

This appendix summarizes certain aspects of PRC taxation, foreign exchange, legal and regulatory matters and contains a description of the material differences between certain requirements of PRC and Hong Kong company law. However, this appendix does not contain an exhaustive summary of all matters of PRC, Hong Kong or other laws or regulations which may affect us or our shareholders, and does not take into account your specific circumstances. If you wish to obtain detailed information on PRC taxation, PRC law or the laws of any other jurisdiction you should seek independent professional advice.

## **PRC Taxation**

### ***Corporate Income Tax***

Corporate income tax in the PRC is governed by the PRC Enterprise Income Tax Law. Enterprises and other organizations generating income within the PRC are subject to enterprise income tax at the rate of 25%.

According to the PRC Enterprise Income Tax Law and its implementing rules, non-resident enterprises, which are enterprises established under foreign laws with their actual management entities outside the PRC and without offices or premises established in the PRC or without income generated associated with their offices and premises established in the PRC, are subject to enterprise income tax at a rate of 10% for their income generated within the PRC.

### ***Business Tax***

Business tax in the PRC is governed by the PRC Provisional Regulations on Business Tax. Enterprises and individuals that provide taxable services, transfer intangible assets or sell real estate within the PRC are subject to business tax at a rate of 3% or 5% of the amount of the taxable services or other transaction, except for the entertainment sector, the turnover of which is subject to the business tax at a rate of 5% to 20%.

### ***Value-added Tax***

Value-added tax, or VAT, in the PRC is governed by the PRC Provisional Regulations on Value-added Tax. VAT is payable on the sale or importation of goods and the provision of processing, repair and labor replacement services in the PRC. VAT is generally levied at the rate of 17%, however a rate of 13% is applicable to the sale or import of certain categories of essential goods. Exported goods are exempt from VAT.

### ***Taxation of Dividends***

According to the PRC Individual Income Tax Law and the Provisions for Implementation of the PRC Individual Income Tax Law, dividends paid by PRC companies to non-resident individuals are generally subject to PRC individual income tax levied at a flat rate of 20%. However, pursuant to certain notices issued by the SAT, in practice, no individual income tax has been collected against non-resident individuals on dividends paid by a PRC company on its shares listed on an overseas stock exchange, such as H shares.

According to the PRC Enterprise Income Tax Law and its implementing rules, non-resident enterprises that do not have a permanent establishment within the PRC are subject to enterprise income tax at a rate of 10% on any income generated within the PRC. Meanwhile, pursuant to the Notice 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 issued by the SAT on November 6, 2008, PRC resident enterprises are required to withhold enterprise income tax at a flat rate of 10% on distributions of dividends to non-resident enterprise shareholders of H shares for the year 2008 and thereafter.

Investors residing in countries or regions which have entered into treaties or arrangements for the avoidance of double taxation with the PRC may be entitled to a reduction of such withholding tax in accordance with the terms of the relevant treaty. Under the notice referred to above, upon receipt of dividends, a non-resident enterprise shareholder may apply to the PRC taxation authorities for a refund of the difference between the amount of tax withheld and the amount payable under the relevant treaty and arrangements.

#### *Taxation of Capital Gains*

The PRC Individual Income Tax Law and the Provisions for Implementation of the PRC Individual Income Tax Law stipulate that gains realized by individuals on the sale of equity shares are subject to income tax at a rate of 20%, and empower the MOF to draft and, after approval of the State Council, to implement detailed tax rules on the mechanism for collecting such tax. However, pursuant to certain notices issued by the SAT, in practice, no individual income tax on gains realized by non-resident individuals on the sale of shares of an overseas listed company (including H shares) has been collected.

Under the PRC Enterprise Income Tax Law and its implementing rules, a non-resident enterprise is generally subject to enterprise income tax at the rate of 10% with respect to the income generated within the PRC, including gains derived from the disposition of equity interests in a PRC company unless such tax is reduced or eliminated by an applicable double taxation treaty.

#### **PRC Foreign Exchange Regulation**

The Renminbi, or RMB, the lawful currency of the PRC, is currently subject to foreign exchange controls and is not freely convertible into foreign exchange. The SAFE, under the PBOC, is responsible for administering all matters relating to foreign exchange.

The RMB is subject to a regulated and managed floating exchange rate system in which the exchange rate is determined based on supply and demand and with reference to a basket of currencies. The PBOC publishes the closing price of the Renminbi against foreign currencies such as the U.S. dollar in the inter-bank foreign exchange market after the closing of the market on each business day, and fixes the central parity for RMB transactions on the following business day. Transactions may then be undertaken within a limited trading band around this central parity price.

Save for foreign investment enterprises and certain other exempted enterprises such as trading companies, all entities in the PRC must sell all of their foreign exchange income to designated foreign exchange banks. Foreign exchange income from loans granted by overseas entities or from the issuance of shares and bonds (including foreign exchange we obtain from the sale of our H shares overseas) is not required to be sold, and may be deposited in foreign exchange accounts at designated foreign exchange banks.

The PRC Foreign Exchange Control Regulations classify all international payments and transfers into current account items and capital account items.

Current account payments and transfers may be made without any the SAFE or other government approvals. PRC enterprises which require foreign exchange for transactions relating to current account items may effect payment from their foreign exchange accounts or at the designated foreign exchange banks, on the strength of valid receipts and proof of the relevant transactions.

Conversion of foreign exchange under capital account items, such as direct investments and capital contributions, remains subject to restrictions, and prior approval of the SAFE must be obtained for the purchase of foreign exchange for such transactions.

Dividends to holders of our H shares are declared in RMB but must be paid in Hong Kong dollars.

In accordance with the relevant regulations, PRC enterprises which are required to pay dividends to their shareholders in foreign exchange (such as our Company) may, on the strength of shareholder's general meeting resolutions or board resolutions for the distribution of profits, effect payment from their foreign exchange accounts or convert and pay dividends at the designated foreign exchange banks.

### **PRC Company Law**

As a joint stock limited liability company incorporated in the PRC, and seeking a listing on the Hong Kong Stock Exchange, we are primarily subject to the following three PRC laws and regulations:

- the PRC Company Law, which was promulgated by the Standing Committee of the National People's Congress on December 29, 1993, took effect on July 1, 1994 and was amended as of December 25, 1999, August 28, 2004 and October 27, 2005;
- the Special Regulations Concerning the Overseas Offering and Listing of Shares Abroad by Joint Stock Limited Companies ("Special Regulations"), which were promulgated by the State Council on August 4, 1994; and
- the Mandatory Provisions for the Articles of Association of Companies Listing Overseas ("Mandatory Provisions"), which were jointly promulgated by the Securities Committee of the State Council and the State Restructuring Commission on August 27, 1994, and which we, as a joint stock limited liability company seeking an overseas listing, must incorporate into our articles of association.

We are incorporated under the PRC Company Law as a joint stock limited liability company. This means that we are a legal person and that our registered capital is divided into shares of equal par value. The liability of our shareholders is limited to the amount of shares held by them and we are liable to our creditors for an amount equal to the total value of our assets.

Our registered capital is equal to the amount of our paid-in capital as recorded at the SAIC.

All of our shares of the same class rank *pari passu* and carry equal rights. We may increase our share capital by issuing new shares with the approval of our shareholders in general meeting. For each share issue of the same class, the terms and the subscription price must be identical. We may issue shares at par value or at a premium, but we may not issue shares below the par value.

Under PRC law, our A shares, which will be denominated and subscribed for in RMB, may only be subscribed for or traded by PRC legal persons, natural persons, QFIIs and foreign strategic investors. Our H shares, which will be denominated in RMB and subscribed for in a currency other than RMB, may only be subscribed for, and traded by QDIIs of China, investors from Hong Kong, Macau and Taiwan or any country and territory outside the PRC (“Foreign Investors”).

Shares that we issue to the Foreign Investors and shares that are listed overseas must be in registered form, denominated in Renminbi and subscribed for in a foreign currency. Shares that are purchased by investors from overseas including Hong Kong, Macau and Taiwan and listed in Hong Kong are known as “overseas listed foreign shares”.

We are required to maintain a register of shareholders for all shares issued in registered form. Information such as our shareholders’ particulars, number of shares held by each shareholder and the dates on which the shareholders become holders of the relevant shares are required to be entered into the register.

We may also reduce our registered capital with the approval of our shareholders in general meeting and subject to certain procedures and meeting minimum registered capital requirements under the PRC Company Law.

Our shares may be transferred in accordance with applicable laws and regulations, such as the PRC Company Law, the PRC Securities Laws and the Special Regulations.

### **PRC Securities Laws and Regulations**

The PRC Securities Law took effect on July 1, 1999 and was amended on August 28, 2004 and October 27, 2005, respectively. The PRC Securities Law comprehensively regulates the PRC securities market, and contains provisions governing, among other matters, the issue and trading of securities, takeovers by listed companies, securities exchanges, securities companies and the duties and responsibilities of the State Council’s securities regulatory authorities. The PRC Securities Law provides that we shall obtain the approval of the CSRC to issue or list our shares overseas.

The CSRC is the supervisory and regulatory institution for securities in the PRC. It is responsible for formulation of policies relating to securities, drafting of securities laws and regulations, supervision of the securities markets, market intermediaries and participants, supervision and regulation of the domestic and overseas public offerings of securities by Chinese companies, as well as supervision and regulation of securities transactions.

Currently, the issue and listing of overseas listed foreign shares (including H shares) are mainly governed by a series of rules and regulations promulgated by the State Council and the CSRC. An overseas listing of our shares must comply with the Special Regulations.

### **Material Differences Between Certain Company Law Matters in the PRC and Hong Kong**

Hong Kong company law is primarily set out in the Hong Kong 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 the Bank is and will be subject. Material differences between certain company law matters in the PRC and Hong Kong are summarized below.

#### ***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 VIII.

Under the Hong Kong 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, (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 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, except where (i) 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) 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) the conversion by our promoters and the SSF of our shares held by them upon receiving the approval of the CSRC or the authorized securities approval authorities of the State Council.

#### ***Derivative action by minority shareholders***

Hong Kong law permits minority shareholders to start a derivative action on behalf of all shareholders 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 a 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.

There is no specific provision in the PRC Company Law to guard against oppression by the majority shareholders over minority shareholders, however 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 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 can be resolved through the courts. The Mandatory Provisions and our Articles of Association provide that disputes between a holder of H shares and the Bank and its directors, supervisors, managers or other senior officers 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 must, 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.