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## APPENDIX VI — TAXATION

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This appendix contains a summary of laws and regulations in respect of taxation in Hong Kong and the PRC.

### PRC TAXATION

The following is a discussion of certain PRC tax provisions relating to the ownership and disposal of H Shares purchased in connection with the [●] and held by the investors as capital assets. This summary does not purport to address all material tax consequences of the ownership of H Shares and does not take into account the specific circumstances of any particular investors. This summary is based on the PRC tax laws in effect as of the Latest Practicable Date, as well as on the Arrangement between Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (《內地和香港特別行政區關於對所得避免雙重徵稅和防止偷漏稅的安排》) signed on 21 August 2006 and the Second Protocol to Arrangement between Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with Respect to Taxes on Income (《內地和香港特別行政區關於對所得避免雙重徵稅和防止偷漏稅的安排第二議定書》) signed on 11 June 2008 (collectively, the “Arrangements”), all of which are subject to change (or changes in interpretation), possibly with retroactive effect.

This discussion does not address any aspects of PRC taxation other than tax on dividends, capital tax, stamp duty, estate duty, income tax, value-added tax and business tax. Prospective investors are urged to consult their tax advisors regarding PRC, Hong Kong and other tax consequences of owning and disposing of H Shares.

### TAXATION APPLICABLE TO THE SHAREHOLDERS

#### Taxation of Dividends

*Individual investors.* According to the Law of the People’s Republic of China on Individual Income Tax (《中華人民共和國個人所得稅法》) (the “Individual Income Tax Law”) as amended on 29 December 2007 and effective from 1 March 2008, dividends paid by PRC companies are ordinarily subject to a PRC withholding tax levied at a flat rate of 20%. For a foreign individual who is not a PRC resident, the receipt of dividends from a company in China is normally subject to a withholding tax of 20% unless specifically exempted by the finance authority of the State Council or reduced by an applicable tax treaty. However, on 21 July 1993, the State Administration of Taxation (the “SAT”), the PRC central government tax authority which succeeded the State Tax Bureau, issued the Notice of the State Administration of Taxation Concerning the Taxation of Gains on Transfer and Dividends from Shares (Equities) Received by Foreign Investment Enterprises, Foreign Enterprises and Foreign Individuals (《國家稅務總局關於外商投資企業、外國企業和外籍個人取得股票(股權)轉讓收益和股息所得稅收問題的通知》) (the “Tax Notice”), which states that dividends paid by a PRC company to individuals with respect to shares listed on an overseas stock exchange (“Overseas Shares”), such as H Shares, are temporarily not subject to PRC withholding tax.

In a letter dated 26 July 1994 to the former State Commission for Restructuring the Economic System, the former State Council Securities Commission and CSRC, the SAT reiterated the temporary tax exemption stated in the Tax Notice for dividends received from a PRC company listed overseas. If this tax exemption is withdrawn, a 20% tax may be withheld on dividends in accordance with the Provisional Regulations of concerning Questions of Taxation on Enterprises Experimenting with the Share System (《股份制試點企業有關稅收問題的暫行規定》) (the “Provisional Regulations”) and the Individual Income Tax Law. The withholding tax may be reduced under an applicable double taxation treaty. To date, the relevant tax authority has not collected withholding tax on dividend payments on Overseas Shares, including H Shares.

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*Enterprises.* According to the EIT Law (amended on 16 March 2007 and effective from 1 January 2008), dividends paid by PRC companies to foreign enterprises that do not have an office or establishment in China, or has an office or establishment in China but its income, including dividends and bonuses received, is not related to such office or establishment, are ordinarily subject to a PRC withholding tax levied at a tax rate of 20%. In accordance with the Notice of the State Administration of Taxation on the Issues concerning Withholding the Enterprise Income Tax on the Dividends Paid by Chinese Resident Enterprises to H-share Holders Which Are Overseas Non-resident Enterprises (《國家稅務總局關於中國居民企業向境外H股非居民企業股東派發股息代扣代繳企業所得稅有關問題的通知》國稅函[2008]897號) effective from 6 November 2008, 10% withholding tax shall be imposed on the dividends paid by Chinese resident enterprises to H-share holders which are overseas non-resident enterprises. Such H-share holders are allowed to apply for tax rebate in accordance with the applicable tax treaties or arrangements, if any.

*Tax treaties.* Investors who do not reside in the PRC but reside in countries that have entered into treaties for the avoidance of double taxation with the PRC may be entitled to a reduction of the withholding tax imposed on the payment of dividends to such investors. China currently has entered into treaties for the avoidance of double taxation with a number of other countries, including but not limited to Australia, Canada, France, Germany, Japan, Malaysia, the Netherlands, Singapore, the United Kingdom and the United States. Under the Agreement between the Government of the People's Republic of China and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (《中華人民共和國政府和美利堅合眾國政府關於對所得避免雙重徵稅和防止偷漏稅的協定》) signed on 30 April 1984, Protocol to Agreement between the Government of the People's Republic of China and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (《中華人民共和國政府和美利堅合眾國政府關於對所得避免雙重徵稅和防止偷漏稅的協定的議定書》) signed on 30 April 1984, Protocol concerning the Interpretation of Paragraph 7 of the Protocol to the Agreement between the Government of the People's Republic of China and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, signed on 30 April 1984 (《中華人民共和國政府和美利堅合眾國政府對1984年4月30日簽訂的關於對所得避免雙重徵稅和防止偷漏稅的協定的議定書第七款解釋的議定書》) signed on 10 May 1986 and Exchange of Notes (《中華人民共和國政府和美利堅合眾國政府關於對所得避免雙重徵稅和防止偷漏稅的協定的換文》) (collectively, the "Treaties"), the PRC Government may tax a dividend paid by the Company to an Eligible U.S. Holder up to a maximum of 10% of the gross amount of such dividend. For the purpose of this section, an "Eligible U.S. Holder" is any beneficial owner of H Shares that (i) is a resident of the United States for purposes of the Treaties; (ii) does not maintain a permanent establishment or fixed base in the PRC to which H Shares are attributable and through which the beneficial owner carries on or has carried on business (or, in the case of an individual, performs or has performed independent personal services); and (iii) who is not otherwise ineligible for benefits under the Treaties with respect to income and gain derived in connection with the H Shares.

According to the Arrangements, the PRC Government may impose tax on dividends payable by a PRC company to a Hong Kong resident. However, such tax should not exceed 10% of the gross amount of dividends payable, and in the case where a Hong Kong resident holds 25% equity interest or more in a PRC company, such tax should not exceed 5% of the gross amount of dividends payable by the PRC company.

### Taxation of Capital Gains

*Individual investors.* With respect to individual holders of H Shares, the Regulations for the Implementation of the Individual Income Tax Law of the People's Republic of China (《中華人民共和國個人所得稅法實施條例》), issued on 28 January 1994 and amended on 19 December 2005

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and 18 February 2008, stipulate that gains realized on the sale of equity shares would be subject to income tax at a rate of 20% on the gains, and empower the Ministry of Finance to formulate the rules for the taxation of individual income derived from transfer of stocks, which shall be approved by the State Council for implementation. However, to date, no such implementation rules have been promulgated. Gains on the sale of shares by individuals were temporarily exempted from individual income tax pursuant to Notice concerning the Extending of Temporary Exemption on Individual Income Tax on the Income Derived from Transfer of Stocks (《財政部、國家稅務總局關於個人轉讓股票所得繼續暫免徵收個人所得稅的通知》), jointly issued by the Ministry of Finance and SAT on 30 March 1998. No income tax on gains of individual investors realized on the sale of equity shares has been collected. If this temporary exemption is withdrawn or ceases to be effective, individual holders of H Shares may be subject to capital gains tax at the 20% rate unless such tax is reduced or eliminated by an applicable double taxation treaty.

*Enterprises.* According to the new EIT Law, a foreign enterprise which does not have an office or an establishment in China, or has an office or establishment in China but its income is not related to such office or establishment, should be subject to the enterprise income tax at a rate of 20% on the capital gains it obtained from PRC companies. The Regulation on Implementation of the Enterprises Income Tax Law of the People's Republic of China (《中華人民共和國企業所得稅法實施條例》), which became effective on 1 January 2008, further stipulates that such tax rate is reduced to 10%. Such withholding tax may be reduced pursuant to an applicable treaty for the avoidance of double taxation.

### Additional PRC Tax Considerations

*Stamp Duty.* In accordance with the *Provisional Regulations of the People's Republic of China on Stamp Duty* (《中華人民共和國印花稅暫行條例》) and the *Detailed Rules for Implementation of Provisional Regulations of the People's Republic of China on Stamp Duty* (《中華人民共和國印花稅暫行條例施行細則》), which became effective on 1 October 1988, the PRC stamp duty shall only be levied on documents, which have legal effects within PRC and are protected under PRC law, executed or received within the PRC. The purchase and disposal of H Shares that take place outside PRC are not subject to the PRC stamp duty.

*Estate duty.* No liability for estate duty under PRC law will arise from non-Chinese nationals holding H Shares.

## TAXATION APPLICABLE TO THE COMPANY

### Income Tax

According to the EIT Law, which became effective from 1 January 2008, the income tax for both domestic companies and foreign invested enterprises will be levied at the uniform rate of 25% except for certain income tax deductions prescribed by the EIT Law. However, the EIT Law provides some transitional preferential measures for enterprises established before the promulgation of the EIT Law which enjoy lower tax rates or regular tax reduction and exemption treatments under the previous tax laws and administrative regulations. According to the Notice of the State Council on the Implementation of Transitional Preferential Policies in Respect of Enterprises Income Tax (《國務院關於實施企業所得稅過渡優惠政策的通知》) issued on 26 December 2007, such enterprises will continue to enjoy a gradually increasing transitional income tax rate within five years after the EIT Law becomes effective. Enterprises entitled to enjoy regular tax reduction and exemption treatments under the previous income tax laws may continue to enjoy remaining incentives in accordance with the requirements and period specified by the previous income tax laws. However, for enterprises that have not made any profits and thus not enjoyed such preferential treatments, the period for enjoying

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preferential treatments shall be calculated from the year 2008. Enterprises may irrevocably choose to apply either transitional preferential policies or the preferential policies provided by the EIT Law, as the case may be.

Under the Notice on the Preferential Policies for Western Development Program (《財政部、國家稅務總局、海關總署關於西部大開發稅收優惠政策問題的通知》), which became effective as of 1 January 2002, domestic companies and foreign invested enterprises which are the encouraged industries by the State in Western Region shall be subject to the enterprise income tax at a reduced rate of 15% commencing from 2001 and expiring in 2010. The Notice of the State Council on the Implementation of Transitional Preferential Policies in respect of Enterprise Income Tax (《國務院關於實施企業所得稅過渡優惠政策的通知》) confirms that the preferential policies for western development program shall be carried out continuously after the EIT Law becomes effective.

### Value-Added Tax

The Provisional Regulations of the People's Republic of China on Value Added Tax (《中華人民共和國增值稅暫行條例》) (promulgated on 13 December 1993, amended on 5 November 2008 and effective from 1 January 2009) apply to domestic enterprises and foreign invested enterprises that sell goods, provide processing or repair services or import goods in the PRC. Value-added tax ("VAT") payable is calculated as "output VAT" minus "input VAT". Input VAT payable by a company on purchases is recoverable out of the output VAT collected from its customers, and any excess of output VAT over input VAT paid is payable to the tax authority. The rate of VAT is 17%, provided that a rate of 13% is levied on certain specified categories of goods sold or imported.

### Business Tax

According to the Provisional Regulations of the People's Republic of China on Business Tax (《中華人民共和國營業稅暫行條例》) (promulgated on 13 December 1993, amended on 10 November 2008 and effective from 1 January 2009), enterprises and individuals that provide various services and that assign intangible assets or sell real property in the PRC shall be subject to business tax at a rate ranging from 3% to 20%.

## TAXATION IN HONG KONG

### Tax on Dividends

Under the current practice of the Hong Kong Inland Revenue Department, no tax is payable in Hong Kong in respect of dividends paid by the Company.

### Taxation on gains from sale

No tax is imposed in Hong Kong in respect of capital gains from the sale of property such as the H Shares. However, trading gains from the sale of the property by persons carrying on a trade, profession or business in Hong Kong where such gains are derived from or arise in Hong Kong from such trade, profession or business will be chargeable to Hong Kong profits tax, which is currently imposed at the rate of 16.5% on corporations and at a maximum rate on individuals of 15%. Certain categories of taxpayers are likely to be regarded as deriving trading gains rather than capital gains (for examples, financial institutions, insurance companies and securities dealers) unless these taxpayers can prove that the investment securities are held for long-term investment. Trading gains from sales of H Shares traded on the Hong Kong Stock Exchange will be considered to be derived from or arising in Hong Kong. Liability for Hong Kong profits tax would thus arise in respect of trading gains from sales

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of H Shares traded on the Hong Kong Stock Exchange realized by persons carrying on a business of trading or dealing in securities in Hong Kong.

### **Stamp Duty**

Hong Kong Stamp duty, currently charged at the ad valorem rate of 0.1% on the higher of the consideration for, or the market value of, the H Shares, will be payable by the purchaser on every purchase and by the seller on every sale of H Shares (in other words, a total of 0.2% is currently payable on a typical sale and purchase transaction involving H Shares). In addition, a fixed duty of HK\$5 is currently payable on any instrument of transfer of H Shares. Where one of the parties to a transfer is resident outside Hong Kong and does not pay the ad valorem duty due by it, the duty not paid will be assessed on the instrument of transfer (if any) and will be payable by the transferee. If stamp duty is not paid on or before the due date, a penalty of up to ten times the duty payable may be imposed.

### **Estate Duty**

The Revenue (Abolition of Estate Duty) Ordinance 2005 came into effect on 11 February 2006 in Hong Kong, pursuant to which estate duty ceased to be chargeable in Hong Kong in respect of the estates of persons dying on or after that date. No Hong Kong estate duty is payable and no estate duty clearance papers are needed for an application for a grant of representation in respect of holders of H Shares whose deaths occur on or after 11 February 2006.