

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

## I. TAXATION IN THE PRC

### 1. Taxes Applicable to Joint-Stock Limited Companies

#### *(1) Enterprise Income Tax*

Under the Enterprise Income Tax Law of the RPC promulgated on March 16, 2007 and effective as of January 1, 2008 (《中華人民共和國企業所得稅法》 the “Enterprise Income Tax”), enterprises that are established inside China are resident enterprise, they shall pay enterprise income tax at the rate of 25% on its incomes derived from both inside and outside China.

Pursuant to the provisions of the State Council, for enterprises that were established prior to the promulgation of the Enterprise Income Tax and enjoyed lower tax rates according to the provisions of the then effective tax laws, administrative regulations or equivalent documents, the preferential income tax rates enjoyed by them shall be gradually transferred to the tax rate set forth in this law within five years after the Enterprise Income Law is promulgated; and enterprises that have enjoyed preferential treatment of tax exemption for a fixed term may continue to enjoy such treatment after the promulgation of this law until the fixed term expires, however, for those that have failed to enjoy the preferential treatment due to failure to make profits, the term of preferential treatment may be counted from 2008.

#### *(2) Business Tax*

Pursuant 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 by the State Council on December 13, 1993, amended on November 5, 2008, and effective as of January 1, 2009 and the Detailed Rules for Implementation of the Provisional Regulations of the People’s Republic of China on Business Tax issued by the MOF and the SAT on December 25, 1993, amended on December 15, 2008 and effective as of January 1, 2009, all entities or individuals providing taxable labor services, transferring intangible assets or selling real estate within the PRC shall pay business tax. Taxable labor services in these two regulations refer to the taxable services in the industries of transport, construction, finance and insurance, post and telecommunications, cultural and sports, entertainment and service; the expression “provision of labor services, transfer of intangible assets or the sale of real estate within the territory of the PRC” as mentioned in these two regulations refers to: (1) the entities or individuals providing or accepting labor services are within the territory of the PRC; (2) the entities or individuals accepting the transferred intangible assets (excluding land use rights) are within the territory of the PRC; (3) the land in respect of which the use right is transferred or leased is within the territory of the PRC; and (4) the real estate sold or leased is within the territory of the PRC.

#### *(3) Value Added Tax (VAT)*

Under 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 by the State Council on December 13, 1993, amended on November 5, 2008 and effective as of January 1, 2009 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》) issued by the MOF and the SAT on December 25, 1993, amended on December 25, 2008 and effective as of January 1, 2009, all entities and individuals selling goods or providing processing or repairing services or importing goods within the territory of the PRC shall pay VAT; general tax payers shall pay VAT at the rate of 13% for 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; general tax payers shall pay VAT at the rate of 17% for selling or importing goods other than the abovementioned items and providing processing or repairing services. The amount of the payable tax which general tax payers shall pay for selling products or providing taxable labor services shall be the difference between the amount of their output tax for the period and the amount of their input tax for the same period.

#### ***(4) Stamp Tax***

Under 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》) promulgated by the State Council on August 6, 1988 and effective as of October 1, 1988 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》) promulgated by the MOF on September 29, 1988 and effective as of October 1, 1988, all entities and individuals executing or receiving taxable documents within the PRC shall pay stamp tax. The scope of taxable documents covers 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 contractual documents, title transfer deeds, business account books, certificates of rights, licenses and other taxable documents specified by the MOF.

## **2. Taxes Applicable to Shareholders of Companies**

### ***(1) Dividend-related Tax***

**For Individual Investors:** Under 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》) adopted by the Standing Committee of the National People's Congress of the PRC, effective as of September 10, 1980, amended for the first time on October 31, 1993, for the second time on August 30, 1999, for the third time on October 27, 2005, for the fourth time on June 29, 2007 and for the fifth time on December 29, 2007 and the Regulation on the Implementation of 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實施條例》) promulgated by the State Council on January 28, 1994 amended for the first time on December 19, 2005, for the second time on February 18, 2008, any and all foreign individuals that are non-Chinese resident shall pay individual income tax at the rate of 20% for any interest, dividend or bonus received by them from any company, other enterprise or other economic organization or natural person in the territory of the PRC.

It is specified in the Circular of the SAT on Issues Concerning the Taxation of Profits from the Transfer of Stocks (Stock Rights) and Dividend Income of Foreign-invested Enterprises, Foreign Enterprises and Foreign Individuals (《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》) (Guo.Shui.Fa [1993] No.045) as promulgated by the SAT on July 21, 1993 and Letter of the SAT on Taxation Issues regarding Dividends Received by Foreign Individuals Holding Shares of China-based Listed Companies (《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》) (Guo.Shui.Han.Fa ([1994] No.440) as promulgated by the SAT on July 26, 1994 that dividends (capital bonuses) received by foreign individuals holding B-shares or overseas shares (including H-shares) from China-based enterprises which issued such shares are temporarily exempted from individual income tax. However, the Circular of Guo.Shui.Fa [1993] No.045 has been repealed by the SAT on January 8, 2011. Currently, some local administrations may be planning to collect individual income tax from non-Chinese resident individuals over their dividend received from China-based listed companies for holding shares (such as H-shares) issued by such companies at foreign stock exchanges.

**For Enterprises:** Under the Enterprise Income Tax Law of the People's Republic of China and the regulations for its implementation, non-resident enterprises having no office or premise inside China, and for a non-resident enterprises whose incomes have no actual connection to its office or premises inside China shall pay enterprise income tax at the rate of 10% on their income received from China. Under 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 SAT on November 6, 2008, enterprise income tax at the rate of 10% shall be levied on dividends of H-shares for 2008 and thereafter years received by any oversea enterprise shareholders that are non-Chinese residents from Chinese resident enterprises. The Response to Questions on Tax over Dividend of B-Shares Received by Non-resident Enterprises (《關於非居民企業取得B股等股票股息徵收企業所得稅問題的批復》) (國稅函[2009]394號) issued by the SAT on July 24, 2009 further provides that any Chinese resident enterprise that publicly issued A-shares, B-shares or overseas shares on stock exchanges in or outside China shall withhold enterprise income tax at the rate of 10% over the dividend of the shares for 2008 or later years distributed by them to non-resident enterprises; if such non-resident enterprise shareholders have the right to enjoy preferential tax treatment under a taxation treaty to which China is a party, the taxation treaty shall be complied in withholding such tax.

## **(2) Capital Gains Tax**

**For Individual Investors:** Under the Law of the People's Republic of China on Individual Income Tax effective on September 10, 1980, amended for the first time on October 31, 1993, for the second time on August 30, 1999, for the third time on October 27, 2005, for the fourth time on June 29, 2007, and for the fifth time on December 29, 2007 and effective as of March 1, 2008 and the Regulation for the Implementation of the Individual Income Tax Law of the People's Republic of China issued by the State Council on January 28, 1994, amended for the first time on December 19, 2005 and for the second time on February 18, 2008 and effective as of March 1, 2008, individuals shall pay individual income tax at the rate of 20% for their incomes from transfer of property. The rules for implementation of the law also provides that the MOF shall draft the measures for collection of individual income

tax over income from transfer of shares, and such measures are subject to the approval of the State Council. However, so far no legislation has expressly provided whether individual income tax shall be collected over the income received by non-Chinese resident individuals from sale of the shares issued by China-based companies listed on overseas stock exchanges, and in practice the taxation administrations never collect individual income tax over such income.

**For Enterprises:** Under the Enterprise Income Tax Law of the RPC and the regulation for its implementation, non-resident enterprises shall pay enterprise income tax at the rate of 10% over their income received by them from the territory of the PRC (including the income from the sale of equity in China-based companies). Therefore, non-resident enterprises shall pay enterprise income tax at the rate of 10% over their income received by them from sale of the shares in the companies listed on overseas stock exchanges. However, in practice, the taxation administrations have not collected such tax over the income received by non-resident enterprises from their transfer of the above-mentioned shares. But, the possibility can not be entirely excluded that taxation administrations will collect enterprise income tax from non-resident enterprises over their income received by them from sale of the shares in the companies listed on overseas stock exchanges by means of withholding.

### 3. PRC Laws and Regulations Related to Foreign Exchange Administration

Strict foreign exchange administration system is applied in the PRC and it has been reformed several times. The Regulation of the People's Republic of China on Foreign Exchange Administration (《中華人民共和國外匯管理條例》) promulgated by the State Council on January 29, 1996 and effective as of April 1, 1996, amended for the first time on January 14, 1997 and for the second time on August 5, 2008 is now the principal foreign exchange legislation and governs receipt and payment by domestic entities and individuals of foreign exchange and their other commercial activities regarding foreign exchange and receipt and payment by overseas entities and individuals in China and their other commercial activities regarding foreign exchange which happen in China. The Regulations on Settlement, Purchase and Payment of Foreign Exchange (《結匯、售匯及付匯管理規定》) issued by the People's Bank of China on June 20, 1996 and effective as of July 1, 1996 provides for some rules and procedures for domestic entities, resident individuals, foreign entities and persons in China settling and purchasing foreign exchange, opening foreign exchange account and paying foreign exchange to outside of China among others.

Under the current Regulation on Foreign Exchange Administration, domestic entities and individuals are allowed to keep foreign exchange and are not required to sell their foreign exchange to the People's Bank of China, and their foreign currency may be deposited outside of China or transferred to China. In China, now the currencies in current account are exchangeable. Enterprises may, according to their requirements, determine to keep their foreign exchange income under the current account or sell them to the financial institutions in the business of settlement and sale of foreign exchanges. To meet requirements for payment of foreign exchange under current account, domestic enterprises may pay such foreign exchange from foreign exchange owned by themselves or from the foreign exchange they purchased from financial institutions in such business. In China, RMB currency under capital account is not yet exchangeable, and the capital account is still regulated strictly. If an overseas entity or individual makes direct investment or issues or trades valuable securities or their derivatives in the PRC, or a domestic entity or individual makes direct investment or

issue or trade valuable securities or their derivatives outside of China, it or he shall go through the procedure for foreign exchange approval and registration. If a domestic enterprise borrows loan from overseas lenders or provides security in favor of an overseas entity or person, it shall go through the procedure for registration of foreign loan and registration of security in favor of a foreign person. Domestic entities or individuals may keep foreign exchange income under the capital account for themselves or sell such income out to a financial institution in the business of settlement and sale of foreign exchange, but both subject to the approval of the relevant foreign exchange administration, unless otherwise provided by a law or national regulation. Foreign exchange fund and the fund for purchasing foreign exchange under the capital account shall be used as approved by the foreign exchange administration and other relevant approval administration.

Managed floating exchange rate system on the basis of market supply and demand is applied to the exchange rate of RMB. The banks appointed by the People's Bank of China to run foreign exchange business shall determine their sales price and purchase price of foreign currencies, handle foreign exchange settlement and sell foreign currencies in accordance with the middle rate of the currencies and the difference between sales and purchase prices published by the People's Bank of China everyday.

In addition, as for the administration of the foreign exchange of the domestic enterprises which are listed on overseas stock exchange, CSRC and SAFE have issued the following provisions:

- (1) The Circular on the Administration of Foreign Exchange of Domestic Enterprises Listed on Overseas Stock Exchanges (《關於境外上市企業外匯管理有關問題的通知》) (Zheng.Jian.Fa.Zi, [1994] No.8) jointly issued by CSRC and SAFE on January 13, 1994 provides that:
  - The fund raised by domestic enterprises through issuing shares on overseas stock exchanges shall fall into the scope of income under capital account, and upon the approval of SAFE, such enterprises may open foreign exchange account and keep such foreign exchange in China.
  - After a domestic enterprise issues shares outside China, it shall, within 10 days after the fund in foreign exchange is received by it, transfer total of such fund into China and deposit such fund into a foreign exchange account as approved by SAFE.
  - When a domestic enterprise needs to distribute dividend or bonus to its overseas shareholders, upon approval by the SAFE, its bank may pay and remit such dividend or bonus from its foreign exchange account, and its other use of foreign exchange shall be handled in accordance with other relevant regulations.
  - 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 net asset, 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 identified as 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.

(2) The Notice Concerning Further Improving Foreign Exchange Control of Overseas-listed Enterprises (《國家外匯管理局、中國證監會關於進一步完善境外上市外匯管理有關問題的通知》(匯發[2002]77號)) jointly issued by CSRC and SAFE on August 5, 2002 and effective as of September 1, 2002 provides that:

- Domestic enterprises listed on overseas stock exchange shall, within 30 days after obtaining CSRC's approval for issuing shares in foreign countries, handle the procedure with SAFE for foreign exchange registration of overseas-listed shares.
- Domestic enterprises listed on overseas stock exchange shall, within 30 days after they have received the funds raised through issue of shares, transfer into China the remaining amount of the funds 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 dedicated accounts or be used for foreign exchange settlement if approved by SAFE.
- Foreign-currency funds, obtained by domestic shareholders of domestic companies with shares listed overseas through selling their shares in the listed companies, shall be transferred back into China within 30 days after the funds become available and after deduction of associated costs and expenses, and such funds shall 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.
- 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 overseas foreign exchange accounts, of which the maximum term shall be 3 months from the date of account opening.
- If domestic enterprises with shares listed overseas need to repurchase their own shares listed and circulated in foreign countries, they 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.

(3) 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》(匯發[2003]108號)) to clarify some relevant issues in the Notice Concerning Further Improving Foreign Exchange Control of Overseas Listings (《關於進一步完善境外上市外匯管理有關問題的通知》(匯發[2002]77號)). 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》(匯發[2005]6號)) to further revise and supplement the abovementioned notices as follows:

- The period within which domestic enterprises listed outside of China shall transfer the funds raised by them into China shall be extended to “6 months after receipt of the funds”, the period within which they may hold an overseas dedicated account for the foreign currency shall be extended to “2 years after opening the account”.
- If foreign-currency funds, obtained by domestic shareholders of domestic companies with shares listed overseas through selling their shares in the companies, will be transferred back into China, they may apply for an approval from their local foreign exchange administration for opening a dedicated account (or using an existing account) to keep the funds. Foreign exchange settlement shall not be made for such funds unless approved by the local foreign exchange administration.

## II. TAXATION IN HONG KONG

### 1. 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 us.

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

### 3. 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.

#### **4. Estate Duty**

The Revenue (Abolition of Estate Duty) Ordinance 2005 came into effect on February 11, 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 February 11, 2006.