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## **SUPERVISORY BOARD AND INDEPENDENT SUPERVISORS**

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### **Background**

As highlighted in the section headed “Appendix V — Summary of German Legal and Regulatory Provisions” in this prospectus, our Company is required to establish a supervisory board comprising individuals who are nominated and appointed by our Shareholders, to supervise and monitor the Management Board.

The three-tier corporate structure under German law inherently does not contemplate the notion of independent non-executive director. The three-tier structure of an AG comprises (a) the management board; (b) the supervisory board; and (c) the general meeting of shareholders. German law only distinguishes between members of the management board and supervisory board members, and there is no distinction between executive and non-executive directors. Therefore, proposed appointment of independent non-executive directors to the executive management board of an AG is not a concept recognized under German law. In this regard, the appointment of independent non-executive directors to the management board in an AG is prohibited under German law.

### **Appointment of Independent Supervisors**

In light of the statutory differences between German law and the common law system, we have appointed three Independent Supervisors who are in compliance with the independence requirements under Rule 3.13 of the Listing Rules and have applied for a waiver from strict compliance with Rule 3.10 of the Listing Rules to have at least three independent non-executive directors. Our Independent Supervisors, namely Mr Park Kun Hwa, Mr Lee Choong Min and Mr Shin Kiyong shall take the place of an independent non-executive director under Rule 3.10. Please refer to the paragraph headed “Specific duties and obligations of the independent non-executive directors under the Listing Rules to be assumed by Independent Supervisors” in this prospectus below.

### **Rules and responsibilities of Supervisory Board**

Under German law, the supervising functions of the supervisory board appear to be similar to the monitoring function of independent non-executive directors. The Listing Rules require independent non-executive directors to establish conventional board committees, including audit committee, remuneration committee and nomination committee, to oversee the business, financial reporting and corporate governance matters of the company. In this connection, the supervisory board has the right under German law to autonomously establish board committees, which can be either permanent or temporary for the duration of a particular transaction for the purpose of supervising the management board. The members of the supervisory board may form an audit committee, a remuneration committee and a nomination committee on similar terms as required under the Listing Rules to perform the general duties and obligations of the independent non-executive directors.

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In addition to the conventional board committees, as and when required by the Listing Rules, the independent non-executive directors shall also form an independent board committee to review connected transactions and other transactions of the company, and to advise shareholders of the company as to whether the terms of the relevant transaction are fair and reasonable and whether such transaction is in the interests of the company and its shareholders as a whole. We will establish such committee as and when required under the Listing Rules regarding the establishment of independent board committee, such committee shall comprise only the Independent Supervisors who do not have a material interest in the relevant transaction. The Independent Supervisors have, in addition to their general duties and obligations, the duty to perform annual reviewing and confirming of the continuing connected transactions. Accordingly, the principal duties and obligations of independent non-executive directors as required under the Listing Rules will be assumed by the Independent Supervisors.

Due to the two-tier management system under German law, the roles and responsibilities of members of the management board are distinct to those of members of the supervisory board. The duties and obligations of supervisors are fundamentally different from members of the management board under German law. Supervisors are required to comply with their own set of rules provided by the German Stock Corporation Act and other applicable laws. The obligations and liability as imposed on members of the management board under German laws are not directly or strictly binding on supervisors. On the same basis, the statutory duties and obligations specifically imposed on directors of listed companies in Hong Kong, including the SFO, the Companies Ordinance, Takeovers Code, and the Listing Rules, are not entirely and directly applicable on supervisors.

However, since both the management board members and supervisors are accountable to the AG and its shareholders, certain obligations which are of fundamental importance to shareholders protection and fair market apply equally to management board members and supervisors, such as the fiduciary duties owed to the AG and prohibition of insider dealing by management board members and supervisors. Furthermore, our Supervisors are also regarded as connected persons pursuant to Rule 14A.11(3) of the Listing Rules.

Please refer to “Appendix V — Summary of German Legal and Regulatory Provisions — (n) Supervisory board” for further details of the roles and responsibilities of supervisory board.

### **Undertakings to our Company and the Hong Kong Stock Exchange**

Each of our Supervisors (including the Independent Supervisors) have undertaken to our Company and the Hong Kong Stock Exchange that, in the exercise of his powers and duties as a Supervisor, he shall:

- (i) comply to the best of his ability with all applicable laws, rules, regulations and normative statements from time to time in force in Germany relating to the responsibilities, duties and obligations of a supervisor in connection with the governing, operation, conduct or regulation of public companies in Germany or elsewhere;

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- (ii) comply to the best of his ability with the provisions of our Articles of Association (including all provisions regarding the duties of Supervisors) and procure our Company and our Management Board to act at all times in accordance with our Articles of Association;
- (iii) use his best endeavours to cause our Company and our Management Board to comply with the Listing Rules, the Code on Takeovers and Mergers, the Code on Share Repurchases and all other relevant securities laws and regulations from time to time in force in Hong Kong applicable to companies listed in Hong Kong;
- (iv) inform the Hong Kong Stock Exchange forthwith and in writing, at any time while he is a Supervisor of our Company, of the initiation by the Supervisory Board of legal proceedings against any of our Directors;
- (v) comply to the best of his ability, as if the same applied to him to the same extent as it does to our Directors, with: (a) Part XV of the Securities and Futures Ordinance; (b) the Model Code for Securities Transactions by Directors of Listed Companies set out in Appendix 10 of the Listing Rules; (c) the Code on Takeovers and Mergers; (d) the Code on Share Repurchases; and (e) all other relevant securities laws and regulations from time to time in force in Hong Kong applicable to companies listed in Hong Kong; and
- (vi) use his best endeavours to procure that any alternate of him shall so comply.

Each of our Supervisors (including the Independent Supervisors) has appointed our Company as his agent, for so long as he remains a Supervisor, for receiving on his behalf any correspondence from and/or service of notices and other documents by the Hong Kong Stock Exchange.

Each of our Supervisors (including the Independent Supervisors) have further undertaken to our Company and the Hong Kong Stock Exchange that he shall provide to the Hong Kong Stock Exchange, immediately upon his resignation as a Supervisor, his up-to-date contact information, including his address for correspondence from and service of notices and other documents by the Hong Kong Stock Exchange and telephone number. Each of them has further undertaken to give his authority to the Head of the Listing Division of the Hong Kong Stock Exchange or to any person authorised by him, to disclose any of the foregoing particulars given by him to members of the Listing Committee and, with the approval of the Chairman or a vice Chairman of the Hong Kong Stock Exchange, to such other persons, as the said Head of the Listing Division may from time to time think fit.

### **Specific duties and obligations of the independent non-executive directors under the Listing Rules to be assumed by the Independent Supervisors**

The following principal duties and obligations specifically for independent non-executive directors under the Listing Rules will be resumed by the Independent Supervisors:

- (a) Rule 3.21 - establishment of audit committee comprising majority of independent non-executive directors

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- (b) Rule 8.10(3) - in case where the controlling shareholder with an interest in a business apart from our Company's business which competes or is likely to compete with our Company's business, the Stock Exchange may require the appointment of sufficient number of independent non-executive directors to ensure that the interests of the general shareholders will be adequately represented
- (c) Rules 13.39(6) and (7) - establishment of an independent board committee (which shall consist only of independent non-executive directors) to advise shareholders as to whether the terms of the relevant transactions or arrangement is in the interest of the issuer and its shareholders interest as a whole
- (d) Rule 13.68 - establishment of remuneration committee comprising majority of independent non-executive directors, which is required to form a view in respect of service contracts falling under Rule 13.68
- (e) Rule 14A.37 - annual review and confirmation of the continuing connected transactions by independent non-executive directors (Please refer to the paragraph headed 'Connected Transactions' below for details)
- (f) Rule 14A.55 - independent non-executive directors to provide their views on connected transactions not falling under Rule 14A.31 or Rule 14A.33 (Please refer to the paragraph headed 'Connected Transactions' below for details)
- (g) Rule 14A.57 - independent non-executive directors to provide their opinion on the profit guarantees given by a connected person (Please refer to the paragraph headed 'Connected Transactions' below for details)
- (h) Rule 17.04(1) - grant of options to a director, chief executive or substantial shareholder of a listed issuer or their associate must be approved by independent non-executive directors
- (i) B.1.1 of Appendix 14 - establishment of remuneration committee comprising majority of independent non-executive directors
- (j) A.4.4 of Appendix 14 - establishment of nomination committee comprising majority of independent non-executive directors

Our Company is of the view that our Independent Supervisors possess the necessary character, experience, competence and independence that the Exchange normally expected from the independent non-executive directors as required under the Listing Rules, and at least one of them possesses the relevant professional qualifications or accounting or financial management expertise as required under Rule 3.10(2) of the Listing Rules. In the event that our Independent Supervisors are required to give their independent views on any transactions of our Company, including connected transactions with SSCP, they will seek the advice from an independent financial adviser, who preferably would possess the requisite industry experience in the business our Group operates, as appropriate. Our Directors believe that this would enable our Independent Supervisor to discharge their obligations under the Listing Rules in a satisfactory and efficient manner.

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### Connected Transactions

In relation to any connected transactions pursuant to Chapter 14A of the Listing Rules, transactions that are subject to independent shareholders' approval pursuant to the Listing Rules or spin-off proposals that are subject to approval of the shareholders of our Company under the Listing Rules,

- (a) our Company shall establish an independent committee (which shall consist only of Independent Supervisors) to advise shareholders as to whether the terms of the relevant transaction or arrangement are fair and reasonable and whether such a transaction or arrangement is in the interests of our Company and our Shareholders as a whole and to advise our Shareholders on how to vote, taking into account the recommendations of the independent financial adviser appointed under the Listing Rules; and
- (b) the independent committee shall not consist of any Independent Supervisors who have a material interest in the relevant transaction or arrangement. The independent committee may consist of only one Independent Supervisor if all other Independent Supervisors have a material interest in the relevant transaction or arrangement. If all the Independent Supervisors have a material interest in the relevant transaction or arrangement, non independent committee can be formed with the exclusion of all interested Directors and Supervisors.

For a connected transaction or a continuing connected transaction requiring independent shareholders' approval, our Company will provide the Exchange with a copy of the minutes of the board meeting approving the transaction and, in the case of a continuing connected transaction, the cap as soon as possible after the meeting clearly reflects the view of the Independent Supervisors.

Where our Company acquires a company or business from a connected person and the profits or net tangible assets or other matters regarding the financial performance of that company or business are guaranteed by the connected person, our Company must (unless expressly exempted by the Exchange) inter alia, publish an announcement including details of the opinion of the Independent Supervisors as to whether:

- (a) the connected person has fulfilled its obligations; and
- (b) the decision to exercise or not to exercise any option to sell the company or business back to the connected person or other rights under the guarantee is fair and reasonable and in the interest of the shareholders as a whole.

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### **Fiduciary duties of Supervisors**

Our Supervisors owe fiduciary duties to our Shareholders under German law. Our Supervisors are under obligations to act in good faith and in the best interest of our Company and our Shareholders. Our Supervisors shall under no circumstance compromise their independence and they should avoid any actual or potential conflict of interest. Therefore, Supervisors shall be required to abstain from voting in respect of any transaction with our Group that he has a material interest. The fiduciary duties of our Supervisors include the duty of confidentiality with regard to any confidential information of our Company available to them in the course of their office, including price sensitive information and transactions and other intellectual properties and trade secrets of our Company. The obligation of secrecy does not only prohibit disclosure of such confidential information to third parties, but also extends to unauthorised disclosures to our Shareholders, employees and other related parties. The obligation of secrecy remains binding on our Supervisors even after the expiry of their term of office. Furthermore, in line with the prohibition of insider dealings under the Hong Kong Securities and Futures Ordinance, pursuant to § 14 of the Securities Trading Act, our Supervisors are also restricted from dealing with shares or other securities of our Company during such time when he possesses any confidential or price sensitive information not available to the general public.

Our Supervisory Board shall employ the duty of care of a diligent and conscientious manager when discharging its duties, and any breach of such duty may lead to liability for damages of our Supervisory Board to our Company and our Shareholders.

In addition, there are also other protection mechanisms in place under German law to ensure that our Supervisory Board will not act against our Shareholders' interest and to avoid conflict of interest. These include requirements for the approval of our Supervisors (with the interested member abstain from voting) with respect to transactions between our Company and our Supervisors, such as granting of loans to a Supervisor by our Company and the conclusion of a service agreement between our Company and a Supervisor.