance with provisions in the foregoing paragraphs. Where a director or senior management contravenes any law, administrative regulation or the articles of association and infringes shareholders' interests, shareholders may also institute litigation at the people's court.

The Special Regulations and the Mandatory Provisions provide that a company's directors, supervisors, general manager and other senior management shall have fiduciary duties towards the company. They are required to faithfully perform their duties, protect the interests of the company and not to use their positions for their own benefit. The Mandatory Provisions contain detailed stipulations on these duties.

### ***Finance and accounting***

A company shall establish its financial and accounting systems according to laws, administrative regulations and the regulations of the financial department of the State Council. A company shall prepare a financial report, which shall be audited by an accountant as

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provided by law, at the end of each financial year. The financial and accounting reports shall be prepared in accordance with provisions of the laws, administrative regulations and the regulations of the financial department of the State Council.

A company shall make available its financial statements at the company's registered address for the inspection by the shareholders at least 20 days before the convening of an annual general meeting of shareholders. A joint stock limited company whose shares are publicly issued must publish its financial statements. When distributing each year's after-tax profits, the company shall set aside 10% of its after-tax profits for the company's statutory common reserve fund (except where the fund has reached 50% of the company's registered capital). When the company's statutory common reserve fund is not sufficient to make up for the company's losses of previous years, current year profits shall be used to make up the losses before allocations are set aside for the statutory common reserve fund. After the company has made appropriations to the statutory common reserve fund from its after-tax profit, it may, with the approval of the shareholders' meeting or the general meeting by way of resolution, make further appropriations from its after-tax profit to the discretionary common reserve fund. After the company has made up its losses and made allocations to its common reserve fund, the remaining profits are distributed in proportion to the number of shares held by the shareholders, except for distributions stipulated by the articles of association of the company which are not to be made in a proportionate manner.

Profit distributed to shareholders by resolution of a general meeting or the board of directors before losses have been made good and appropriations have been made to the statutory common reserve fund in violation of the foregoing provisions must be returned to the company. Shares held by the company shall not be entitled to any distribution of profits.

The premium over the nominal value of the shares of the company on issue and other income required by the relevant governmental authority to be treated as the capital common reserve shall be accounted for as capital common reserve. The common reserve of a company shall be applied to make up the company's losses, expand the business operations of the company or increase the company's capital. The capital common reserve shall not be used to make good the company's losses. Upon the conversion of statutory common reserve into capital, the balance of the statutory common reserve shall not be less than 25% of the registered capital of the company before such conversion.

The company shall have no other accounting books except the statutory accounting books. The company's assets shall not be deposited in any accounts opened in the name of an individual.

### ***Appointment and dismissal of auditors***

Pursuant to the PRC Company Law, the appointment or dismissal of accountants responsible for the company's auditing shall be determined by the shareholders' meeting, general meeting or the board of directors in accordance with the articles of association of the company. The accountant shall be allowed to make statements when the general meeting or the board of directors is going to conduct a vote on the dismissal of the accountant. The company shall provide true and complete accounting evidences, books, financial and accounting reports and other accounting data to its accountant without any refusal, withholding and false information.



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The Special Regulations require a company to engage a qualified independent accounting firm to audit the company's annual report, and review and check other financial reports of the company.

### *Distribution of profits*

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

### *Amendment of articles of association*

Any amendments to the company's articles of association must be made in accordance with the procedures set forth in applicable laws, regulations and the articles of association. Any amendment of provisions incorporated into the articles of association of the company in accordance with the Mandatory Provisions will only be effective after approval by the company approval department authorized by the CSRC and the State Council and filed with the State Administration for Industry and Commerce or any of its local bureaus for registration. If the amendment to the articles of association falls to be registered and filed and has been adopted, the company must process registration of changes in accordance with applicable laws and regulations.

### *Dissolution and liquidation*

A company shall be dissolved by reasons of the following:

- (i) the term of its operations set down in the company's articles of association has expired or other events of dissolution specified in the company's articles of association have occurred;
- (ii) the shareholders' general meeting has resolved to dissolve the company;
- (iii) the company is dissolved by reason of its merger or demerger;
- (iv) the business licence is revoked or the company's operation is ordered to close or is dissolved;
- (v) the company is dissolved by the people's court in response to the request of shareholders holding shares that represent more than 10% of the voting rights of all shareholders of the company, on the grounds that the operation of the company experiences serious difficulties that cannot be resolved through other means, rendering ongoing existence of the company a cause for significant losses for shareholders.

In the event of paragraph (i) above, the company may carry on its existence by amending its articles of association. The amendment of the articles of association in accordance with provisions set out in the previous paragraph shall require approval of shareholders holding more than two thirds of voting rights attending a general meeting.

Where the company is dissolved in the circumstances described in paragraphs (i), (ii), (iv) or (v) above, liquidation must commence within 15 days after the establishment of a liquidation committee.

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Members of the liquidation committee shall be appointed by the directors or the general meeting. If a liquidation committee is not established within the stipulated period, the company's creditors can apply to the people's court, requesting the court to appoint relevant personnel to form the liquidation committee for liquidation. The people's court shall accept such application and form a liquidation committee to conduct liquidation in a timely manner.

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

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

The liquidation committee shall notify the company's creditors within 10 days after its establishment, and issue public notices in the newspapers within 60 days.

A creditor shall lodge his claim with the liquidation committee within 30 days after receiving the notification, or within 45 days of the public notice if he did not receive any notification. A creditor shall state all matters relevant to his creditor rights in making his claim and furnish evidence. The liquidation committee shall register such creditor rights. The liquidation committee shall not make any settlement to creditors during the period of claim.

Upon liquidation of the company's properties and the preparation of the balance sheet and inventory of assets, the liquidation committee shall draw up a liquidation plan to be submitted to the general meeting or people's court for endorsement. The remaining assets of the company after payment of liquidation expenses, wages, social insurance expenses and statutory compensation, outstanding taxes and the company's debt shall be distributed to shareholders according to their proportion of capital contribution in the case of companies with limited liability or according to shareholding proportion in the case of joint stock limited companies. The company shall exist during the liquidation period, but it cannot be engaged in any operating activities that are not related to the liquidation. The company's properties shall not be distributed to the shareholders before repayments are made in accordance to the foregoing provisions.

Upon liquidation of the company's properties and the preparation of the balance sheet and inventory of assets, if the liquidation committee becomes aware that the company does not have sufficient assets to meet its liabilities, it must apply to the people's court for a declaration for bankruptcy according to law.

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Following such bankruptcy declaration by the people's court, the liquidation committee shall hand over the affairs of the liquidation to the people's court.

Upon completion of the liquidation, the liquidation committee shall submit a liquidation report to the shareholders' meeting, general meeting or the people's court for verification. Thereafter, the report shall be submitted to the company registration authority in order to cancel the company's registration, and a public notice of its termination shall be issued. Members of the liquidation committee are required to discharge their duties honestly and in compliance with the relevant laws. Members of the liquidation committee shall be prohibited from accepting bribes or other unlawful income and from misappropriating the company's properties. A member of the liquidation committee is liable to indemnify the company and its creditors in respect of any loss arising from his wilful or material default.

Liquidation of a company declared bankrupt according to the law shall be processed in accordance with laws on corporate bankruptcy.

### ***Overseas listing***

The shares of a company shall only be listed overseas after obtaining approval from CSRC and the listing must be arranged in accordance with procedures specified by the State Council. According to the Special Regulations, a company's plan to issue H shares and domestic invested shares which has been approved by CSRC may be implemented by the board of directors of the company separately, within 15 months after approval is obtained from the CSRC.

### ***Loss of share certificates***

A shareholder may apply, in accordance with the public notice procedures set out in the PRC Civil Procedure Law, to a people's court in the event that share certificates in registered form are either stolen, lost or destroyed, for a declaration that such certificates will no longer be valid. After such a declaration has been obtained, the shareholder may apply to the company for the issuance of replacement certificates.

The Mandatory Provisions have additional provisions on loss of share certificates and H share certificates of shareholders of overseas listed foreign shares, which are set out in the Articles of Association.

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

The PRC Company Law has deleted provisions governing suspension and termination of listing. The new Securities Law has been amended as follows:

Where a listed company is in any of the following circumstances, the stock exchange shall decide to suspend the listing and trading of its stocks

- (1) the total amount of shares or shareholding distribution of the company has been changed and no longer complies with the necessary requirements for listing
- (2) the company fails to make public its financial position in accordance with the requirements or there is false information in the financial report with the possibility of misleading investors;

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- (3) the company has committed a major breach of the law;
- (4) the company has incurred losses for latest three consecutive years; or
- (5) any other circumstances as required by the listing rules of the stock exchange(s).

Where a listed company is in any of the following circumstances, the stock exchange shall decide to terminate the listing of its stocks:

- (1) the total amount of shares or shareholding distribution of the company changes and thus, fails to meet the requirements of listing, and where the company fails again to meet the requirements of listing within the period as prescribed by the stock exchange;
- (2) the company fails to make public its financial position according to the relevant provisions or has any false record in its financial statements, and refuses to make any correction;
- (3) the company has incurred losses for the latest three consecutive years and fails to gain profits in the year thereafter;
- (4) the company is dissolved or is announced bankruptcy;
- (5) any other circumstance as prescribed in the listing rules of the stock exchange.

### *Merger and demerger*

A merger agreement must be signed by merging companies and the relevant companies shall draw up their respective balance sheets and inventory of property. The companies should within 10 days of the resolution of the merger inform their respective creditors and publish a notice in newspapers within 30 days. The creditors may, within 30 days for those who have received the notice or within 45 days for those who have not, request a company to satisfy any unpaid debts or provide equivalent guarantees. When companies merge, the credits and debts of the merging parties shall be assumed by the surviving company or the new company.

When a company demerges, a balance sheet and inventory of assets must be drawn up. The company should notify all its creditors within 10 days of such resolution being made and announce the same in newspapers within 30 days. Unless agreed in writing with a creditor in respect of settlement of debts prior to the demerger of the company, the liabilities before the demerger of the company shall be jointly and severally borne by the demerged companies.

Changes in registerable particulars of the companies caused by merger or demerger must be registered with the company registration authorities in accordance with the law. Cancellation of a company should be registered in accordance with the law when a company is dissolved. Establishment of a company shall be registered when a new company is established.

### **D. Securities Law and Regulations and Regulatory Regimes**

The PRC has promulgated a number of regulations in relation to the issue and trading of shares and disclosure of information. In October 1992, the Securities Commission and the CSRC were established under the State Council. In early 1998, the State Council dissolved the then Securities Commission whose functions have now been assumed by the CSRC. The Securities Commission is

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responsible for coordinating the drafting of the securities law, formulating policies on securities affairs, planning the development of securities markets and guiding, coordinating and regulating all PRC institutions involved in securities affairs and supervising the CSRC. The CSRC is the regulatory arm of the Securities Commission and is responsible for drafting regulations governing the securities market, supervising securities companies, regulating the domestic and overseas public issue of securities by PRC companies, supervising securities trading, compiling securities related statistics and conducted research and analysis.

On 22 April 1993, the State Council promulgated the Securities Provisional Regulations. The Securities Provisional Regulations deal with the application and approval procedures for public offerings of equity securities, trading in equity securities, the acquisition of listed companies, deposit, settlement, clearing and transfer of listed equity securities, disclosure of information, investigation, penalties and dispute settlement with respect to a listed company. The Securities Provisional Regulations specifically provide that the offer of shares by a PRC company directly and indirectly outside the PRC require the approval of the Securities Commission (or the CSRC at present). Provisions of the Securities Provisional Regulations in relation to acquisitions of listed companies and disclosure of information are expressed to apply to companies listed on a stock exchange in general without being confined to companies listed on any particular stock exchange. Such provisions may, therefore, be applicable to joint stock limited companies with shares listed on a stock exchange outside the PRC (eg. the Hong Kong Stock Exchange).

On 31 December 2006, the CSRC promulgated the Administrative Measures on Information Disclosure by Listed Companies. Under these measures, the CSRC is responsible for supervising the disclosure of information by companies which have offered shares to the public in the PRC. These measures contain provisions regarding prospectuses and listing reports to be issued in connection with a public offering of shares in the PRC, publication of regular reports (including annual, interim and quarterly reports) and announcement of material transactions or matters by companies which have offered shares to the public.

On 4 August 1994, the State Council promulgated the Special Regulations. These provisions deal mainly with the issue, subscription, trading, declaration of dividends and other distributions of foreign capital stock listed aboard and the disclosure of information of articles of association of joint stock limited companies having foreign capital stock listed aboard.

On 25 December 1995, the State Council promulgated the Regulations of the State Council Concerning Domestic Listed Foreign Shares of Joint Stock Limited Companies. These regulations deal mainly with the issue, subscription, trading, declaration of dividends and other distributions of domestic listed foreign shares and the disclosure of information of joint stock limited companies having domestic listed foreign shares.

On 29 December 1998, the Standing Committee of the NPC promulgated the Securities Law of the PRC which came into effect on 1 July 1999. This is the first national securities law in the PRC and is the fundamental law comprehensively regulating activities in the PRC securities market. On 27 October 2005, the Securities Law of the PRC was revised. The Securities Law of the PRC is applicable to the issuance of and trading in shares, company bonds and other securities designated by the State Council according to law in the PRC. Where the Securities Law of the PRC does not apply, the provisions of the PRC Company Law and other applicable laws and administrative regulations will apply.

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On 29 March 1999, SETC and the CSRC promulgated the Opinion on the Further Promotion of the Regular Operation and In-Depth Reform of Companies Listed Overseas (the “Opinion”), which is aimed at regulating the internal operation and management of PRC companies listed overseas. The Opinion regulates, amongst other things, the appointments and functions of external directors and independent directors in the board of directors, and the appointment and functions of external supervisors in the supervisory committee.

### **E. Arbitration and Enforcement of Arbitration Awards**

According to the Arbitration Law of the People’s Republic of China (the “Arbitration Law”) promulgated by the Standing Committee of the NPC on 31 August 1994 and effective on 1 September 1995, any disputes over contracts or other property interests among citizens, legal persons and other organizations with equal status may be settled by arbitration. Both parties shall reach an arbitration agreement voluntarily in order to settle the dispute through arbitration. The arbitration commission shall not accept any application for arbitration from a single party without arbitration agreement. The people’s court shall not accept filing of suit from a single party with arbitration agreement, except for invalid arbitration agreement.

Under the Arbitration Law, an arbitration committee may, before the promulgation by the PRC Arbitration Association of arbitration regulations, formulate interim arbitration rules in accordance with the Arbitration Law and the PRC Civil Procedure Law.

The Mandatory Provisions requires an arbitration clause to be included in the articles of association of a company listed in Hong Kong. In case of any dispute or claim arises from any rights or obligations provided in the articles of association, the PRC Company Law or other relevant laws and administrative regulations between holders of overseas listed foreign shares and the company, holders of overseas listed foreign shares and the directors, supervisors, managers or other senior management of the company, and holders of overseas listed foreign shares and holders of domestic shares, such parties shall submit that dispute or claim for arbitration. Such parties may either elect to submit such dispute or claim to China International Economic and Trade Arbitration Commission or Hong Kong International Arbitration Centre for arbitration under their respective arbitration regulations. If the party elects to arbitrate the dispute or claim at the Hong Kong International Arbitration Centre, then either party may apply to have such arbitration conducted in Shenzhen according to the securities arbitration rules of the Hong Kong International Arbitration Centre. China International Economic and Trade Arbitration Commission is an economic and trade arbitration organ in the PRC. In accordance with China International Economic and Trade Arbitration Commission Arbitration Rules as amended on 11 January 2005 (which amendment became effective on 1 May 2005), the jurisdiction of China International Economic and Trade Arbitration Commission covers disputes involving Hong Kong. China International Economic and Trade Arbitration Commission is located in Beijing with branch offices in Shenzhen and Shanghai. Under the Arbitration Law, an arbitral award is final and binding on the parties. If a party fails to comply with an award, the other party to the award may apply to the people’s court for enforcement. A people’s court may refuse to enforce an arbitral award made by an arbitration commission if there is any procedural irregularity (including irregularity in the composition of the arbitration committee or the giving of an award beyond the scope of the arbitration agreement or the jurisdiction of the arbitration commission).

A party seeking to enforce an arbitral award of a foreign affairs arbitration organ of the PRC against a party who or whose property is not within the PRC may apply to a foreign court with jurisdiction over the case for enforcement. Similarly, an arbitral award made by a foreign arbitration

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body may be recognized and enforced by the PRC courts in accordance with the principles of reciprocity or any international treaty concluded or acceded to by the PRC. The PRC acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “New York Convention”) adopted on 10 June 1958 pursuant to a resolution of the Standing Committee of the NPC passed on 2 December 1986. The New York Convention provides that all arbitral awards made in a state which is a party to the New York Convention shall be recognized and enforced by other parties to the New York Convention subject to their right to refuse enforcement under certain circumstances including where the enforcement of the arbitral award is against the public policy of the state to which the application for enforcement is made. It was declared by the Standing Committee of the NPC simultaneously with the accession of the PRC that (i) the PRC will only recognize and enforce foreign arbitral awards on the principle of reciprocity; and (ii) the PRC will only apply the New York Convention to disputes considered under PRC laws to be arising from contractual and non-contractual mercantile legal relations. Arrangements for reciprocal enforcement of arbitral awards between Hong Kong and China were signed on 18 June 1999. This new arrangement has been approved by the Supreme People’s Court of the PRC and the Hong Kong Legislative Council and became effective on 1 February 2000. The new arrangement is made in accordance with the spirit of the New York Convention, allowing awards made by PRC arbitral authorities to be enforceable in Hong Kong and awards by Hong Kong arbitral authorities to be enforceable in the PRC.

### F. Foreign Exchange Control

The Foreign Exchange Control Regulations of the People’s Republic of China (中華人民共和國外匯管理條例) (the “Foreign Exchange Control Regulations”) promulgated by the State Council on 29 January 1996 and amended on 14 January 1997 and 5 August 2008 stipulates the principles of the control over foreign exchange receipts and disbursement of the PRC and the relevant punishment on the violation of such regulations. In addition to the Foreign Exchange Control Regulations, the Regulations on the Foreign Exchange Settlement, Sale and Payments, which were promulgated on 20 June 1996 by the PBOC and took effect on 1 July 1996, contain detailed provisions regulating the holding, sale and purchase of foreign exchange by enterprises, individuals and economics organizations and social institutions in the PRC. The PBOC publishes the Renminbi exchange rate against other major currencies. Pursuant to the Announcement of the People’s Bank of China on Reforming the RMB Exchange Rate Regime (中國人民銀行關於完善人民幣匯率形成機制改革的公告) issued by the PBOC on 21 July 2005 a managed floating exchange rate regime based on market demand and supply with reference to a basket of currencies has been adopted in the PRC since 21 July 2005. The PBOC will announce the closing price of a foreign currency such as the US dollar traded against the RMB in the interbank foreign exchange market after the closing of the market on each business day, and will make it the central parity for the trading against the RMB on the following business day.

At present, control of purchase of foreign exchange is relaxed. Enterprises within the PRC which require foreign exchange for their ordinary trading and non-trading activities, import activities and repayment of foreign debts may purchase foreign currency from designated banks if the application is supported by relevant documents. Furthermore, foreign investment enterprises that require foreign currency for dividend payments, such as profit distribution to foreign investors, may draw funds in their foreign exchange bank accounts kept with designated banks after paying due dividend taxes. Should such foreign currency be insufficient, foreign investment enterprises may purchase foreign currency from designated banks. While foreign exchange control on current account transactions has been relaxed, the drawdown of foreign currency loans by companies, the provision of foreign exchange guarantees, overseas investments and any other types of capital account transactions

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that involve the purchase of foreign exchange remain subject to the approval of the SAFE. When conducting foreign exchange transactions, the designated banks may, based on the exchange rate published by the POBC and subject to certain limits, freely determine the applicable exchange rate.

### **MATERIAL DIFFERENCES BETWEEN CERTAIN COMPANY LAW MATTERS IN THE PRC AND HONG KONG**

Hong Kong company law is primarily set out in the Companies Ordinance and supplemented by common law and rules of equity that apply to Hong Kong. There are material differences between Hong Kong company law and the PRC law applicable to a joint stock limited liability company incorporated under the PRC Company Law, to which we are and will be subject. This summary is, however, not intended to be an exhaustive comparison.

### **SHAREHOLDER MEETINGS—QUORUM**

Under Hong Kong law, the quorum for a meeting of a company is provided for in the articles of association of a company, but must be at least two members. The PRC Company Law does not specify any quorum requirement for a shareholders' general meeting, but the Special Regulations and the Mandatory Provisions provide that our general meeting may be convened when replies to the notice of that meeting have been received from shareholders whose shares represent 50% of the voting rights at least 20 days before the proposed date of the meeting, or if that 50% level is not achieved, we must within five days notify our shareholders by way of a public announcement and we may hold the shareholders' general meeting thereafter.

### **SHAREHOLDER MEETINGS—VOTING**

Under Hong Kong law, an ordinary resolution is passed by a simple majority of affirmative votes cast by members present in person or by proxy at a general meeting and a special resolution is passed by a majority of not less than three-fourths of votes cast by members present in person or by proxy at a general meeting.

Under the PRC Company Law, the passing of any resolution requires more than one-half of the affirmative votes held by our shareholders present in person or by proxy at a shareholders' general meeting except in cases such as proposed amendments to our Articles of Association, increase or decrease of registered capital, merger, division, dissolution or transformation, which require two-thirds of the affirmative votes cast by shareholders present in person or by proxy at a shareholders' general meeting.

### **VARIATION OF CLASS RIGHTS**

The PRC Company Law makes no specific provision relating to variation of class rights. However, the PRC Company Law states that the State Council can promulgate regulations relating to other kinds of shares. The Mandatory Provisions contain detailed provisions relating to the circumstances which are deemed to be variations of class rights and the approval procedures required to be followed in respect thereof. These provisions have been incorporated in the Articles of Association, which are summarized in Appendix VI.

Under the Companies Ordinance, no rights attached to any class of shares can be varied except (i) with the approval of a special resolution of the holders of the relevant class at a separate meeting,



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(ii) with the consent in writing of the holders of three-fourths in nominal value of the issued shares of the class in question, (iii) by agreement of all the members of the Company or (iv) if there are provisions in the Articles of Association relating to the variation of those rights, then in accordance with those provisions.

We (as required by the Hong Kong Listing Rules and the Mandatory Provisions) have adopted in the Articles of Association provisions protecting class rights in a similar manner to those found in Hong Kong law. Holders of overseas listed shares and domestic listed shares are defined in the Articles of Association as different classes. The special procedures for voting by a class of shareholders shall not apply in the following circumstances: (i) where we issue and allot, either separately or concurrently in any 12-month period, pursuant to a Shareholders' special resolution, not more than 20% of each of the existing issued overseas listed shares and the domestic listed shares; (ii) where the plan for the issue of domestic listed shares and overseas listed shares upon our establishment is implemented within 15 months following the date of approval by the CSRC; and (iii) where the transfer of shares from the holders of domestic listed shares to foreign investors upon receiving the approval of the State Council Securities regulatory authority and other approving authority (if applicable) and then listing and transacting in the overseas stock exchange.

### **DERIVATIVE ACTION BY MINORITY SHAREHOLDERS**

Hong Kong law permits minority shareholders to start a derivative action on behalf of the company against directors who have committed a breach of their fiduciary duties to the company if the directors control a majority of votes at a general meeting, thereby effectively preventing the company from suing the directors in breach of their duties in its own name.

Although the PRC Company Law gives our Shareholders the right to initiate proceedings in the people's court to restrain the implementation of any resolution passed by our shareholders in a general meeting, or by the Board of Directors, that violates any law, administrative rules or Articles of Association or if the Directors or management personnel violate laws, administrative rules or articles of association when performing their duties and cause losses to the company, there is no form of proceedings equal to a derivative action. The Mandatory Provisions, however, provide us with certain remedies against the Directors, Supervisors and officers who breach their duties to us. In addition, as a condition to the listing of our H shares on the Hong Kong Stock Exchange and in accordance with our Articles of Association, each of our Directors and Supervisors is required to give an undertaking in favors of us acting as agent for each of our Shareholders. This allows minority shareholders to act against our Directors and Supervisors in default.

### **MINORITY SHAREHOLDER PROTECTION**

Under Hong Kong law, a shareholder who complains that the affairs of a company incorporated in Hong Kong are conducted in a manner unfairly prejudicial to his interests may petition to the court to either wind up the company or make an appropriate order regulating the affairs of the company. In addition, on the application of a specified number of members, the Financial Secretary may appoint inspectors who are given extensive statutory powers to investigate the affairs of a company incorporated in Hong Kong.

The Company, as required by the Mandatory Provisions, has adopted in its Articles of Association minority protection provisions similar to (though not as comprehensive as) those available

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under the Hong Kong law. These provisions state that a controlling shareholder may not exercise its voting rights in a manner prejudicial to the interests of other shareholders, may not relieve a director or supervisor of his duty to act honestly in our best interests or may not approve the expropriation by a director or supervisor of our assets or the individual rights of other shareholders.

### ARBITRATION OF DISPUTES

In Hong Kong, disputes between shareholders and a company or its directors, managers and other senior officers may be resolved through the courts. The Mandatory Provisions and our Articles of Association provide that disputes between a holder of H shares and the Company and its directors, supervisors, managers or other members of senior management or a holder of domestic listed shares, arising from the Articles of Association, the PRC Company Law or other relevant laws and administrative regulations which concerns the affairs of the Company should, with certain exceptions, be referred to arbitration at either the Hong Kong International Arbitration Center (“HKIAC”) or the China International Economic and Trade Arbitration Commission. Such arbitration is final and conclusive.

The Securities Arbitration Rules of the HKIAC contain provisions allowing, upon application by any party, an arbitral tribunal to conduct a hearing in Shenzhen for cases involving the affairs of companies incorporated in the PRC and listed on the Hong Kong Stock Exchange so that PRC parties and witnesses may attend. Where any party applies for a hearing to take place in Shenzhen, the tribunal shall, where satisfied that such application is based on bona fide grounds, order the hearing to take place in Shenzhen conditional upon all parties, including witnesses and arbitrators, being permitted to enter Shenzhen for the purpose of the hearing. Where a party, other than a PRC party or any of its witnesses or any arbitrator, is not permitted to enter Shenzhen, then the tribunal shall order that the hearing be conducted in any practicable manner, including the use of electronic media. For the purpose of the Securities Arbitration Rules of the HKIAC, a PRC party means a party domiciled in the PRC other than the territories of Hong Kong, Macau and Taiwan.

### SUMMARY OF MATERIAL DIFFERENCES BETWEEN HONG KONG LISTING RULES AND SHANGHAI LISTING RULES

As our A Shares are listed on the Shanghai Stock Exchange, we are also subject to Rules Governing the Listing on the Shanghai Stock Exchange (“**Shanghai Listing Rules**”). Set out below is a summary of material differences between Hong Kong Listing Rules and Shanghai Listing Rules:

- **Periodic financial reporting**

There are material differences in financial reporting standards and practices regarding, for examples, industry-specific financial reporting requirements, announcement of preliminary results, form and content of periodic financial reports and post-vetting of periodic financial reports.

- **Classification and disclosure requirements for notifiable transactions**

The method of classification of notifiable transactions under Hong Kong Listing Rules and the disclosure requirement pertaining to such transactions differ from those under the Shanghai Listing Rules.

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- **Connected transactions**

The definition of a connected person under the Hong Kong Listing Rules and the definition of a related party under the Shanghai Listing Rules are different. In addition, the disclosure and shareholder approval requirements for connected transactions under the Hong Kong Listing Rules and for related party transactions under the Shanghai Listing Rules, as well as the respective exemptions are different.

- **Disclosure of inside information**

The scope, timing and method of disclosure of inside information are different between Hong Kong Listing Rules and Shanghai Listing Rules.