

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

A. TAXATION IN THE PRC

Taxes Applicable to Joint-Stock Limited Companies

Enterprise Income Tax

Enterprise Income Tax Law of the People's Republic of China (《中華人民共和國企業所得稅法》, “Income Tax Law”) was promulgated on March 16, 2007, effective January 1, 2008. The Income Tax Law regulates the rate of enterprise income tax at 25%. Enterprises established before promulgation of the Income Tax Law and entitled to benefit from a preferential tax rate as per the tax laws and administrative regulations then prevailing may gradually shift to the tax rate defined by the Income Tax Law within five years after effectiveness of the Income Tax Law according to the Notice on the Implementation of the Transitional Preferential Tax Policies (《國務院關於實施企業所得稅過渡優惠政策的通知》), or Circular 39, issued by the PRC State Council on December 26, 2007. Those entitled to the preference of fixed tax holiday or fixed-term tax reductions may continue to benefit in the same manner according to the requirements of Circular 39 until expiration of the tax holiday or the term of the preference. For those who have not benefited from such preference due to the failure to realize profit, the preference will be applied starting from the effective date of the Income Tax Law, January 1, 2008.

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》) and the *Detailed Rules for Implementation of 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實施細則》), both of which became effective on January 1, 1994 and amended on January 1, 2009, all institutions and individuals providing taxable services, transferring intangible assets or selling real estate within the PRC shall pay business tax.

Value-added Tax (VAT)

According to 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》) in effect since January 1, 1994 and the *Detailed Rules for Implementation of 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實施細則》) in effect since December 25, 1993, both of which are first amended on January 1, 2009, all institutions and individuals selling goods or providing processing, repairing or replacement services or importing goods within the PRC shall pay VAT.

The tax rate of 13% shall be levied on general taxpayers selling or importing grain, edible vegetable oil, tap water, heating supply, air-conditioning, gas, liquefied petroleum gas, natural gas, marsh gas, coal products for civil use, books, newspapers, magazines, feedstuff, chemical fertilizer, pesticide, farming machines, films for agricultural use and other goods specified by the State Council; the rate applicable to goods exported by taxpayers shall be zero unless otherwise prescribed by the State Council.

The rate of 17% shall be levied on taxpayers selling or importing goods other than the abovementioned items, and to taxpayers providing processing, repair or replacement services.

The rate applicable to goods sold or taxable services provided by small-scale taxpayers is 3%. A small-scale taxpayer is defined as a taxpayer engaged in the manufacturing of goods or the supply of taxable services, or primarily dealing in the manufacturing of goods or supply of taxable services while concurrently engaged in

the wholesale or retail of goods as secondary operations, and has annual taxable sales (hereinafter referred to as “taxable sales”) of less than RMB500,000; or a taxpayer engaged in business other than those set forth above and having annual taxable sales of less than RMB800,000.

Individuals, non-enterprise institutions, and enterprises not frequently incurring taxable activities with annual taxable income beyond the figure set for small-scale taxpayers shall be deemed as small-scale taxpayers for the purpose of VAT payment.

The withholding agent of the VAT should be: (i) the domestic agents of foreign entities or individuals, who provide taxable services within the territory of the PRC but have no business institutions in the PRC; or (ii) the assignee of the assets or the purchaser of the services in case there is no domestic agent.

Stamp Tax

According to 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 the Provisional Regulations of the People’s Republic of China on Stamp Tax* (《中華人民共和國印花稅暫行條例實行細則》) as brought into effect on October 1, 1988, all institutions and individuals executing or receiving taxable documents within the PRC shall pay stamp tax. The list of taxable documents includes purchase and sale contracts, processing contracts, construction project contracts, property lease contracts, cargo freight contracts, warehousing and storage contracts, loan contracts, property insurance contracts, technical contracts, other documents that resemble a contract in nature, title transfer deeds, business account books, certificates of rights, licenses and other taxable documents specified by the Ministry of Finance.

Pursuant to the *Notice on Certain Policies Related to Stamp Tax issued by the Ministry of Finance and State Administration of Taxation* (《財政部、國家稅務總局關於印花稅若干政策的通知》) on November 27, 2006, the electricity sale and purchase contracts entered into by the power generator and the grid companies are purchase and sale contracts at the rate of 0.3‰.

Taxes Applicable to Shareholders of Companies

Dividend-related Tax

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》), hereinafter referred to as the “*Individual Income Tax Law*”) brought into effect on September 10, 1980 and the latest amendment on December 29, 2007, individual income tax at the rate of 20% shall be levied on dividends of H shares received by any and all foreign individuals that are non-Chinese residents.

However, according to the terms of the *Circular on Questions Concerning Tax on the Profits Earned by Enterprise with Foreign Investment, Foreign Enterprises and Foreign Individuals From Transfer of Stocks (Stock Rights) and on Dividend Income* (《關於外商投資企業、外國企業和外籍個人取得股票(股權)轉讓收入和股息所得稅收問題的通知》) as promulgated by the State Administration of Taxation on July 21, 1993 (hereinafter referred to as the “*Taxation Notice*”), the income from dividends (bonuses) received by foreign enterprises and foreign individuals who hold B-shares or overseas shares from China’s domestic enterprises which issue B-shares or overseas shares, is temporarily exempted from enterprise income tax and individual income tax.

Furthermore, it is specified in the Letter of the State Administration of Taxation concerning Taxation Issues of Dividends Received by Foreign Individuals Holding Shares of Companies Listed in China (《關於外籍個人持有中國境內上市公司股票所取得的股息有關稅收問題的函》) as promulgated by the State

Administration of Taxation on July 26, 1994 that dividends (capital bonuses) received by foreign individuals holding B-shares or overseas shares (including H-shares) from Chinese enterprises issuing such shares are temporarily exempted from individual income tax.

As of yet, the tax authority in charge has not imposed any individual income tax upon dividends of overseas shares. Individual income tax, therefore, is temporarily exempted or reduced for dividends or other distributions of H-shares held by any foreign individuals according to the prevailing PRC laws and regulations.

According to the Circular on Questions Concerning Withholding and Remitting Enterprise Income Tax for Dividends Received by Oversea H-share Holders (Enterprise shareholders) from Chinese Resident Enterprises (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) issued by the State Administration of Taxation on November 6, 2008, enterprise income tax at the rate of 10% shall be levied on dividends of H-shares of 2008 and thereafter received by any oversea enterprise shareholders that are non-Chinese residents from Chinese resident enterprises.

Share transfer-related tax

According to the *Individual Income Tax Law*, proceeds received from sale of capital securities by any non-Chinese resident individual shall be levied an individual income tax of 20%.

However, according to the *Taxation Notice*, income tax is temporarily exempted for net income obtained by foreign enterprises through transferring B-shares or overseas shares (including H-shares) issued by Chinese enterprises and not held by the foreign enterprises' organizations or related business entities within the territory of the PRC, and for income received by foreign individuals from transfers of their B-shares or overseas shares (including H-shares) issued by Chinese enterprises.

Furthermore, pursuant to the *Notice of the Ministry of Finance and the State Administration of Taxation concerning the Continued Individual Income Tax Exemption for Individuals' Proceeds from Share Transfers* (《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》) which came into effect on March 30, 1998, and effective since January 1, 1997, individual income tax exemption is continually valid from individuals' transfers of shares of public companies.

Estate duty or inheritance tax

There is no estate duty or inheritance tax levied in China at present.

B. THE PRC LAWS AND REGULATIONS CONCERNING FOREIGN EXCHANGE CONTROL

The foreign exchange control system of China has experienced a number of reforms and the current system contains three major regulatory laws and regulations since 1993.

The People's Bank of China ("PBOC"), as authorized by the State Council, promulgated the *Announcement Concerning Further Reformation of the Foreign Exchange Control System* (《關於進一步改革外匯管理體制的公告》) on December 28, 1993, which was brought into force on January 1, 1994.

The *Regulations of the People's Republic of China on Management of Foreign Exchanges* (《中華人民共和國外匯管理條例》), "Foreign Exchange Regulations") promulgated by the State Council, implemented on April 1, 1996, first amendment on January 14, 1997 and latest amendment on August 6, 2008, applies to the receipts, payments or business activities in China that are transacted in foreign currencies by domestic institutions, individuals, foreign institutions and foreign individuals visiting China. The second

amendment of the Foreign Exchange Regulations on August 6, 2008 substantially changed the regulatory system by abolishing the compulsory sale principle of the exchanges income under current items, which means enterprises and individuals have the option either to sell to banks or keep the exchange income.

The *Regulations on Control of Foreign Exchange Settlements, Sales and Payments* (《結匯、售匯及付匯管理規定》) issued by PBOC on June 20, 1996 and implemented on July 1, 1996 governs the foreign exchange settlements, purchases, foreign exchange account openings and payments to foreign countries that are incurred in China by domestic institutions, individual residents, foreign organizations' institutions in China and foreign individuals visiting China.

PBOC publicizes the exchange rates between RMB and other major foreign currencies on each business day. The exchange rates are determined by reference to the preceding day's trading prices of RMB against major foreign currencies in the inter-bank foreign exchange market.

The PRC government has been loosening its control over foreign exchange purchases. Any Chinese enterprise in need of foreign currencies in their day-to-day business activities, trade and nontrade operations, import business and payment of foreign debts may purchase foreign currencies from designated banks, provided that they submit the required appropriate supporting documents. In addition, if foreign-funded enterprises are in need of foreign currencies for distributing dividends, capital bonuses or profits to foreign investors, the amount so needed after payment of the appropriate dividend tax may be drawn from the enterprises' foreign exchange accounts maintained with designated banks. If the foreign currency in such an account is insufficient, the foreign-funded enterprise may apply to the government authority in charge for purchasing the necessary amount of foreign currency from a designated bank to cover the deficiency.

Although the foreign exchange control over transactions under current accounts has decreased, enterprises shall obtain approval from the State Administration of Foreign Exchange before they accept foreign-currency loans, provide foreign-currency guarantees, make investments in foreign countries or carry out any other capital account transactions involving the purchase of foreign currencies.

In foreign exchange transactions, designated banks may freely determine applicable exchange rates based on the rates publicized by PBOC and subject to certain governmental restrictions.

The *Notice Concerning Foreign Exchange Control of Overseas-listed Enterprises*, (《關於境外上市企業外匯管理有關問題的通知》) as jointly promulgated by China Securities Regulatory Commission ("CSRC") and the State Administration of Foreign Exchange ("SAFE"), came into effect on January 13, 1994, and provides that:

- (i) Funds raised by domestic enterprises through issuing shares in foreign countries shall be categorized as income from capital projects, and may be deposited in cash in foreign exchange accounts opened in China as approved by the SAFE.
- (ii) A domestic enterprise issuing shares in foreign countries shall, within ten days after the foreign funds raised through the issuance of the shares have become available, transfer the full amount of the funds into China and deposit the amount in a foreign exchange account opened with approval.
- (iii) Foreign currencies needed by domestic enterprises issuing shares in foreign countries for the purpose of distributing dividends and capital bonuses to overseas shareholders may be paid and remitted by the enterprises' banks from their foreign exchange accounts with approval of the SAFE. The enterprises' foreign currency uses for other purposes shall be handled according to applicable regulations.
- (iv) If the sum of foreign-currency funds raised by a domestic enterprise through the issuance of shares in foreign countries reaches 25% or more of the enterprise's total equity, it may apply to the Ministry of Commerce of the PRC (previously known as the Ministry of Foreign Trade and Economic

Cooperation of China) or its authorized department to establish a Sino-foreign joint venture according to the Law on Sino-foreign Joint Ventures. If it is granted the status of a Sino-foreign joint venture, its foreign-currency income and expenses shall be handled pursuant to the foreign exchange control regulation governing foreign-invested enterprises.

The *Notice Concerning Further Improving Foreign Exchange Control of Overseas-listed Enterprises* (《關於進一步完善境外上市企業外匯管理有關問題的通知》), jointly issued by CSRC and SAFE, took effect on September 1, 2002, and provides that:

- (i) Domestic equity holders of companies with foreign shares listed overseas and of overseas listed companies controlled by Chinese investors shall, within 30 days after obtaining CSRC's approval for issuing and listing shares in foreign countries, fulfill the procedure with SAFE for foreign exchange registration of overseas-listed shares.
- (ii) Companies with foreign shares listed overseas shall, within 30 days after the funds raised have become ready, transfer into China the amount of the funds remaining after deduction of associated costs and expenses, and shall not retain the funds in foreign countries without permission of SAFE. The funds transferred back into China shall be subject to control as if they were funds directly injected by foreign investors and may be kept in earmarked accounts or be used for foreign exchange settlement if approved by SAFE.
- (iii) Foreign-currency funds, obtained by domestic equity holders of companies with foreign shares listed overseas and of overseas listed companies controlled by Chinese investors through reducing holdings of shares in listed companies or through the listed companies' sale of their assets (or equity), shall be transferred back into China within 30 days after the funds become available and after deduction of associated costs and expenses, which may not be detained in foreign countries without approval of SAFE. Foreign exchange settlement shall be made for such funds as approved by SAFE after they are transferred back into China.
- (iv) If overseas accounts are to be opened to temporarily keep the abovementioned foreign-currency funds before they are transferred back into China, application may be made to SAFE for opening such earmarked foreign exchange accounts, of which the maximum term shall be 3 months from the date of account opening.
- (v) Overseas listed companies controlled by Chinese investors who have injected funds raised in China as investment or foreign debts shall fulfill appropriate procedures according to prevailing regulations governing investments, foreign debts and foreign exchange control.
- (vi) The procedure for foreign exchange registration of overseas investment shall be carried out according to regulations for overseas investments of domestic equity holders of overseas listed companies controlled by Chinese investors who inject assets or equity in foreign countries. The asset or equity to be so injected shall be appraised. The amount of the overseas investment shall not be less than the appraised value of the asset or equity to be injected, and the asset appraisal and confirmation procedure prescribed by the state-owned assets administration shall be fulfilled if the investment involves state-owned assets.
- (vii) Companies with foreign shares listed overseas needing to repurchase their own shares listed and circulated in foreign countries shall, after obtaining the approval from CSRC, follow procedures set by SAFE for changing foreign exchange registration of their overseas-listed shares and for approval of opening an overseas account and remittance of funds to foreign countries.

On September 9, 2003, SAFE issued the *Notice Concerning Improving Foreign Exchange Control of Overseas Listings* (《關於完善境外上市外匯管理有關問題的通知》), clarifying relevant issues in the *Notice Concerning Further Improving Foreign Exchange Control of Overseas Listings*.

On February 1, 2005, SAFE issued the *Notice Concerning Foreign Exchange Control of Overseas Listings* (《關於境外上市外匯管理有關問題的通知》), further revising and supplementing the abovementioned notices as follows:

The time limit for domestic equity holders of companies with foreign shares listed overseas and of overseas listed companies controlled by Chinese investors to transfer funds back into China has been extended to “within six months after the funds so raised have become ready”, and for earmarked overseas foreign exchange accounts, the time period has been extended to “two years from the date of account opening.”

On November 9, 2010, the SAFE promulgated the Notice of the State Administration of Foreign Exchange on Relevant Issues Concerning Strengthening the Administration of the Foreign Exchange Business (《關於加強外匯業務管理有關問題的通知》), regulating that the settlement of exchange shall comply with the use of proceeds as disclosed in the prospectus. For the settlement of proceeds over-raised or beyond the use as disclosed in the prospectus, a resolution of the board of directors in relation to the use of exchange settlement shall be submitted separately. If the proceeds are to be settled and paid to the other party to the transaction, they shall not be settled and retained in the party’s own RMB account.