

*This Appendix contains a summary of PRC company and securities laws and regulations, certain material differences between the PRC Company Law and Hong Kong Companies Ordinance and additional regulatory provisions introduced by the Hong Kong Stock Exchange in relation to PRC joint stock limited companies. The principal objective is to provide potential investors with an overview of the principal legal and regulatory provisions applicable to our Company. As the information contained below is a summary form, it does not contain all the information that may be important to potential investors.*

## **PRC LEGAL SYSTEM**

The PRC legal system is based on the PRC Constitution and is made up of written laws, regulations, directives and local laws, laws of Special Administrative Regions and laws resulting from international treaties entered into by the PRC government. Court case verdicts do not constitute binding precedents. However, they are used for the purposes of judicial reference and guidance.

The National People's Congress of the PRC ("NPC") and the Standing Committee of the NPC are empowered by the PRC Constitution to exercise the legislative power of the State. The NPC has the power to amend the PRC Constitution and enact and amend basic laws governing State agencies and civil and criminal matters. The Standing Committee of the NPC is empowered to interpret, enact and amend all laws except for the laws that are required to be interpreted, enacted and amended by the NPC.

The State Council is the highest organ of the State administration and has the power to enact administrative rules and regulations. The ministries and commissions under the State Council are also vested with the power to issue orders, directives and regulations within the jurisdiction of their respective departments. All administrative rules, regulations, directives and orders promulgated by the State Council and its ministries and commissions must be consistent with the PRC Constitution and the national laws enacted by the NPC. In the event that a conflict arises, the Standing Committee of the NPC has the power to annul administrative rules, regulations, directives and orders.

At the regional level, the provincial and municipal congresses and their respective standing committees may enact local rules and regulations and the people's governments may promulgate administrative rules and directives applicable to their own administrative areas. These local laws and regulations must be consistent with the PRC Constitution, the national laws and the administrative rules and regulations promulgated by the State Council.

The State Council, provincial and municipal governments may also enact or issue rules, regulations or directives in new areas of the law for experimental purposes. After gaining sufficient experience with experimental measures, the State Council may submit legislative proposals to be considered by the NPC or the Standing Committee of the NPC for enactment at the national level.

The PRC Constitution vests the power to interpret laws in the Standing Committee of the NPC. According to the Decision of the Standing Committee of the NPC Regarding the Strengthening of Interpretation of Laws passed on June 10, 1981, the Supreme People's Court, in addition to its power to give general interpretation on the application of laws in judicial proceedings, also has the power to interpret specific cases. The State Council and its

ministries and commissions are also vested with the power to interpret rules and regulations that they have promulgated. At the regional level, the power to interpret regional laws is vested in the regional legislative and administrative bodies which promulgate such laws.

### **PRC JUDICIAL SYSTEM**

Under the PRC Constitution and the Law of Organization of the People's Courts, the judicial system is made up of the Supreme People's Court, the local people's courts, military courts and other special people's courts. The local people's courts are comprised of the basic people's courts, the intermediate people's courts and the higher people's courts. The basic people's courts are organized into civil, criminal, economic and administrative divisions. The intermediate people's courts are organized into divisions similar to those of the basic people's courts, and are further organized into other special divisions, such as the intellectual property division. The higher level people's courts supervise the basic and intermediate people's courts. The people's procuratorates also have the right to exercise legal supervision over the civil proceedings of people's courts of the same level and lower levels. The Supreme People's Court is the highest judicial body in the PRC. It supervises the administration of justice by all of the people's courts.

The people's courts employ a two-tier appellate system. A party may appeal against a judgment or order of a local people's court to the people's court at the next highest level. Second judgments or orders given at the same level and at the next highest level are final. First judgments or orders of the Supreme People's Court are also final. If, however, the Supreme People's Court or a people's court at a higher level finds an error in a judgment which has been given in any people's court at a lower level, or the presiding judge of a people's court finds an error in a judgment which has been given in the court over which he presides, the case may then be retried according to the judicial supervision procedures.

The Civil Procedure Law of the PRC, which was adopted on April 9, 1991, sets forth the criteria for instituting a civil action, the jurisdiction of the people's courts, the procedures to be followed for conducting a civil action and the procedures for enforcement of a civil judgment or order. All parties to a civil action conducted within the PRC must comply with the Civil Procedure Law. Generally, a civil case is initially heard by a local court of the municipality or province in which the defendant resides. The parties to a contract may, by express agreement, select a jurisdiction where civil actions may be brought, provided that the jurisdiction is either the plaintiff's or the defendant's place of residence, the place of execution or implementation of the contract or the object of the action.

A foreign national or enterprise generally has the same litigation rights and obligations as a citizen or legal person of the PRC. If a foreign country's judicial system limits the litigation rights of PRC citizens and enterprises, the PRC courts may apply the same limitations to the citizens and enterprises of that foreign country within the PRC. If any party to a civil action refuses to comply with a judgment or order made by a people's court or an award granted by an arbitration panel in the PRC, the aggrieved party may apply to the people's court to request enforcement of the judgment, order or award. There are time limits imposed on the right to apply for such enforcement. If at least one of the parties to the dispute is an individual, the time limit is one year. If both parties to the dispute are legal persons or other institutions, the time

limit is six months. If a person fails to satisfy a judgment made by the court within the stipulated time, the court will, upon application by either party, mandatorily enforce the judgment.

A party seeking to enforce a judgment or order of a people's court against a party who is not located within the PRC and does not own any property in the PRC, may apply to a foreign court with proper jurisdiction for recognition and enforcement of the judgment or order. A foreign judgment or ruling may also be recognized and enforced by the people's court according to PRC enforcement procedures if the PRC has entered into, or acceded to, an international treaty with the relevant foreign country, which provides for such recognition and enforcement, or if the judgment or ruling satisfies the court's examination according to the principle of reciprocity, unless the people's court finds that the recognition or enforcement of such judgment or ruling will result in a violation of the basic legal principles of the PRC, its sovereignty or security, or for reasons of social and public interest.

### **THE PRC COMPANY LAW, SPECIAL REGULATIONS AND MANDATORY PROVISIONS**

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

- The PRC Company Law, which was promulgated by the Standing Committee of the NPC on December 29, 1993, took effect on July 1, 1994 and was revised as of December 25, 1999;
- The Special Regulations, which were passed by the State Council on August 4, 1994 pursuant to Articles 85 and 155 of the PRC Company Law; and
- The Mandatory Provisions, which were jointly promulgated by the Securities Committee 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.

Set out below is a summary of the provisions of the PRC Company Law, the Overseas Listing Special Regulations and the Mandatory Provisions applicable to us.

#### **Incorporation**

A company limited by shares may be incorporated by a minimum of five promoters, and at least half of the promoters must reside within the PRC. According to the Special Regulations, State-owned enterprises or enterprises with the majority of their assets owned by the Chinese government can be restructured in accordance with the relevant regulations to become joint stock limited companies which may issue shares to overseas investors. These companies, if incorporated by promotion, may have less than five promoters and can issue new shares once incorporated. We are incorporated under the PRC Company Law as a joint stock limited liability company. This means that we are a legal entity 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.

Under the PRC Company Law, we may invest in other limited liability companies in the PRC. Unless approved by the State Council, the amount of our aggregate investment in other limited liability companies may not exceed 50% of our net assets.

The promoters shall convene an inaugural meeting within 30 days after the issued shares have been fully paid up, and shall give notice to all subscribers or make an announcement of the date of the inaugural meeting 15 days before the meeting. The inaugural meeting may be convened only with the presence of shareholders holding shares representing more than 50% of the voting rights in the company. At the inaugural meeting, matters including the adoption of draft articles of association proposed by the promoter(s) and the election of the board of directors and the supervisory committee of the company will be dealt with. All resolutions of the meeting require the approval of subscribers with at least half of the voting rights present at the meeting.

Within 30 days after the conclusion of the inaugural meeting, the board of directors shall apply to the registration authority for registration of the establishment of the company. A company is formally established, and has the status of a legal person, after the business license has been issued by the relevant administration for industry and commerce and a. Companies established by the public subscription method shall file a report on the offer of shares with the securities administration department of the State Council for record.

A company's promoters shall be liable for: (i) the payment of all expenses and liabilities incurred in the incorporation process jointly and severally if the company cannot be incorporated; (ii) the repayment of subscription monies to the subscribers, together with interest, at bank rates for a deposit of the same term jointly and severally if the company cannot be incorporated; and (iii) damages suffered by the company as a result of the default of the promoters in the course of incorporation of the company. According to the Provisional Regulations Concerning the Issuance and Trading of Shares promulgated by the State Council on April 22, 1993 (which is only applicable to issuance and trading of shares in the PRC and their related activities), if a company is established by means of public subscription, the promoters of such company are required to assume joint responsibility for the accuracy of the contents of the Prospectus and to ensure that the Prospectus does not contain any misleading statement or omit any material information.

### **Establishment Procedures**

After receiving approval from the PBOC, our Board submitted an application, which included the approval certificate, our Articles of Association and a capital verification report, to the State Administration of Industry and Commerce. The State Administration of Industry and Commerce issued our business license on March 21, 1988.

### **Registered Capital**

Our registered capital is equal to the amount of our paid-in capital as recorded at the State Administration of Industry and Commerce. The minimum registered capital of a joint stock limited liability company is RMB10,000,000. As a company authorized by the CSRC to list our Shares on the Hong Kong Stock Exchange, we are required to have a registered capital of not less than RMB50,000,000.

**Allotment and Issue of Shares**

All of our Share issues are based on the principles of transparency, equality and fairness. The same class of shares must carry equal rights. For each Share issue, the terms of allotment for individual shares, including the subscription price, must be identical to other Shares of the same class. We may issue Shares at par value or at a premium, but we may not issue Shares below the par value.

We must obtain the approval of the CSRC to offer our Shares to the overseas public. Under the Special Regulations, upon approval of the Securities Commission, a company may agree, in the underwriting agreement with respect to an issue of overseas listed foreign invested shares, to retain not more than 15% of the aggregate number of overseas listed foreign invested shares proposed to be issued after accounting for the number of underwritten shares.

**Registered or Bearer Shares**

The promoters may make capital contributions in cash, in kind or by way of injection of assets, industrial property rights, non-patented technology or land use rights based on their appraised value. The amount of investment made in the form of industrial property rights and non-patented technology may not exceed 20% of the registered capital of the company except where special state regulations in respect of the application of high and new technological achievement provide otherwise. Shares that we issue to 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 the territories of Hong Kong, Macau and Taiwan and listed in Hong Kong are known as “overseas listed foreign shares”. Within the PRC, all Shares that we issue to a promoter, State-designated investment institution or legal person must be in registered form. Shares that we issue to the public in China, however, may be in either registered or bearer form.

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 became holders of the relevant Shares are required to be entered into the register.

We are also required to record the amount of bearer shares issued, the number designated to each bearer share and the date of issue of each bearer share.

**Increase of Share Capital**

We may increase our Share capital by issuing new Shares only if we satisfy the following conditions:

- the immediately preceding Share issue was subscribed for in full, and at least one year has elapsed since the date of the immediately preceding Share issue, unless we increase our Share capital by way of an issue of overseas listed foreign shares, in which case the time period may be less than 12 months;
- we have made a profit in each of the three financial years preceding the public offer of shares and are in a position to distribute dividends to our shareholders;

- our financial and accounting statements for the three preceding financial years do not contain any false information; and
- our expected dividend is greater than or equal to the interest rate of bank deposits for the same period.

We must obtain our shareholders' approval to issue new Shares. After the shareholders' have approved a new issue, our Board must obtain the approval of the authorized department of the State Council or of the provincial people's government. If we issue Shares by way of a public offering, we must also obtain the approval of the relevant securities administration authority. After we complete a subscription of new Shares, we must register the increase in registered capital with the State Administration of Industry and Commerce and issue a public notice.

### **Reduction of Share Capital**

Subject to minimum registered capital requirements, we may reduce our registered capital in accordance with the following procedures:

- we must prepare a current balance sheet and financial statement;
- our shareholders must approve the reduction of registered capital in a general meeting;
- once the resolution approving the reduction has been passed, we must inform our creditors of the reduction in capital within 10 days and publish an announcement of the reduction in a newspaper at least three times within 30 days;
- our creditors may, within the statutory prescribed time limit, require us to pay our debts or provide guarantees covering such debts;
- we must register the reduction in registered capital with the State Administration of Industry and Commerce; and
- we must obtain necessary approvals from all relevant supervisory authorities.

### **Repurchase of Shares**

We may only repurchase our Shares to (i) reduce our registered share capital, (ii) to merge with another company that holds our Shares or (iii) for any other purpose permitted by law and relevant administrative regulations. The Mandatory Provisions stipulate that we must act in accordance with our Articles of Association and that we must obtain necessary approvals from any relevant supervisory authorities. We may repurchase our Shares by making a general offer to our shareholders, by purchasing our Shares on a stock exchange or by purchasing our Shares through an off-market contract.

After repurchasing our Shares, we are required to cancel the portion of our Shares that have been repurchased, change our registration particulars and issue a public notice within 10 days.



**Transfer of Shares**

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

Any Shares that are held by our Directors, Supervisors or managers may not be transferred during their respective terms of office.

The PRC Company Law does not limit the shareholding percentage of an individual shareholder.

Transfers of shares may not be entered in the register of shareholders within 30 days before the date of a shareholders' meeting or within five days before the record date set for the purpose of distribution of dividends.

**Shareholders**

Under the PRC Company Law and the Mandatory Provisions, our shareholders are entitled to the following rights:

- to attend and vote in person or to appoint a proxy to attend and vote on his or her behalf at a general meeting;
- to receive dividends and distributable benefits in other forms in proportion to his or her shareholding;
- to inspect our Articles of Association, minutes of shareholders' meetings and financial reports and to put forward proposals and to ask questions relating to our operations;
- to transfer our Shares on the Hong Kong Stock Exchange in accordance with any applicable laws;
- to initiate legal proceedings in the people's court if a resolution passed at a shareholders' meeting or Board meeting infringes applicable law or administrative rules or the legitimate interests of our shareholders;
- to receive surplus assets of the company upon its termination in proportion to his or her shareholding; and
- any other shareholders' rights specified in the company's articles of association.

The obligations of a general shareholder include (i) the obligation to abide by the company's articles of association, (ii) to pay the subscription monies in respect of the shares subscribed for, (iii) to be liable for the company's debts and liabilities to the extent of the amount of subscription monies agreed to be paid in respect of the shares taken up by such shareholder and (iv) any of the shareholders' obligations specified in the company's articles of association.

Our shareholder's liability is limited to the amount of Shares each shareholder holds.

**Shareholders' General Meetings**

Our shareholders may exercise the following powers in a general meeting:

- determine our business policies and investment plans;
- elect or remove our Directors and fix the remuneration of our Directors;
- elect or remove our Supervisors who are representatives of the shareholders and fix the remuneration of our Supervisors;
- consider and approve the reports of our Board and our Supervisory Committee;
- consider and approve our annual financial budget and accounting plans;
- consider and approve our profit distribution plan and plans for recovery of losses;
- approve an increase or reduction in our share capital;
- approve an issue of bonds;
- approve a merger, division, dissolution or liquidation;
- approve the appointment and removal of our auditors;
- consider and approve resolutions submitted by shareholders holding 5% or more of our voting rights;
- approve amendments to our Articles of Association.

Shareholders' general meetings are divided into annual general meetings and extraordinary shareholders' general meetings. An annual general meeting must be held once every year. Our Board is required to convene an extraordinary shareholders' general meeting within two months after the occurrence of any of the following circumstances:

- the number of Directors on our Board is less than two-thirds of the number required under the PRC Company Law or our Articles of Association;
- our accumulated losses amount to one-third of our total share capital;
- upon a request by holders of not less than 10% of our Shares; or
- the Board or the Supervisory Committee considers such a meeting necessary.

A shareholders' general meeting is convened by the Board and presided over by the chairman of the Board. Under the Special Regulations and the Mandatory Provisions, we are required to give 45 days' notice of a shareholders' general meeting and this notice must specify the matters to be considered and the date and place of the meeting. If we have bearer Shares in issue, we must make a public announcement of the shareholders' general meeting at least 45 days prior to the meeting being held. Under the Special Regulations and the Mandatory Provisions, shareholders who plan to attend a shareholders' general meeting are required to provide us with a written confirmation of their intentions 20 days prior to the meeting. Shareholders holding 5% or more of our voting rights are entitled, under the Special Regulations, to submit written resolutions to be considered at an annual general meeting. Any proposed resolutions that can be decided at a shareholders' general meeting must be included in the agenda of that meeting.



The Special Regulations and the Mandatory Provisions provide that a general meeting of our shareholders may be held if shareholders holding 50% or more of our voting rights have confirmed in writing 20 days prior to the proposed date of the meeting that they intend to attend the meeting. If this 50% minimum is not attained, a shareholders' general meeting may only be held if, within five days after the deadline for confirming attendance, we notify the shareholders by public announcement of the matters to be considered and the date and place of the meeting.

Each shareholder present at a shareholders' general meeting is entitled to one vote for each Share held. A shareholder may appoint a proxy to attend and vote on his behalf at a shareholders' general meeting. Ordinary resolutions proposed at a shareholders' general meeting generally must be passed by more than half of the votes cast by shareholders present in person or by proxy. However, special resolutions and the following actions must be approved by more than two-thirds of the votes cast by shareholders present in person or by proxy: (i) amendments to our Articles of Association; (ii) a merger, division or dissolution; (iii) an increase or reduction of capital or the issue of any class of Shares, bonds and securities; and (iv) other matters which the shareholders' general meeting has resolved by way of ordinary resolution as having a potential material effect on us as a company and should be approved by special resolution.

In the event of a variation or abrogation of the rights of a particular class of shareholders, the Mandatory Provisions require us to hold a special class meeting. Holders of our Domestic Shares and holders of our H Shares are deemed to be different classes of shareholders.

## **Board**

Our Articles of Association provide that our Board may consist of up to twelve Directors. The term of office for our Directors is determined by our Articles of Association but may not exceed three years. Our Directors are allowed to serve consecutive terms if re-elected. Our Board of Directors may exercise the following powers:

- convene shareholders' meetings and report to the shareholders;
- implement resolutions passed by shareholders in general meetings;
- decide on our business plans and investment plans;
- formulate annual budgets and accounts;
- formulate profit distribution plans and plans for recovery of losses;
- formulate plans for a merger, demerger or dissolution;
- formulate plans for the increase or decrease in our registered capital or plans for the issue of bonds;
- decide on our internal management structure;
- appoint or dismiss our managers, and at the recommendation of a manager, employ or dismiss deputy managers and financial controllers and to fix their remuneration; and
- decide on a management control system.

In addition, the Mandatory Provisions provide that our Board is also responsible for formulating proposals for amending our Articles of Association.

**Board Meetings**

Our Board holds regular meetings at least twice every year. Notice of the regular board meetings is given at least 10 days before the date of the meeting. Our Board may determine the notice period and manner for extraordinary Board meetings.

Our Articles of Association require that more than half of our Directors must be present to convene a meeting. A Director may attend a Board meeting personally or may appoint another Director to attend on his behalf. All Board resolutions must be passed by the affirmative votes of more than half of the Directors. All resolutions passed at a board meeting must be recorded in the minutes of the relevant meeting and the minutes must be signed by the Directors in attendance at the meeting and the person who recorded the minutes. If a Board resolution contravenes any applicable laws or regulations or our Articles of Association and results in substantial damages to us as a company, the Directors who participated in passing the resolution (except those who voted against the resolution and whose dissenting vote was recorded in the relevant minutes) are personally liable to us.

**Chairman of our Board**

Our chairman is elected by a vote of our Board and must be approved by more than half of the Directors. The chairman is our legal representative and may exercise the following powers:

- presides over shareholders' general meetings and convenes and presides over meetings of the Board;
- examines the implementation of resolutions of the Board; and
- signs Share certificates and bonds issued by us.

**Non-Executive Directors and Independent Directors**

No less than half of our Directors must be non-executive Directors and there must be at least two independent Directors on our Board.

- We are required to provide non-executive Directors with the necessary information and documentation for them to fulfill their responsibilities. The opinions expressed by any independent Director will be recorded in the Board minutes.
- Connected Transactions will be endorsed by an independent director before they can become effective. Two or more independent directors may propose the convening of an interim general shareholders' meeting.
- Independent Directors may directly report unusual circumstances to the general shareholders' meeting, the CSRC and other relevant regulatory authorities.

**Qualification of Directors**

The PRC Company Law provides that the following persons may not serve as one of our Directors:

- a person who is unable or has limited ability to undertake any civil liabilities;
- a person who has been convicted of an offence relating to bribery, corruption, appropriation of property, or the destruction of social economic order, where less than five years have elapsed since the date of completion of the sentence;
- a person who has been deprived of his political rights, where less than five years have elapsed since the completion of such deprivation;
- a person who is a Director, factory manager or manager of a company or enterprise that has become bankrupt and has been liquidated due to mismanagement, and who is personally liable for the bankruptcy or liquidation of such company or enterprise, where less than three years have elapsed since the date of the completion of the liquidation of the company or enterprise;
- a person who has been a legal representative of an enterprise that has had its business license revoked because of unlawful operations and the person is personally responsible for such revocation, where less than three years has elapsed since the date of such revocation;
- a person who is liable for a relatively large amount of debt which has not been repaid when due; or
- a person who is a State civil servant.

Other circumstances under which a person is disqualified from acting as a Director are set out in our Articles of Association and the Mandatory Provisions.

**Supervisory Committee**

We are required to establish a Supervisory Committee comprised of at least three members. The Supervisory Committee is responsible for the following matters:

- examining our financial affairs;
- supervising our Directors and managers to ensure that they carry out their duties in compliance with the relevant laws and regulations and our Articles of Association;
- requiring our Directors and managers to rectify any action which adversely affects our interests;
- proposing the convening of extraordinary shareholders' general meetings; and
- carrying out other duties as specified in our Articles of Association.

**Our Supervisors are required to attend our board meetings**

Under our Articles of Association, the affirmative vote of a majority of our Supervisors is required to pass resolutions of the Supervisory Committee.

Members of the Supervisory Committee include representatives elected by our workers and representatives elected by our shareholders in a general meeting. Our Directors, managers and financial controller may not serve as a Supervisor. The term of office for our Supervisors is three years and a Supervisor may serve consecutive terms if re-elected. The circumstances under which a person is disqualified from acting as a Director under the PRC Company Law and the Mandatory Provisions also apply to a Supervisor.

### **Manager and Officers**

We are required to have a manager who is appointed, and may be removed, by the Board. Our manager is accountable to the Board and may exercise the following powers:

- supervise our production, business and administration and implement resolutions of our Board;
- organize the implementation of our business and investment plans;
- formulate plans for the establishment of our internal management structure;
- formulate our basic administration system;
- formulate our internal rules;
- recommend the appointment and dismissal of deputy managers and the financial controller and appoint or dismiss other administrative officers (other than those required to be appointed or dismissed by our Board);
- attend board meetings; and
- other powers conferred by our Board or our Articles of Association.

The Special Regulations require us to employ other corporate officers, including a financial controller and company secretary.

The circumstances under which a person is disqualified from acting as a Director under the PRC Company Law and the Mandatory Provisions also apply to our manager and other senior officers.

The articles of association of a company shall have binding effect on the shareholders, directors, supervisors, managers and other executives of the company. Such persons shall be entitled to exercise their rights, apply for arbitration and issue legal proceedings according to the articles of association of the company. The provisions of the Mandatory Provisions regarding the senior management of a company have been incorporated in the Articles of Association (a summary of which is set out in Appendix VII).

### **Duties of Directors, Supervisors, Managers and Officers**

Our Directors, Supervisors, manager and officers are required under the PRC Company Law to comply with the relevant laws and regulations, to comply with our Articles of Association, to carry out their duties honestly and to protect our interests. The Special Regulations and the Mandatory Provisions provide that our Directors, Supervisors, manager and officers owe a fiduciary duty to us, and require them to perform their duties faithfully, protect our corporate interests and not abuse their positions for personal gain. Our Directors,

Supervisors, manager and officers are also under a duty of confidentiality and are prohibited from divulging certain information unless required by applicable laws or regulations or by our shareholders.

If a Director, Supervisor, manager or officer contravenes any law, regulation or our Articles of Association in the performance of his duties and such contravention results in a loss to us, the respective individual will be held personally liable to us for such loss.

### **Finance and Accounting**

We are required to establish a financial and accounting system which must comply with relevant laws and regulations as well as rules stipulated by the Ministry of Finance and the State Council.

We are also required to prepare financial statements at the end of each financial year. These financial statements include our balance sheet, profit and loss account, a statement on financial status and changes of financial status and a profit distribution statement. We are required to make our financial statements available for inspection by our shareholders at least 20 days prior to our annual general meeting. We must also publish our financial statements by way of public announcement.

We are required by PRC law to make the following transfers from our after-tax profit before we distribute any profits to our shareholders:

- 10% of our after-tax profit must be transferred to our statutory common reserve fund, provided that no transfer is required if our accumulated statutory common reserve fund exceeds 50% of our registered capital;
- between 5% and 10% of our after-tax profit must be transferred to the statutory public welfare fund; and
- subject to our shareholders' approval in a general meeting and after transfer of the requisite amount to the statutory common reserve fund, a discretionary amount from our after-tax profit must be transferred to the discretionary common reserve.

Any balance of the after-tax profit after making-up losses and transfers to the common reserve and statutory public welfare funds may be distributed to our shareholders in proportion to their respective shareholdings.

If the amount in our statutory common reserve fund is insufficient to make up for losses from the previous year, our profits in the current year must be applied to make up for such losses before we make allocations to the statutory common reserve fund and the statutory public welfare fund.

Our common reserve consists of the statutory common reserve fund, discretionary common reserve fund and the capital common reserve fund. Our capital common reserve fund is made up of the premium over the nominal value of our Shares. Other amounts required by the relevant governmental financial authority are to be treated as the capital common reserve fund.

Our common reserve must be applied for the following purposes:

- to make up for any losses;
- to expand our business operations; and
- to pay up our registered share capital by new Share issues to shareholders in proportion to their existing shareholdings, or by increasing the par value of the shares currently held by the shareholders, provided that if the statutory common reserve is converted into registered capital, the balance of the statutory common reserve after such conversion may not be less than 25% of our registered capital.

The statutory public welfare fund must be applied for the collective welfare of our employees.

### **Appointment and Retirement of Auditors**

The Special Regulations require us to employ an independent PRC qualified firm of accountants to audit our annual financial statements and review certain other financial reports.

The auditors are to be appointed for a term commencing from their appointment at an annual general meeting to the close of the next annual general meeting.

If we remove or fail to renew the appointment of our existing auditors, we are required by the Special Regulations to give prior notice to the auditors and the auditors are entitled to make representations before our shareholders in a general meeting. If our auditors resign, they are obligated to make a statement to the shareholders stating whether or not we have undertaken any inappropriate transactions. The appointment, removal or nonrenewal of appointment of auditors is decided by our shareholders and must be recorded with the CSRC.

### **Distribution of Profits**

The Special Regulations provide that dividends and other distributions payable to holders of our H Shares must be declared and calculated in Renminbi and paid in a foreign currency. Under the Mandatory Provisions, the payment of dividends and other distributions in foreign currency to these shareholders must be made through a receiving agent appointed by us for holders of H shares.

### **Amendments to Articles of Association**

Our Articles of Association may only be amended by an affirmative vote of more than two-thirds of our shareholders at a general meeting. An amendment to our Articles of Association will only take effect after we have obtained any necessary approvals from relevant regulatory and administrative agencies. If an amendment to our Articles of Association affects the information in our business registration, we must apply to the related government department to change the relevant details in the license.

### **Merger and Division**

Our shareholders must approve all mergers and divisions. We may also need to seek government approval for a merger or division. In the PRC, a merger may be effected either by



way of absorption followed by the dissolution of the company being absorbed or by the establishment of a new entity followed by the dissolution of the original entities.

If our shareholders approve a proposed merger, we are required to sign a merger agreement and to prepare our balance sheet and an inventory of assets. We must notify our creditors of the merger within 10 days and publicly announce the merger in the newspapers at least three times within 30 days after the resolution approving the merger has been passed. Our creditors are allowed, within a certain time period, to request us to repay any outstanding indebtedness or provide guarantees covering such indebtedness. If we are unable to repay our debts or provide such guarantees, we may be prohibited from proceeding with the merger.

In the case of a division, we are likewise required to prepare our balance sheet and an inventory of assets and to notify our creditors. Our creditors are again entitled to ask us to repay or guarantee any outstanding indebtedness and our inability to do so may prevent the consummation of the division.

### **Dissolution and Liquidation**

Under the PRC Company Law and Mandatory Provisions, we will be dissolved and liquidated if any of the following events occur:

- (i) our term of operations as stipulated in our Articles of Association has expired;
- (ii) the occurrence of any event in our Articles of Association which specifically triggers our dissolution;
- (iii) our shareholders in a general meeting agree to our dissolution by special resolution;
- (iv) a merger or division that requires our dissolution;
- (v) the declaration of our insolvency as a result of our inability to pay our debts when they become due and payable; or
- (vi) we have been ordered to close down as a result of a violation of the law or administrative regulations.

If we are dissolved in the circumstances referred to in (i) through (iii) above, in a general meeting our shareholders must, within 15 days of the occurrence of the event, appoint the members of a liquidation committee. If the liquidation committee is not established within the specified time, our creditors may apply to the people's court to appoint the members of the liquidation committee. The people's court will then organize a liquidation committee to conduct the liquidation. If we are dissolved in the circumstances described in (v) or (vi) above, the people's court or relevant administrative authorities shall supervisor the liquidation committee, which consists of shareholders, the relevant government authorities and the relevant professional personnel.

A liquidation committee is required to notify our creditors of our dissolution within 10 days after its establishment and issue a public announcement of our dissolution at least three times within 60 days after its establishment. A creditor is required to lodge its claim with the liquidation committee within the statutory time limit.

The liquidation committee shall exercise the following powers during the liquidation period:

- sort out the company's assets and to prepare a balance sheet and an inventory of the assets;
- notify creditors or issue public notices;
- dispose of and liquidate any unfinished businesses of the company;
- pay all outstanding taxes;
- settle the company's financial claims and liabilities;
- deal with the surplus assets of the company after its debts have been paid off; and
- represent the company in civil lawsuits.

In the event of a dissolution, our assets will be applied to pay all expenses incurred in connection with the liquidation, employee wages, employees' insurance, tax and our general indebtedness. Any surplus assets will be distributed to our shareholders in proportion to their respective shareholdings. If our assets are insufficient to repay or discharge our indebtedness, the liquidation committee will apply to the people's court for a declaration of insolvency and will transfer the liquidation proceedings to the people's court.

If we are involved in liquidation proceedings, we will not be allowed to engage in any new business operations.

Upon completion of the liquidation process, the liquidation committee is required to submit a liquidation report to our shareholders in a general meeting and to the relevant administrative department for confirmation. The liquidation committee is also required to apply to the Administration of Industry and Commerce for the cancellation of our registration and to make a public announcement of our dissolution following such cancellation.

Members of the liquidation committee are required to discharge their duties honestly and in compliance with laws. A member of the liquidation committee is liable to us and our creditors in respect of any loss arising from his willful or material default.

### **Overseas Listing**

We must obtain the approval of the CSRC to list our Shares overseas. An overseas listing of our Shares must comply with the Special Regulations.

According to the Special Regulations and the Mandatory Provisions, our Board must implement our plan to issue the H Shares and Domestic Shares within 15 months after the CSRC has approved our application.

### **Loss of Share Certificates**

If a Share certificate in registered form of our domestic shares is either lost, stolen or destroyed, the respective shareholder may apply, in accordance with the relevant provisions set out in the PRC Civil Procedure Law, to a people's court for a declaration that such certificate will no longer be valid. After obtaining the declaration, the shareholder may apply to us for a replacement certificate.

A separate procedure regarding the loss of H Share certificates is provided for in the Mandatory Provisions, which has been incorporated into our Articles of Association, a summary of which is set out in Appendix VII to this Prospectus.

### **Suspension and Termination of Listing**

We may have our listing on the Hong Kong Stock Exchange suspended by the securities administration department of the State Council if any of the following events occur:

- (i) our registered capital or the distribution of our Shares no longer complies with the relevant listing requirements;
- (ii) we have failed to disclose our financial position in accordance with the relevant law and regulations or our financial report contains false information;
- (iii) we have committed a material breach of the law; or
- (iv) we have incurred losses for three consecutive years.

If the circumstances referred to in (ii) or (iii) above have occurred and are considered serious, or if the circumstances referred to in (i) or (iv) above have occurred and the situation has not been rectified within the time stipulated, the securities administration department of the State Council may terminate the listing of our Shares.

The securities administration department of the State Council may also terminate the listing of our Shares if we have resolved to be wound up or are ordered by the relevant governmental authority to be dissolved, or if we are declared insolvent.

### **SECURITIES LAW AND REGULATIONS**

The PRC has promulgated a number of regulations that relate to the issue and trading of our Shares and disclosure of information by us. In early 1993, the State Council established the Securities Committee and the CSRC. The Securities Committee is responsible for co-ordinating the drafting of securities regulations, formulating securities-related policies, planning the development of securities markets, directing, coordinating and supervising all securities-related institutions in the PRC and administering the CSRC. The CSRC is the regulatory arm of the Securities Committee and is responsible for the drafting of regulatory provisions of securities markets, supervising securities companies, regulating public offers of securities by PRC companies in the PRC or overseas, regulating the trading of securities, compiling securities-related statistics and undertaking research and analysis.

On April 22, 1993, the State Council promulgated the Provisional Regulations Concerning the Issuance and Trading of Shares (the "Securities Provisional Regulations"). These regulations deal with the application and approval procedures for public offerings of equity securities, trading in equity securities, the acquisition of listed companies, deposit, settlement, clearing and transfer of listed equity securities, the disclosure of information with respect to a listed company, investigation and penalties and dispute settlement. According to these regulations, we must obtain the approval of the Securities Committee to offer our Shares outside the PRC. In addition, if we propose to issue Renminbi denominated ordinary shares as well as special Renminbi-denominated shares, we must comply with the Securities Provisional Regulations. Provisions of these regulations in relation to acquisitions of listed companies and

disclosure of information expressly apply to listed companies in general without being confined to listed companies on any particular stock exchange.

On September 2, 1993, the Securities Committee promulgated the Provisional Measures Prohibiting Fraudulent Conduct Relating to Securities. The prohibitions imposed by these measures include the use of insider information in connection with the issuance of, or trading in, securities (insider information being defined to include undisclosed material information known to any insider, which may affect the market price of securities); the use of funds or information or through an abuse of power in creating a false or disorderly market or influencing the market price of securities or inducing investors to make investment decisions without knowledge of actual circumstances; and the making of any statement in connection with the issue of, and trading in, securities which is false or materially misleading, or in respect of which there is any material omission. Penalties imposed for contravening any of the provisions of the measures include fines, confiscation of profits and suspension of trading. In serious cases, criminal liability may be imposed.

On December 25, 1995, the State Council promulgated the Regulations of the State Council Concerning Domestic Listed Foreign Shares of Joint Stock Limited Liability Companies. These regulations deal mainly with the issue, subscription, trading and declaration of dividends and other distributions of domestic listed foreign shares and disclosure of information of joint stock limited liability companies having domestic listed foreign shares.

The Securities Law took effect on July 1, 1999. This is the first national securities law in the PRC, and it is divided into 12 chapters and 214 articles regulating, among other things, 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 Securities Law comprehensively regulates activities in the PRC securities market. Article 29 of the Securities Law provides that we must obtain prior approval from the State Council's regulatory authorities to list our Shares outside the PRC. Article 213 of the Securities Law provides that specific measures in respect of shares of companies in the PRC which are to be subscribed and traded in foreign currencies by a person or organization outside the PRC shall be separately formulated by the State Council. Currently, the issue and trading of foreign issued shares (including H Shares) are still mainly governed by the rules and regulations promulgated by the State Council and the CSRC.

In order to promote strict compliance of "companies listed outside China" ("Listed Companies") with the relevant domestic and foreign laws and regulations, their conscientious performance of their continuing obligations toward investors and their establishment of a good corporate image on domestic and foreign capital markets, SETC and the CSRC jointly issued the Further Standardizing Operations and Reform of Companies Listed Outside China Opinion ("Standardizing Opinion") on March 29, 1999. The Standardizing Opinion requires us to specify our decision-making process, strengthen director responsibility, establish a sound external and independent director system, strengthen the functions of our supervisory board and secretary of the Board, explore methods to motivate our senior management personnel and intensify our internal reform.

**ARBITRATION AND ENFORCEMENT OF ARBITRAL AWARDS**

The Arbitration Law of the People's Republic of China (the "Arbitration Law") was passed by the Standing Committee of the NPC on August 31, 1994 and became effective on September 1, 1995. It is applicable to, among other matters, trade disputes involving foreign parties where the parties have entered into a written agreement to refer the matter to arbitration before an arbitration committee constituted in accordance with the Arbitration Law. Under the Arbitration Law, an arbitration committee may, before the promulgation by the PRC Arbitration Association of arbitration regulations, formulate interim arbitration rules in accordance with the Arbitration Law and the PRC Civil Procedure Law. Where the parties have by agreement provided arbitration as the method for dispute resolution, the people's court will refuse to handle the case.

The Listing Rules and the Mandatory Provisions require an arbitration clause to be included in our Articles of Association and, in the case of the Listing Rules, also in contracts with each of our Directors and Supervisors, to the effect that whenever any disputes or claims arise between holders of our H Shares and us; holders of our H Shares and our Directors, Supervisors, manager or other senior officers; or holders of our H Shares and holders of Domestic Shares, in respect of any disputes or claims in relation to our affairs or as a result of any rights or obligations arising under our Articles of Association, the PRC Company Law or other relevant laws and administrative regulations, such disputes or claims shall be referred to arbitration.

Where a dispute or claim of rights referred to in the preceding paragraph is referred to arbitration, the entire claim or dispute must be referred to arbitration, and all persons who have a cause of action based on the same facts giving rise to the dispute or claim or whose participation is necessary for the resolution of such dispute or claim, shall comply with the arbitration. Disputes in respect of the definition of shareholders and disputes in relation to our register of shareholders need not be resolved by arbitration.

A claimant may elect for arbitration to be carried out at either the China International Economic and Trade Arbitration Commission in accordance with its Rules or the Hong Kong International Arbitration Center in accordance with its Securities Arbitration Rules. Once a claimant refers a dispute or claim to arbitration, the other party must submit to the arbitral body elected by the claimant. If the claimant elects for arbitration to be carried out at the Hong Kong International Arbitration Center, any party to the dispute or claim may apply for a hearing to take place in Shenzhen in accordance with the Securities Arbitration Rules of the Hong Kong International Arbitration Center.

Under the Arbitration Law and PRC Civil Procedure Law, an arbitral award is final and binding on the parties. If a party fails to comply with an award, the other party to the award may apply to the people's court for enforcement. A people's court may refuse to enforce an arbitral award made by an arbitration commission if there is any procedural or membership irregularity specified by law or the award exceeds the scope of the arbitration agreement or is outside the jurisdiction of the arbitration commission.

A party seeking to enforce an arbitral award of PRC arbitration panel against a party who, or whose property, is not within the PRC, may apply to a foreign court with jurisdiction over the case for enforcement. Similarly, an arbitral award made by a foreign arbitration body may be

recognized and enforced by the PRC courts in accordance with the principles of reciprocity or any international treaty concluded or acceded to by the PRC. The PRC acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “New York Convention”) adopted on June 10, 1958 pursuant to a resolution of the Standing Committee of the NPC passed on December 2, 1986. The New York Convention provides that all arbitral awards made in a state which is a party to the New York Convention shall be recognized and enforced by other parties to the New York Convention, subject to their right to refuse enforcement under certain circumstances, including where the enforcement of the arbitral award is against the public policy of the state to which the application for enforcement is made. It was declared by the Standing Committee of the NPC simultaneously with the accession of the PRC that (i) the PRC will only recognize and enforce foreign arbitral awards on the principle of reciprocity and (ii) the PRC will only apply the New York Convention in disputes considered under PRC laws to arise from contractual and non-contractual mercantile legal relations. On June 18, 1999, an arrangement was made between Hong Kong and the Supreme People’s Court of the PRC for the mutual enforcement of arbitral awards. This new arrangement was approved by the Supreme People’s Court of the PRC and the Hong Kong Legislative Council, and became effective on February 1, 2000. The arrangement is made in accordance with the spirit of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958. Under the arrangement, awards made by PRC arbitral authorities recognized under the Arbitration Ordinance of Hong Kong can be enforced in Hong Kong. Hong Kong arbitration awards are also enforceable in China.

## **FOREIGN EXCHANGE CONTROL**

The foreign exchange control system is regulated by three sets of provisions. On December 28, 1993, the PBOC, with the authorization of the State Council, issued the Notice to Further Reform of the Foreign Exchange Control System, which became effective on January 1, 1994. Other main regulations and implementation measures include the PRC Foreign Exchange Control Regulations, which became effective on April 1, 1996 and was promulgated by the State Council on January 29, 1996 and amended on January 14, 1997, and the Regulations on the Foreign Exchange Settlement, Sale and Payments, which were promulgated by the PBOC on June 20, 1996 and became effective on July 1, 1996 and which contain detailed provisions regulating the settlement, sale and payment of foreign exchange by domestic enterprises, individuals, economic organizations and social organizations in the PRC.

The PBOC publishes, on each business day, the Renminbi exchange rate against other major foreign currencies. Such rate is set by reference to the previous days’ trading price of Renminbi/major foreign currencies on the inter-bank foreign exchange market.

In general, all organizations and individuals within the PRC are required to sell their recurrent foreign exchange earnings to designated banks unless they have received a specific waiver. Foreign-invested enterprises, on the other hand, are permitted to retain a certain percentage of their recurring foreign exchange earnings and the sums retained may be deposited into foreign exchange bank accounts maintained with designated banks. Capital foreign exchange must be deposited into foreign exchange bank accounts maintained with designated banks and can generally be retained in such accounts.



At present, the Chinese government is relaxing its control over foreign exchange. Enterprises that require foreign exchange for recurring activities such as trading and payment of staff remuneration may purchase foreign exchange from designated banks, subject to the production of relevant supporting documents.

In addition, where an enterprise requires foreign exchange for the payment of dividends, such as the distribution of profits by a foreign-invested enterprise to its foreign investor, then, subject to the due payment of taxes on such dividends, the amount required may be withdrawn from funds in foreign exchange accounts maintained with designated banks, and where the amount of the funds in foreign exchange is insufficient, the enterprise may purchase additional foreign exchange from designated banks.

Despite the relaxation of foreign exchange control over current account transactions, the approval of the SAFE is still required before an enterprise may receive a foreign currency loan, provide a foreign exchange guarantee, make an investment outside the PRC or enter into any other capital account transaction that involves the purchase of foreign exchange.

When conducting foreign exchange transactions, the designated banks may, based on the exchange rate published by the PBOC and subject to certain limits, freely determine the applicable exchange rate.

## **HONG KONG LAWS AND REGULATIONS**

### **SUMMARY OF MATERIAL DIFFERENCES BETWEEN HONG KONG AND PRC COMPANY LAW**

The Hong Kong law applicable to a company incorporated in Hong Kong is based on the Companies Ordinance and supplemented by common law and the rules of equity that apply to Hong Kong.

As a joint stock limited liability company established in the PRC that is seeking a listing of H Shares on the Hong Kong Stock Exchange, we are governed by the PRC Company Law and all other rules and regulations promulgated pursuant to the PRC Company Law.

In the following sections, we summarize certain material differences between Hong Kong company law applicable to a company incorporated in Hong Kong and the PRC Company Law applicable to a joint stock limited liability company incorporated and existing under the PRC Company Law. This summary is, however, not intended to be an exhaustive comparison.

#### **Share Capital**

Under Hong Kong law, the authorized share capital of a Hong Kong company is the amount of share capital that the company is authorized to issue. A company is not bound to issue the entire amount of its authorized share capital. The authorized share capital of a Hong Kong company may be larger than the issued share capital. Hence, the directors of a Hong Kong company may, with the prior approval of the shareholders if required, cause the company to issue new shares. The PRC Company Law does not provide for authorized share capital. Our registered capital is the amount of our issued share capital. Any increase in our registered capital must be approved by our shareholders in a general meeting and the relevant PRC governmental and regulatory authorities.

Under the PRC Company Law, a company which is authorized by the relevant securities administration authority to list its shares on a stock exchange must have a registered capital of not less than RMB50 million. Hong Kong law does not prescribe any minimum capital requirements for companies incorporated in Hong Kong.

Under the PRC Company Law, the shares subscribed for in the form of intangible assets (excluding land use rights) generally may not exceed 20% of a joint stock limited company's registered capital. There is no such restriction on a Hong Kong company under Hong Kong law.

### **Restrictions on Shareholding and Transfer of Shares**

Under PRC law, our Domestic Shares, which are denominated and subscribed for in Renminbi, may only be subscribed for or traded by the State, PRC legal persons and natural persons. Our overseas listed H Shares, which are denominated in Renminbi and subscribed for in a currency other than Renminbi, may only be subscribed for, and traded by, investors from Hong Kong, Macau and Taiwan or any country and territory outside the PRC.

Under the PRC Company Law, our Promoters are not allowed to transfer the Shares they hold for a period of three years after the date of our establishment. Similarly, our Directors, Supervisors and manager cannot transfer their Shares during their respective terms of office.

There are no such restrictions on shareholdings and transfer of shares under Hong Kong law.

### **Financial Assistance for Acquisition of Shares**

Although the PRC Company Law does not prohibit or restrict us or our subsidiaries from providing financial assistance for the purpose of an acquisition of our Shares, the Mandatory Provisions contain restrictions on a company and its subsidiaries providing such financial assistance similar to those under the Hong Kong company law.

### **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 elaborate 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 VII. Under the 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. The Company (as required by the Listing Rules and the Mandatory Provisions) has 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 foreign invested shares and domestic invested shares are defined in the Articles of Association as different classes, except where (i) the Company issues and allots, in any 12-month period,

pursuant to a shareholders' special resolution, not more than 20% of each of the issued overseas listed foreign invested shares and the issued domestic invested shares existing as at the date of the shareholders' special resolution; and (ii) the plan for the issue of domestic invested shares and listed foreign invested shares upon its establishment is implemented within 15 months following the date of approval by the CSRC. The Mandatory Provisions contain detailed provisions relating to circumstances which are deemed to constitute a variation of class rights.

### **Directors, Officers and Supervisors**

The PRC Company Law, unlike Hong Kong company law, does not contain any requirements relating to the declaration of directors' interests in material contracts, interested directors being restricted from counting towards the quorum of, and voting at, a meeting of the board of directors at which a transaction in which a director is interested in being considered, restrictions on directors' authority in making major dispositions, restrictions on companies providing certain benefits, such as loans, to directors and guarantees in respect of directors' liability and prohibitions against compensation for loss of office without shareholders' approval. The Mandatory Provisions, however, contain certain restrictions on major dispositions and specify the circumstances under which a director may receive compensation for loss of office, all of which provisions have been incorporated in the Articles of Association, a summary of which is set out in Appendix VII.

### **Supervisory Committee**

Under the PRC Company Law, our Directors and managers are subject to the supervision of a Supervisory Committee. There is no mandatory requirement for the establishment of a supervisory committee for a company incorporated in Hong Kong.

The Mandatory Provisions provide that each supervisor owes a duty, in the exercise of his powers, to act in good faith and honestly in what he considers to be our best interests and to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

### **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, that violates any law or infringes the lawful rights and interests of our shareholders, 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 favor

of us acting as agent for each of our shareholders. This allows minority shareholders to act against our Directors and Supervisors in default.

### **Protection of Minorities**

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 of minority shareholders' but 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 our 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.

### **Notice of Shareholders' Meetings**

Under the PRC Company Law, notice of a shareholders' general meeting must be given not less than 30 days before the meeting or, in the case of a company having bearer shares, a public announcement of a shareholders' general meeting must be made at least 45 days prior to it being held. Under the Special Regulations and the Mandatory Provisions, 45 days' written notice must be given to all our shareholders and shareholders who wish to attend the meeting must reply in writing 20 days before the date of the meeting. For a Hong Kong limited company, the minimum period of notice of a general meeting where convened for the purpose of considering ordinary resolutions is 14 days and where convened for the purpose of considering special resolutions, is 21 days. The notice period for an annual general meeting is also 21 days.

### **Quorum for Shareholders' Meetings**

Under Hong Kong law, the quorum for a general meeting 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 only 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.

**Voting**

Under Hong Kong law, an ordinary resolution is passed by a simple majority of 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 quarters 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 votes held by our shareholders present in person or by proxy at a shareholders' general meeting except in cases of proposed amendments to our Articles of Association, merger, division or dissolution, which require two-thirds of the votes held by shareholders present in person or by proxy at a shareholders' general meeting.

**Financial Disclosure**

We are required under the PRC Company Law to make available at our office for inspection by shareholders our annual balance sheet, profit and loss account, statement of changes in financial position and other relevant annexes 20 days before our shareholders' annual general meeting. In addition, we must publish our financial statements and our annual balance sheet must be verified by registered accountants. The Companies Ordinance requires a company incorporated in Hong Kong to send to every shareholder a copy of its balance sheet, auditors' report and directors' report, which are to be laid before the company in its annual general meeting, not less than 21 days before such meeting.

We are required under PRC law to prepare our financial statements in accordance with PRC accounting standards. The Mandatory Provisions require that we must, in addition to preparing our accounts according to PRC standards, have our accounts prepared and audited in accordance with international or Hong Kong accounting standards and our financial statements must also contain a statement of the financial effect of the material differences (if any) from the financial statements prepared in accordance with the PRC accounting standards. The Company is required to publish its interim and annual accounts within 60 days from the end of the first six months of a financial year and within 120 days from the end of a financial year, respectively.

The Special Regulations require that there should not be any inconsistency between the information disclosed within and outside the PRC and that, to the extent that there are differences in the information disclosed in accordance with the relevant PRC and overseas laws, regulations and requirements of the relevant stock exchanges, such differences should also be disclosed simultaneously.

**Information on Directors and Shareholders**

The PRC Company Law gives our shareholders the right to inspect our Articles of Association, minutes of the shareholders' general meetings and financial and accounting reports. Under the Articles of Association, shareholders have the right to inspect and copy (at reasonable charges) certain information on shareholders and on directors similar to that available to shareholders of Hong Kong companies under Hong Kong law.

**Receiving Agent**

Under the PRC Company Law and Hong Kong law, dividends once declared are debts payable to shareholders. The limitation period for debt recovery action under Hong Kong law is six years, while under the PRC law this limitation period is two years. The Mandatory Provisions require us to appoint a trust company registered under the Hong Kong Trustee Ordinance (Chapter 29 of the Laws of Hong Kong) as a receiving agent to receive on behalf of holders of H Shares dividends declared and all other monies owed by us in respect of our Shares.

**Corporate Reorganization**

Corporate reorganizations involving a company incorporated in Hong Kong may be effected in a number of ways, such as a transfer of the whole or part of the business or property of the company to another company in the course of being wound up voluntarily, pursuant to section 237 of the Companies Ordinance or a compromise or arrangement between the company and its creditors or between the company and its members pursuant to section 166 of the Companies Ordinance, which requires the sanction of the court. For PRC companies, such reorganizations are administratively considered and sanctioned under the PRC Company Law.

**Dispute Arbitration**

In Hong Kong, disputes between shareholders on the one hand, and a company incorporated in Hong Kong or its directors on the other, may be resolved through the courts. The Mandatory Provisions provide that such disputes should be submitted to arbitration at either the Hong Kong International Arbitration Centre (“HKIAC”) or the China International Economic and Trade Arbitration Commission (“CIETAC”), at the claimant’s choice.

**Mandatory Deductions**

Under the PRC Company Law, after tax profits of a company are subject to deductions of contributions to the statutory common reserve fund and the statutory public welfare fund of a company before they can be distributed to shareholders. There are prescribed limits under the PRC Company Law for such deductions. There are no corresponding provisions under the Companies Ordinance.

**Remedies of the Company**

Under the PRC Company Law, if a director, supervisor or manager in carrying out his duties infringes any law, administrative regulation or the articles of association of a company, which results in damage to the company, that director, supervisor or manager should be responsible to the company for such damages. In addition, in compliance with the Listing Rules, remedies of the Company similar to those available under the Hong Kong law (including rescission of the relevant contract and recovery of profits made by a Director, Supervisor or officer) have been set out in the Articles of Association.



**Dividends**

The Articles of Association empower the Company to withhold, and pay to the relevant tax authorities, any tax payable under PRC law on any dividends or other distributions payable to a shareholder. Under Hong Kong law, the limitation period for an action to recover a debt (including the recovery of dividends) is six years, whereas under PRC laws, the relevant limitation period is two years. The Company shall not exercise its powers to forfeit any unclaimed dividend in respect of H Shares until after the expiry of the applicable limitation period.

**Fiduciary Duties**

In Hong Kong, there is the common law concept of the fiduciary duty of directors. Under the PRC Company Law and the Special Regulations, directors, supervisors, officers, and managers owe a fiduciary duty towards their company and are not permitted to engage in any activities which compete with or damage the interests of their company.

**Closure of Register of Shareholders**

The Companies Ordinance requires that the register of shareholders of a company must not generally be closed for the registration of transfers of shares for more than 30 days (extendable to 60 days in certain circumstances) in a year, whereas the Company's Articles of Association provide, as required by the PRC Company Law, that share transfers may not be registered within 30 days before the date of a shareholders' meeting or within five days before the record date set for the purpose of distribution of dividends.

**LISTING RULES**

The Hong Kong Listing Rules provide additional requirements which apply to us as an issuer incorporated in the PRC as a joint stock limited liability company and seeking a primary listing or whose primary listing is on the Hong Kong Stock Exchange. Set out below is a summary of the principal provisions containing the additional requirements which apply to us.

**Sponsor**

We are required to retain for at least one year following our listing, or such shorter period as the Hong Kong Stock Exchange may in its absolute discretion permit, the services of a sponsor for our listing, or other financial adviser or professional firm which is acceptable to the Hong Kong Stock Exchange, to provide us with professional advice on continuous compliance with the Hong Kong Listing Rules, and to act at all times, in addition to our two authorized representatives, as our principal channel of communication with the Hong Kong Stock Exchange. The appointment of the sponsor may not be terminated until a replacement acceptable to the Hong Kong Stock Exchange has been appointed.

If the Hong Kong Stock Exchange is not satisfied that the sponsor is fulfilling its responsibilities adequately, it may require us to terminate the sponsor's appointment and appoint a replacement.

The sponsor must be satisfied that the Directors and the Supervisors appreciate the nature of their responsibilities and can be expected to honor their obligations required of them

under their respective undertakings, the Hong Kong Listing Rules and applicable laws and regulations.

The sponsor must keep the Company informed on a timely basis of changes in the Hong Kong Listing Rules and any new or amended law, regulation or code in Hong Kong applicable to the Company. It must act as the Company's principal channel of communication with the Hong Kong Stock Exchange if the authorized representatives of the Company are expected to be frequently outside Hong Kong.

### **Accountants' Report**

An accountants' report will not normally be regarded as acceptable by the Hong Kong Stock Exchange unless the relevant accounts have been audited to a standard comparable to that required in Hong Kong. Such report will normally be required to conform to either Hong Kong accounting standards or International Accounting Standards.

### **Process Agent**

We are required to appoint and maintain a person authorized to accept service of process and notices on our behalf in Hong Kong throughout the period during which our securities are listed on the Hong Kong Stock Exchange and must notify the Hong Kong Stock Exchange of his, her or its appointment, the termination of his, her or its appointment and his, her or its contact particulars.

### **Public Shareholding**

If at any time we issue securities other than the H Shares which are listed on the Hong Kong Stock Exchange, the Hong Kong Listing Rules require that all of our H Shares must be held by the public, the H Shares must represent not less than 10% of our issued share capital and the aggregate number of our H Shares and other securities held by the public must constitute not less than 25% of our issued share capital.

### **Independent Non-Executive Directors and Supervisors**

Independent non-executive Directors are required to demonstrate an acceptable standard of competence and adequate commercial or professional expertise to ensure that the interests of our general body of shareholders will be adequately represented. Supervisors must have the character, expertise and integrity and be able to demonstrate a standard of competence commensurate with their position as Supervisors.

### **Restrictions on Purchase of its Own Securities**

Subject to governmental approvals and the Articles of Association, we may repurchase our own H Shares on the Hong Kong Stock Exchange in accordance with the provisions of the Hong Kong Listing Rules. Approval by way of special resolution of the holders of Domestic Shares and the holders of H Shares at separate class meetings conducted in accordance with the Articles of Association is required for share repurchases. In seeking approvals, we are required to provide information on any proposed or actual purchases of all or any of our equity securities, whether or not listed or traded on the Hong Kong Stock Exchange. We must also

state the consequences of any purchases which will arise under either or both of the Hong Kong Takeovers Codes and any similar PRC law of which Directors are aware, if any. Any general mandate given to Directors to repurchase H Shares must not exceed 10% of the total number of our existing issued H Shares.

***Redeemable Shares***

We must not issue any redeemable shares unless the Hong Kong Stock Exchange is satisfied that the relative rights of the holders of our H Shares are adequately protected.

***Pre-emptive Rights***

Except in the circumstances mentioned below, Directors are required to obtain the approval by a special resolution of shareholders in general meeting, and the approvals by special resolutions of the holders of Domestic Shares and H Shares (each being otherwise entitled to vote at general meetings) at separate class meetings conducted in accordance with the Articles of Association, prior to:

- (i) authorizing, allotting, issuing or granting Shares or securities convertible into Shares, options, warrants or similar rights to subscribe for any Shares or such convertible securities; or
- (ii) any major subsidiary making any such authorization, allotment, issue or grant so as materially to dilute the percentage of our equity interest in such subsidiary.

No such approval will be required, except to the extent that our existing shareholders have by special resolution in general meeting given a mandate to Directors, either unconditionally or subject to such terms and conditions as may be specified in the resolution, to authorize, allot or issue, either separately or concurrently once every 12 months, not more than 20% of each of the existing issued Domestic Shares and H Shares as at the date of the passing of the relevant special resolution or, such Shares as are part of our plan at the time of our establishment, to issue Domestic Shares and H Shares and which plan is implemented within 15 months from the date of approval by the State Council Securities Policy Committee.

**Amendment to Articles of Association**

We may not permit or cause any amendment to our Articles of Association which would cause them to cease to comply with the PRC Company Law, the Mandatory Provisions or the Listing Rules.

**Documents for Inspection**

We are required to make available at a place in Hong Kong for inspection by the public and our shareholders free of charge, and for copying by our shareholders at reasonable charges the following:

- a complete duplicate register of shareholders;
- a report showing the state of our issued share capital;
- our latest audited financial statements and the reports of the Directors, auditors and (if any) Supervisors, if any, thereon;

- special resolutions;
- reports showing the number and nominal value of securities repurchased by us since the end of the last financial year, the aggregate amount paid for such securities and the maximum and minimum prices paid in respect of each class of securities repurchased (with a breakdown between Domestic Shares and H Shares);
- a copy of the latest annual return filed with the PRC State Administration for Industry and Commerce or other competent PRC authority; and
- for shareholders only, copies of minutes of meetings of shareholders.

**Receiving Agents**

Under Hong Kong law, we are required to appoint one or more receiving agents in Hong Kong and pay to such agents dividends declared and other monies owed in respect of the H Shares to be held, pending payment, in trust for the holders of such H Shares.

**Statements in Share Certificates**

We are required to ensure that all our listing documents and share certificates include the statements stipulated below and to instruct and cause each of our share registrars not to register the subscription, purchase or transfer of any of our Shares in the name of any particular holder unless and until such holder delivers to the share registrar a signed form in respect of those Shares bearing statements to the following effect, that the acquirer of Shares:

- agrees with us and each shareholder, and we agree with each shareholder, to observe and comply with the PRC Company Law, the Special Regulations and the Articles of Association;
- agrees with us, each shareholder, Director, Supervisor, manager and other officer and we acting both for the company and for each Director, Supervisor, manager and other officer, agree with each shareholder to refer all differences and claims arising from the Articles of Association or any rights or obligations conferred or imposed by the PRC Company Law or other relevant laws and administrative regulations concerning our affairs to arbitration in accordance with the Articles of Association. Any reference to arbitration will be deemed to authorize the arbitration tribunal to conduct its hearing in open session and to publish its award. Such arbitration will be final and conclusive;
- agrees with us and each shareholder that Shares are freely transferable by the holder thereof; and
- authorizes us to enter into a contract on his behalf with each Director and officer whereby such Directors and officers undertake to observe and comply with their obligations to shareholders as stipulated in the Articles of Association.

**Compliance with the PRC Company Law, the Special Regulations and the Articles of Association**

We are required to observe and comply with the PRC Company Law, the Special Regulations and the Articles of Association.

**Contract between Us and Directors, Officers and Supervisors**

We are required to enter into a contract in writing with every Director and officer containing at least the following provisions:

- an undertaking by the Director or officer to us to observe and comply with the PRC Company Law, the Special Regulations, the Articles of Association, the Hong Kong Takeovers Codes and an agreement that we shall have the remedies provided in the Articles of Association and that neither the contract nor his office is capable of assignment;
- an undertaking by the Director or officer to us acting as agent for each shareholder to observe and comply with his obligations to our shareholders as stipulated in the Articles of Association; and
- an arbitration clause which provides that whenever any differences or claims arise from the contract, our Articles of Association or any rights or obligations conferred or imposed by the PRC Company Law or other relevant law and administrative regulations concerning affairs between us and our Directors or officers and between a holder of H Shares and a Director or officer, such differences or claims will be referred to arbitration at either the CIETAC in accordance with its rules or the HKIAC in accordance with its Securities Arbitration Rules, at the election of the claimant and that once a claimant refers a dispute or claim to arbitration, the other party must submit to the arbitral body elected by the claimant. Such arbitration will be final and conclusive.

We are also required to enter into a contract in writing with every Supervisor containing terms substantially similar to those for Directors.

If the party seeking arbitration elects to arbitrate the dispute or claim at HKIAC, then either party may apply to have such arbitration conducted in Shenzhen, according to the Securities Arbitration Rules of HKIAC.

PRC laws shall govern the arbitration of disputes or claims referred to above, unless otherwise provided by law or administrative regulations.

The award of the arbitral body is final and shall be binding on the parties thereto.

Disputes over who is a shareholder and over the share register do not have to be resolved through arbitration.

**Subsequent Listing**

We must not apply for the listing of our H Shares on a PRC stock exchange unless the Hong Kong Stock Exchange is satisfied that the relative rights of the holders of our H Shares are adequately protected.

**GENERAL**

If any change in the PRC law or market practices materially alters the validity or accuracy of any basis upon which the additional requirements have been prepared, the Hong Kong Stock Exchange may impose additional requirements or make listing of our H Shares subject to special conditions as the Hong Kong Stock Exchange may consider appropriate. Whether or not any such changes in the PRC law or market practices occur, the Hong Kong Stock Exchange retains its general power under the Hong Kong Listing Rules to impose additional requirements and make special conditions in respect of our listing.

**OTHER LEGAL AND REGULATORY PROVISIONS**

Upon our listing on the Hong Kong Stock Exchange, the provisions of the SFO, the Hong Kong Takeovers Codes and such other relevant ordinances and regulations as may be applicable to companies listed on the Hong Kong Stock Exchange will apply to us.

**SECURITIES ARBITRATION RULES**

The Articles of Association provide that certain claims arising from the Articles of Association or the PRC Company Law shall be arbitrated at either the CIETAC or the HKIAC in accordance with their respective rules.

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 the 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, a PRC party means a party domiciled in the PRC other than the territories of Hong Kong, Macau and Taiwan.

**PRC LEGAL MATTERS**

Commerce & Finance Law Offices, our legal adviser on PRC law, has sent to us a letter dated June 14, 2004 confirming that it has reviewed the summaries of PRC company and securities regulations and the summaries of certain material differences between the Hong Kong company law and the PRC Company Law in so far as they relate to PRC law as contained in this Appendix and that, in its opinion, such summaries are correct summaries of relevant PRC laws and regulations. This letter is available for inspection as referred to in the Section headed “Documents Delivered to Registrar of Companies and Available for Inspection” in Appendix IX to this Prospectus.