

Specimen section of prospectus on summary of the constitution of the company and local laws for companies incorporated in the PRC

SUMMARY OF ARTICLES OF ASSOCIATION AND THE PRINCIPAL LEGAL AND REGULATORY PROVISIONS OF THE PEOPLE'S REPUBLIC OF CHINA

Set out below is a summary of certain provisions of the Articles of Association of the Company and a summary of the People's Republic Of China's (the "PRC") company and securities laws and regulations, certain material differences between the PRC Company Law and the Companies Ordinance and additional regulatory provisions introduced by the Hong Kong Stock Exchange ("Stock Exchange") in relation to PRC joint stock limited companies.

R19A.27(2)
s342(1)(a)(i)

The Company was incorporated in the PRC as a joint stock limited company on [Date] under the PRC Company Law. The Articles of Association comprises the Company's constitution; below is a summary of the principal provisions of the Articles of Association, which were adopted on [Date] and will become effective on the Listing Date.

A1A5
s342(1)(a)(iv)

The principal objective of this summary is to provide potential investors with an overview of the Articles of Association and the principal legal and regulatory provisions applicable to the Company. As the information contained below is a summary, it does not contain all the information that may be important to potential investors. If you wish to obtain detailed information on PRC law or the laws of any other jurisdiction, you should seek independent professional advice. A copy of the full Chinese text of the Articles of Association is available for inspection as mentioned in the section headed "Documents Delivered to the Registrar of Companies and Available for Inspection" in Appendix [●] to this prospectus.

PART I: SUMMARY OF THE CONSTITUTIONAL DOCUMENTS

1. ALTERATIONS TO CONSTITUTIONAL DOCUMENTS

A13d Sec 2 para
1(2)

The Company may amend its Articles of Association in accordance with relevant laws, administrative regulations and the Articles of Association.

Amendments to the Articles of Association involving the contents of *the Mandatory Provisions of the Articles of Association of Companies Seeking Overseas Listing* (the "Mandatory Provisions") shall become effective upon approval by the approval authorities of the State Council and the securities regulatory authority of the State Council. If there is any change relating to the registered particulars of the Company, application shall be made for registration of the changes in accordance with law.

2. DIRECTORS AND BOARD OF DIRECTORS

(a) Appointment, retirement and removal

A1A7(4)
A13d Sec 2 para
1(1)(h)

Certain persons may not serve as a Director, Supervisor, the president or other senior officer of the Company, including (without limitation and subject to certain exceptions) persons who have committed the offences of corruption, bribery, trespass of property, misappropriation of property or damaging the social economic order, and have been penalised due to such offences; persons who were former directors, factory chiefs or managers of a company or enterprise which has become insolvent and has been liquidated and were personally liable for

the insolvency of such company or enterprise; persons who were legal representatives of a company or enterprise, which had its business licence revoked due to a violation of the law and were ordered to close down, and who were personally liable for the revocation of such business licence; persons with a comparatively large amount of personal debts due and unsettled; and persons who have committed criminal offences and are still under investigation by law administration authorities.

The validity of the conduct of Directors, the president or other senior officers who have acted on behalf of the Company with respect to third parties who have acted in good faith shall not be affected due to any irregularity in the employment, election or qualification of such Directors, president or other senior officers.

The Board shall consist of [●] Directors. A Director is not required to hold any Shares. The chairman of the Board shall be elected or removed by more than half of all of the Directors. A Director may be removed by ordinary resolution at a Shareholders' general meeting.

A1A7(5)
3rd Sch 5

The term of office of the chairman shall be three years and is renewable upon re-election.

The minimum length of the period for giving written notice of the intention to nominate a person for election as a Director and of his willingness to be elected shall be at least seven days. Such seven-day period shall commence no earlier than the second day after the issue of the notice of the meeting at which the election shall be conducted and no later than seven days prior to such meeting.

The list of Directors' and Supervisors' candidates shall be proposed in form of a motion to the Shareholders' general meeting for resolution. The Shareholders' general meeting approves the appointment of Directors and Supervisors with a simple majority vote.

(b) **Power to allot and issue Shares**

A13d Sec 2 para
1(1)(a)

In order to allot or issue shares, the Board shall prepare a proposal for approval by Shareholders in general meeting by way of special resolution. Any such allotment or issue must be conducted in accordance with the procedures stipulated by relevant laws and administrative regulations.

(c) **Power to dispose of the Company's or any of its subsidiaries' assets**

A13d Sec 2 para
1(1)(b)

The Board shall not, without the prior approval of Shareholders in general meeting, dispose or agree to dispose of any fixed assets of the Company where the aggregate of: (i) the expected value of the fixed assets of the Company proposed to be disposed of; and (ii) the amount or value of the consideration for any fixed assets of the Company disposed of in the period of four months immediately preceding the proposed disposition, exceeds 33% of the value of the Company's fixed assets as shown in the last balance sheet tabled before the Shareholders in

general meeting. For these purposes, “disposition” includes any act involving a transfer of an interest in property other than providing security by fixed assets.

The validity of a transaction for the disposition of fixed assets by the Company shall not be affected by a breach of this restriction.

(d) **Borrowing power**

A1A7(3)
A13d Sec 2 para
1(1)(i)
3rd Sch 22

The Articles of Association do not contain any special provision in respect of the manner in which borrowing powers may be exercised by the Directors, other than provisions which: (a) give the Board the power to formulate proposals for the issuance of debentures by the Company; and (b) require the issuance of debentures to be approved by the Shareholders in general meeting by way of a special resolution.

(e) **Remuneration**

A1A7(2)
A13d Sec 2 para
1(1)(g)
3rd Sch 5

The Company shall, with the prior approval of Shareholders in general meeting, enter into a contract in writing with each Director or Supervisor for emoluments in respect of their services. The Directors or Supervisors have no power under the Articles of Association to determine their own remuneration.

(f) **Compensation or payments for loss of office**

A13d Sec 2 para
1(1)(c)

The contract for emoluments entered into between the Company and a Director or Supervisor shall provide that, in the event of a takeover of the Company, the Director or Supervisor shall, after obtaining the prior consent of Shareholders in general meeting, receive payments or other amounts by way of compensation for loss of or retirement from office. A takeover of the Company means:

- (i) an offer made to acquire the shares held by all shareholders of the Company; or
- (ii) an offer made such that the offeror will become the controlling shareholder (as defined in the Articles of Association) of the Company.

If the relevant Director or Supervisor receives any payments or other amounts by way of compensation, as described above, without such compensation having first been approved by the shareholders of the company in general meeting, any such sum shall belong to those persons who have sold their Shares as a result of accepting the offer, and the expenses incurred by the Director or Supervisor in distributing that sum pro rata among those persons shall be borne by him and shall not be deducted from the sum distributed.

(g) **Loans to Directors, Supervisors and other officers**

A13d Sec 2 para
1(1)(d)

The Company is prohibited from directly or indirectly making any loan or giving any guarantee for a loan to its Directors, Supervisors, the president or other senior

officers of the Company or the Directors, Supervisors, the president or other senior officers of its holding company.

A loan made by the Company in breach of the prohibition described above shall be immediately repayable by the recipient of the loan regardless of the terms of that loan. A guarantee for a loan provided by the Company in breach of the prohibition referred to above shall be unenforceable against the Company except in certain limited circumstances.

Certain transactions described in the Articles are not subject to the foregoing prohibition, such as, inter alia, the provision of a loan or a guarantee for a loan by the Company to a company which is a subsidiary of the Company.

For these purposes, “guarantee” includes any act of undertaking or property provided to secure the performance of obligations by the obligor.

(h) **Giving of financial assistance to purchase the Shares of the Company**

A13d Sec 2 para
1(1)(e)

Subject to certain exceptions in the Articles of Association, neither the Company nor any of its subsidiaries shall at any time and in any manner provide financial assistance to:

- (i) a person who acquires or is proposing to acquire any Shares, including any person who has directly or indirectly incurred a liability as a result of the acquisition of any Shares; and
- (ii) the person mentioned in paragraph (i) above for the purposes of reducing or discharging his liabilities.

For these purposes, “financial assistance” includes, without limitation, assistance given by way of gift; guarantee, indemnity, release or waiver; loan, including variances therein; and any other assistance when the Company is insolvent or where its net assets would be reduced by a material extent.

Further, “incurring a liability” includes incurring a liability by making an agreement or arrangement (whether enforceable or unenforceable, and whether made on one’s own account or with any other person) or by changing one’s financial position by any other means.

Certain transactions described in the Articles of Association are not subject to the above prohibition on financial assistance, such as, among others, the lawful distribution of the Company’s assets as dividends, a distribution of dividends by way of Shares and where the assistance is given with the principal purpose being genuinely for the Company’s interests and not for the purpose of acquiring the Shares, or the provision of such assistance is incidental to some broader objective of the Company.

(i) **Disclosure of interests in and voting on contracts with the Company or any its subsidiaries**

A13d Sec 2 para
1(1)(f)

Where a Director, Supervisor, the president or other senior officer of the Company is in any way, directly or indirectly, materially interested in a contract, transaction or arrangement or proposed contract, transaction or arrangement with the Company, he shall declare the nature and extent of his interest to the Board at the earliest opportunity, whether or not the contract, transaction or arrangement or proposal is otherwise subject to the approval of the Board.

Unless the interested Director, Supervisor, president or other senior officer has disclosed his interest in accordance with the preceding paragraph and the contract, transaction or arrangement has been approved by the Board at a meeting in which the interested Director is not counted in the quorum and has refrained from voting, such contract, transaction or arrangement is voidable at the instance of the Company except as against a bona fide party thereto acting without notice of the breach of duty by the Director, Supervisor, the president or other senior officer concerned. A Director, Supervisor, the president and other senior officer of the Company is deemed to be interested in a contract, transaction or arrangement in which his related parties have an interest.

Where a Director, Supervisor, the president or other senior officer of the Company gives the Board a general notice in writing stating that, by reason of the facts stated in the notice, he is interested in contracts, transactions or arrangements of any description which may subsequently be entered into by the Company, then he shall be deemed to have made a disclosure for the purposes of the relevant provisions in the Articles of Association so far as the content stated in such notice is concerned, if such notice is given to the Board before the date on which the question of entering into the relevant contract, transaction or arrangement is first taken into consideration by the Company.

(j) **Liability**

The Directors, Supervisors, the president and other senior officers of the Company owe fiduciary duties and duties of diligence to the Company. In addition to any rights and remedies provided for in relevant laws and administrative regulations, the Company is entitled to adopt a series of measures where a Director, Supervisor, the president or other senior officer is in breach of his duties owed to the Company including, but not limited to, the right to claim for losses incurred by the Company as a result of his breach; to account for the profits made by such person as a result of his breach and to recover any monies received by such person, including, without limitation, commissions.

The Board shall carry out its duties in compliance with the laws and administrative regulations, the Articles of Association and resolutions passed at general meetings. Each Director, Supervisor, the president and other senior officer of the Company should abide by his fiduciary principles in the discharge of his duties, and not to place himself in a position where his duty and his own interests may

conflict. Such principles include (but are not limited to and are subject to certain exceptions): to act honestly in what he considers to be in the best interest of the Company; except in accordance with the Articles of Association or with the informed consent of Shareholders in general meeting, not to enter into any contract, transaction or arrangement with the Company, use the Company's assets for his personal benefit in any manner, or accept commissions in connection with the Company's transactions; not to use his position to accept bribes or other illegal income or to seek personal gain; or compete with the Company or use or disclose confidential information of the Company.

A Director, Supervisor, the president or other senior officer of the Company shall not direct parties related to him to do what he is not permitted to do. Parties related to a Director, Supervisor, the president or other senior officer include (but are not limited to): the spouse, minor child or partner of the relevant person or a company in which that Director, Supervisor, the president or other senior officer, alone or jointly with one or more of his related parties or with any of the other Directors, Supervisors, the president or other senior officers of the Company, has de facto control.

The fiduciary duties of a Director, Supervisor, the president and other senior officer of the Company do not necessarily cease with the termination of his tenure. The duty of confidentiality in relation to trade secrets of the Company survives the termination of his term of office. Other duties may continue for such period as fairness may require depending on the time lapse between the termination of his term of office and the occurrence of the matter in question and the circumstances and the terms under which the relationships between him and the Company are terminated.

Except in certain circumstances, liabilities of a Director, Supervisor, the president, or other senior officer arising from the violation of a specified duty may be released by informed Shareholders in general meeting.

In addition to obligations imposed by relevant laws, administrative regulations or the listing rules of the securities exchange on which the Shares are listed, Directors, Supervisors, the president and other senior officers, in the exercise of their powers and the discharge of their duties, owe certain obligations to the Shareholders, including: not to cause the Company to go beyond the business scope specified in its business licence; to act honestly in what they consider to be the best interests of the Company; not to deprive the Company of any assets or beneficial opportunities; and not to deprive Shareholders of their personal rights and interests.

Each of the Directors, Supervisors, the president and other senior officers of the Company owes a duty, in the exercise of his powers and discharge of his duties, to exercise the care, diligence and skill that a reasonably prudent person would exercise under similar circumstances.

3. VARIATION OF RIGHTS OF EXISTING SHARES OR CLASSES OF SHARES

A1A25(3)
A13d Sec 2 para
1(3)

The Company may not vary or abrogate rights attached to any class of shares unless approved by a special resolution of shareholders in general meeting and by holders of shares of that class at a separate meeting conducted in accordance with the provisions of the Articles of Association. The circumstances deemed to be a variation or abrogation of the class rights of a particular class of shares, include, but are not limited to, increasing or decreasing the number of shares of any class; creating a new class of shares having voting or distribution rights or privileges equal or superior to the shares of such class; increasing the rights or privileges of another class; and varying or abrogating the provisions in the Articles of Association.

Shareholders of the affected class, whether or not having the right to vote at general meetings, shall have the right to vote at class meetings in respect of certain matters, but Interested Shareholder(s) (as defined below) shall not be entitled to vote at class meetings.

Resolutions of a class of shareholders shall require the approval of shareholders present representing more than two thirds of the voting rights of that class voting in favor of such resolutions.

Written notice of a class meeting shall be given by the Company at least 45 days before the date of the meeting to notify all the registered shareholders holding shares of that class of the matters to be considered at the meeting and the date and place of the meeting. A shareholder who intends to attend the meeting shall deliver a written reply confirming his attendance at the class meeting to the Company at least 20 days before the date of the meeting.

The Company can convene a class shareholders' meeting, if the number of shares of the class carrying voting rights represented by shareholders intending to attend represents more than half of the total number of such shares. If not, the Company shall make an announcement, within five days, once again notifying the Shareholders of the matters proposed to be considered and the date and place of the meeting. Once an announcement has been so made, the Company may convene the class shareholders' meeting.

Notice of class meetings need only be served on shareholders entitled to vote thereat.

Meetings of any class of shareholders shall be conducted in a similar way as closely as possible to the provisions for general meetings of shareholders set out in the Articles of Association. The provisions of the Articles of Association relating to the conduct of any general meeting of shareholders shall apply to any class meeting.

In addition to holders of other class of shares, holders of Domestic Shares and overseas listed foreign Shares are deemed to be shareholders of different classes. Voting by holders of different classes of shares is not applicable where:

- (a) the Company issues, with the approval by special resolution of its Shareholders in general meeting, either separately or concurrently once every 12 months, not more

A1a para 65(b)

than 20% of each of its existing issued Domestic Shares or overseas listed foreign Shares;

- (b) the Company completes, within 15 months from the date on which approval is given by the securities regulatory authorities of the State Council, its plan (made at the time of its establishment) to issue Domestic Shares and overseas listed foreign Shares; and
- (c) Shares registered on the domestic share register are transferred to overseas investors, and such transferred Shares are listed or traded on an overseas stock exchange, with the approval by the securities regulatory authorities of the State Council.

A1a para 65(c)

For the purposes of the class rights provisions in the Articles of Association, an “**Interested Shareholder**” is:

- (i) in the case of a repurchase of Shares by offers to all Shareholders in the same proportion or through “on-market” dealing on the Stock Exchange, a controlling Shareholder within the meaning of the Articles of Association;
- (ii) in the case of a repurchase of Shares by an off-market agreement outside the Stock Exchange, a Shareholder to whom the proposed contract is related; or
- (iii) in the case of a proposed restructuring of the Company, a shareholder within a class who bears less than a proportionate amount of obligations imposed on the shareholders of that class or who has an interest different from the interest of the other shareholders of that class.

4. **ORDINARY AND SPECIAL RESOLUTIONS**

A13d Sec 2 para 1(4)

Resolutions of general meetings are divided into ordinary resolutions and special resolutions.

To adopt an ordinary resolution, more than half of the votes represented by Shareholders (including proxies) present at the Shareholders’ general meeting must be exercised in favour of the resolution.

To adopt a special resolution, more than two thirds of the votes represented by the Shareholders (including proxies) present at the Shareholders’ general meeting must be exercised in favour of the resolution.

5. **VOTING RIGHTS (GENERALLY ON A POLL AND RIGHT TO DEMAND A POLL)**

A1A25(1)
A13d Sec 2 para 1(5)

The Shareholders have the right to attend or appoint a proxy to attend Shareholders’ general meetings and to vote at those meetings. Shareholders (including proxies) voting at a Shareholders’ general meeting may exercise voting rights in accordance with the number of Shares carrying the right to vote, and each Share shall have one vote.

At any Shareholders' meeting, voting shall be on a poll, except where the chairman decides to allow a resolution which relates purely to a procedural or administrative matter to be voted on by a show of hands. On a poll taken at a meeting, a Shareholder (including his proxy) entitled to two or more votes needs not cast all his votes in the same way.

In the case of an equality of votes, the chairman of the meeting shall be entitled an additional vote.

6. REQUIREMENTS FOR ANNUAL GENERAL MEETINGS

A13d Sec 2 para
1(6)

A Shareholders' general meeting shall either be an annual general meeting or an extraordinary general meeting. Annual general meetings are held once every year within six months after the financial year end.

7. NOTICE OF MEETING AND BUSINESS TO BE CONDUCTED THEREAT

A13d Sec 2 para
1(8)

The Shareholders' general meeting is the organ of authority of the Company and shall exercise its functions and powers in accordance with law.

The Company shall not enter into any contract with any person other than a Director, Supervisor, the president or other senior officer whereby such person is entrusted with the management of the whole or a material part of any business of the Company without the prior approval of Shareholders in general meeting.

The Board shall convene an extraordinary general meeting within two months of the occurrence of certain events including, without limitation, when the number of Directors is less than the number of Directors required by the PRC Company Law or two-thirds of the number of Directors specified in the Articles of Association; when the unaccounted losses of the Company amount to one third of the total amount of its paid-in share capital; or when the Board considers necessary or upon the request of the Board of Supervisors or two or more independent Directors or Shareholder(s) individually or collectively holding 10% or more of the Shares.

The Company shall give written notice to the Shareholders at least 45 days before the date of any general meeting, setting out, among other things, the matters proposed to be considered at the meeting and the date and place of the meeting. Shareholders who will attend the meeting shall return written replies of attendance to the Company at least 20 days before the date of the meeting.

At least 10 days before the Company is to convene a general meeting, Shareholders individually or collectively holding 3% or more of Shares carrying voting rights shall have the right to put forward new resolutions in writing to the Company.

The Company shall calculate, according to the written replies received 20 days before the date of the meeting, the number of Shares carrying voting rights that the Shareholders attending the meeting represent. The Company can convene a Shareholders' general meeting if the number of Shares carrying voting rights represented by Shareholders intending to attend comprise more than half of the total number of Shares carrying voting rights. If not, the Company shall make an announcement, within five days, once again

notifying the Shareholders of the matters proposed to be considered and the date and place of the meeting. Once an announcement has been so made, the Company may convene the general meeting. An extraordinary general meeting may not decide on matters not specified in the notice.

A public announcement of a Shareholders' general meetings shall be published in one or more newspapers designated by the security authorities of the State Council during the period of 45 days to 50 days before the date of the meeting. Upon the publication of announcement, all holders of Domestic Shares shall be deemed to have received notice of the relevant Shareholders' meeting. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

Shareholders requisitioning an extraordinary general meeting of Shareholders or a class meeting shall abide by certain procedures detailed in the Articles of Association.

The matters which require the sanction of an ordinary resolution at a Shareholders' general meeting include, but are not limited to, plans for the distribution of profits and for making up losses proposed by the Board and the election and removal of the members of the Board.

The matters which require the sanction of a special resolution at a Shareholders' general meeting include, but are not limited to, the issue of corporate debentures; the division, merger, dissolution, or liquidation of the Company; and amendments to the Articles of Association.

8. QUORUM FOR SHAREHOLDERS MEETINGS

R19A.42
A1A56
A13d Sec 2 para
1(16)

The Company can convene a Shareholders' meeting if the number of Shares carrying voting rights represented by Shareholders intending to attend represents more than half of the total number of Shares carrying voting rights. If not, the Company shall within five days notify the Shareholders, again by announcement, of the matters proposed to be considered, the date and the place for the meeting. The Company may then hold the Shareholders' meeting after publication of such announcement.

The Company can convene a class Shareholders' meeting if the number of Shares of the class carrying voting rights represented by Shareholders intending to attend represents more than half of the total number of such Shares. If not, the Company shall within five days notify the Shareholders, again by announcement, of the matters proposed to be considered, the date and the place for the class meeting. The Company may then hold the class Shareholders' meeting after publication of such announcement.

9. PROXIES

A13d Sec 2 para
1(13)

Any Shareholder entitled to attend and vote at a Shareholders' general meeting shall be entitled to appoint one or more persons (whether or not a Shareholder) as his proxy to attend and vote on his behalf. A proxy so appointed shall be entitled to exercise the following rights in accordance with the authorisation from that Shareholder:

- (i) the Shareholder's right to speak at the meeting;
- (ii) the right to demand, whether on his own or together with others, a poll; and
- (iii) the right to vote on a poll.

The instrument appointing a proxy shall be in writing under the hand of the appointor or his attorney duly authorised in writing, or if the appointor is a legal person either under seal or under the hand of a director or attorney duly authorised. The instrument appointing a voting proxy shall be deposited at the Company's place of domicile or at such other place as is specified in the notice convening the meeting not less than 24 hours prior to the time for holding the meeting at which the proxy proposes to vote. If such instrument is signed by another person under a power of attorney or other authorisation documents given by the appointor, such power of attorney or other authorisation documents shall be notarised. The notarised power of attorney or other authorisation documents shall, together with the instrument appointing the voting proxy, be deposited at the Company's place of domicile or at such other place as is specified in the notice convening the meeting.

If the appointor is a legal person, its legal representative or any person authorised by resolutions of its board of directors or other governing body shall attend the Shareholders' general meeting as the appointor's representative.

Any form issued to a Shareholder by the Board for the purpose of appointing a proxy shall be in such form which enables the Shareholder, according to his free will, to instruct his proxy to vote in favor of or against the motions proposed and in respect of each individual matter to be voted on at the meeting. Such a form shall contain a statement that, in the absence of instructions from the appointor, the proxy may vote as he thinks fit.

A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or loss of capacity of the appointor or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the Share in respect of which the proxy is given, provided that no notice in writing of such death, loss of capacity, revocation or transfer as aforesaid shall have been received by the Company before the commencement of the meeting at which the proxy is used.

10. ACCOUNT AND AUDIT

(a) Financial and accounting system

A13d Sec 2 para
1(7)

The Company shall establish its financial and accounting systems in accordance with the laws, administrative regulations and rules formulated by relevant state authorities.

The Board shall place before the Shareholders at every annual general meeting such financial reports as are required by laws, administrative regulations or directives promulgated by local governments and supervisory authorities.

The financial statements of the Company shall be prepared both in accordance with the PRC accounting standards and regulations and in accordance with either

international accounting standards or the accounting standards of the place outside the PRC where the Shares are listed. For the purposes of distribution of the Company's after-tax profits in a financial year, the lower of the after-tax profits as shown in the different sets of financial statements shall be adopted. The Company shall disclose its financial reports prepared in accordance with either international accounting standards or the accounting standards of the place outside the PRC where the Shares are listed twice in each financial year, that is, its interim financial reports within three months of the end of the first six months of a financial year and its annual financial reports within four months of its financial year end.

The financial reports of the Company shall be made available at the Company for inspection by Shareholders 20 days before the annual general meeting. Every Shareholder is entitled to a copy of the financial reports. In addition, a copy of the above financial reports shall, at least 21 days before the date of the annual general meeting, be delivered or sent by pre-paid post to the registered address of every holder of overseas listed foreign Shares as shown on the register of Shareholders.

The Company shall not keep any books of accounts other than those required by law.

(b) **Appointment and removal of auditor**

The Company shall appoint an independent accounting firm which is qualified under the relevant regulations of the State to audit the Company's annual financial statements and review the Company's other financial reports.

The first accounting firm of the Company may be appointed by the inaugural meeting prior to the first annual general meeting and the accounting firm so appointed shall hold office until the conclusion of the first annual general meeting. Thereafter, the accounting firm appointed by the Company shall hold office from the conclusion of each annual general meeting of Shareholders until the conclusion of the next annual general meeting of Shareholders.

The Company's appointment, removal and non-renewal of the appointment of an accounting firm shall be resolved upon by the Shareholders in general meeting. The Shareholders in general meeting may by ordinary resolution remove an accounting firm before the expiry of its term of office, notwithstanding the stipulations in the contract between the Company and the firm, but without prejudice to the firm's right to claim, if any, for damages in respect of such removal.

The remuneration of an accounting firm or the manner in which such remuneration is determined shall be decided by the Shareholders in general meeting. The remuneration of the accounting firm appointed by the Board shall be confirmed by the Board.

Before the removal or the non-renewal of the appointment of an accounting firm, advance notice of such removal or non-renewal shall be given to the accounting firm and such firm shall have the right to attend and to make representations to the Shareholders' general meeting.

The accounting firm may resign its office by notice to the Company. Such notice shall include either a statement to the effect that there are no circumstances connected with its resignation which it considers should be brought to the notice of the Shareholders or creditors of the Company; or details of any such circumstances. If the notice contains details of such circumstances, a copy of such statement shall be placed at the Company for Shareholders' inspection and the Company shall send a copy of such statement by prepaid mail to every holder of overseas listed foreign Shares at the address registered in the register of Shareholders. All such notices from accounting firms shall also be sent to the relevant governing authority.

Where the accounting firm resigns its post, it shall make clear to the Shareholders' general meeting whether there is any impropriety on the part of the Company. In addition, where the accounting firm's notice of resignation contains a statement of any circumstance which should be brought to the notice of the Shareholders or creditors of the Company, it may require the Board to convene an extraordinary general meeting for the purpose of giving an explanation of the circumstances connected with its resignation.

11. TRANSFER OF SHARES

Subject to the approval of the securities regulatory authorities of the State Council, holders of Domestic Shares may transfer their Shares to overseas investors, and such transferred Shares may be listed or traded on an overseas stock exchange. Any listing or trading of the transferred Shares on an overseas stock exchange shall also comply with the regulatory procedures, rules and requirements of such overseas stock exchange.

Shares of the Company held by the Promoters are not transferable within one year commencing from the date of establishment of the Company.

The Directors, Supervisors and senior officers of the Company shall report to the Company the number of Shares held by them in the Company and the subsequent changes in their shareholdings. The number of Shares which a Director, Supervisor or senior officer may transfer every year during his term of office shall not exceed 25% of the total number of the Shares in his possession. Such personnel shall not transfer the Shares in their possession within six months after they have terminated their employment with the Company.

No changes in the Shareholders' register due to the transfer of Shares may be made within 30 days before the date of a general meeting or within five days before the record date for the Company's distribution of dividends.

A1A7(8)
A13d Sec 2 para
1(9)

12. POWER OF THE COMPANY TO PURCHASE ITS OWN SHARES

A13d Sec 2 para
1(10)

The Company may, according to applicable law, administrative regulations, Listing Rules, departmental rules and the Articles of Association and subject to the approval of the relevant governing authority of the State, repurchase its Shares under certain circumstances including (without limitation):

- (i) cancellation of its Shares for the purpose of reducing its registered share capital;
- (ii) merging with another company which holds the Shares;
- (iii) granting the Shares as incentive compensation to the employees of the Company;
- (iv) acquiring the Shares upon request by Shareholders who vote against any resolution adopted at the Shareholders' general meeting on the merger or division of the Company.

If the Company repurchases its own Shares in the manner set out in paragraphs (i), (ii) or (iii) above or by an off-market agreement outside a stock exchange, resolutions relating to such repurchase shall be adopted at a general meeting of Shareholders. Where Shares are repurchased lawfully pursuant to paragraph (i) above, such Shares shall be cancelled within 10 days from the date of repurchase; in case of repurchase pursuant to paragraphs (ii) or (iv), such Shares shall be transferred or cancelled within six months thereafter; and in case of repurchase pursuant to paragraph (iii), such Shares shall not be more than 5% of the total issued share capital of the Company and shall be transferred to the relevant employees within one year.

After cancellation of any repurchased Shares, the Company shall apply to the original companies registration authority for registration of the change of its registered capital and issue an announcement.

The Company may, with the approval of the relevant state governing authorities, also repurchase its Shares by, inter alia, making a pro rata general offer of repurchase to all the Shareholders; repurchasing Shares through "on-market" dealing on a stock exchange; or repurchasing by an off-market agreement outside a stock exchange.

Any repurchase by a Company of its Shares by an off-market agreement requires the prior approval of Shareholders obtained at a Shareholders' meeting and the Company may also rescind or vary, or waive any of its rights under such an agreement, with the prior approval of Shareholders obtained at a Shareholders' meeting. An agreement to repurchase Shares as mentioned above includes but is not limited to an agreement to become obliged to repurchase and acquire rights to repurchase Shares.

The Company shall not assign an agreement to repurchase its Shares or any of its rights thereunder.

13. POWER OF ANY SUBSIDIARY OF THE COMPANY TO OWN SHARES IN ITS PARENT COMPANY A13d Sec 2 para 1(11)

The Articles of Association contain no restrictions preventing any subsidiary of the Company from holding Shares.

14. DIVIDENDS AND OTHER METHODS OF DISTRIBUTION A13d Sec 2 para 1(12)

The Company may distribute dividends by way of cash and/or Shares.

The Company shall appoint on behalf of holders of overseas listed foreign Shares receiving agents to receive on behalf of such Shareholders dividends and other monies payable by the Company in respect of their Shares. The receiving agent appointed by the Company on behalf of holders of overseas listed foreign Shares listed on the Hong Kong Stock Exchange shall be a registered trust company under the Hong Kong Trustee Ordinance.

15. CALLS ON SHARES AND FORFEITURE OF SHARES A13d Sec 2 para 1(14)

Any amount paid up in advance of calls on any Share may carry interest but shall not entitle the relevant Shareholder to participate in respect of that Share in a dividend subsequently declared.

Subject to compliance with the relevant laws and administrative regulations of the PRC, the Company may exercise its right to confiscate dividends which are not claimed by anyone but such right can only be exercised after the expiry of the relevant time frame.

16. INSPECTION OF REGISTER OF SHAREHOLDERS AND OTHER RIGHTS OF SHAREHOLDERS A13d Sec 2 para 1(15)

The Company shall keep a complete register of Shareholders comprising registers of holders of the Company's overseas listed foreign Shares; and other holders.

Unless the Board thinks necessary for the purpose of listing, the Company shall keep the register(s) of Shareholders at its place of domicile. The Company may, in accordance with any understanding or agreements between the securities regulatory authority of the State Council and applicable overseas securities regulatory organisations, keep its original register of holders of overseas listed foreign Shares overseas and appoint overseas agent(s) to manage such register. The original register of overseas listed foreign Shares listed in Hong Kong shall be maintained in Hong Kong and a duplicate of that register shall be maintained at the Company's place of domicile. The appointed overseas agent(s) shall ensure the consistency between the original and the duplicate of the share register. If there is any inconsistency between the original and the duplicate of the share register for holders of foreign Shares, the original shall prevail.

The alteration or rectification of any part of the register of Shareholders shall be carried out in accordance with the laws of the place where such part of the register is maintained.

No changes which are required by reason of a transfer of Shares may be made to the register of Shareholders within 30 days before the date of a Shareholders' general meeting or five days before the record date for the Company's distribution of dividends.

When the Company decides to convene a Shareholders' general meeting, distribute dividends, liquidate or carry out other corporate activities which require the determination of shareholdings, the Board shall fix a record date for the purpose of determining such shareholdings. A person who is registered in the register as a Shareholder at the end of the record date shall be entitled to participate in the relevant corporate activity.

Any person who objects to the register of Shareholders and requests to register his name on, or delete his name from the register may apply to the court with jurisdiction to amend the register.

Shareholders are entitled to certain Company information, including, but not limited to: copies of the Articles of Association (for a reasonable fee), special resolutions of the Company, minutes of Shareholders' general meetings and the latest audited financial statements, report of the Board, report of the auditors and report of the Board of Supervisors; and to inspect the register of Shareholders and personal particulars of each of the Company's Directors, Supervisors, the president and other senior officers.

17. RIGHTS OF MINORITY SHAREHOLDERS IN RELATION TO FRAUD OR OPPRESSION

A13d Sec 2 para
1(17)

In addition to the obligations imposed by law, administrative regulations and the listing rules of the stock exchange on which the Shares are listed, a controlling Shareholder, when exercising his rights as a Shareholder, shall not exercise his voting rights to make a decision which is prejudicial to the interests of the Shareholders generally or of some of the Shareholders in respect of certain matters, including (without limitation): to relieve a Director or Supervisor of his duty to act honestly in the best interests of the Company; or to approve the expropriation by a Director or Supervisor (for his own benefit or for the benefit of another person), of any of the Company's assets or beneficial opportunities; or the individual rights of other Shareholders.

18. PROCEDURE ON DISSOLUTION AND LIQUIDATION

A13d Sec 2 para
1(18)

The Company shall be dissolved in accordance with law in certain circumstances, including (without limitation) where:

- (i) dissolution is approved by a special resolution of Shareholders at a general meeting;
- (ii) dissolution is necessary due to a merger or division of the Company;
- (iii) the Company's business licence is revoked or cancelled according to law;
- (iv) the Company is ordered to close down due to violation of applicable law or administrative regulations;

- (v) where the Company's operations and management encounter serious difficulty, its continuation will cause substantial loss to the interests of the Shareholders and no solution can be found through any other channel, and Shareholders holding more than 10% of the voting rights of the Company requisition the people's court to dissolve the Company.

Where the Company is dissolved by virtue of the reasons set out in paragraphs (i), (iii) and (v) above, the Company shall establish a liquidation committee within 15 days, and the members of the liquidation committee shall be selected by Directors or decided at Shareholders' general meeting.

Where the Board proposes to liquidate the Company due to causes other than where the Company has declared that it is insolvent, the Board shall include a statement in its notice convening the Shareholders' general meeting to consider the proposal to the effect that, after making full inquiry into the affairs of the Company, the Board is of the opinion that the Company will be able to pay all its debts in full within 12 months from the commencement of the liquidation.

Upon the passing of the resolution by the Shareholders in general meeting for the liquidation of the Company, all functions and powers of the Board shall cease.

The liquidation committee shall act in accordance with the instructions of the Shareholders' general meeting to make a report at least once every year to the Shareholders' general meeting on the committee's receipts and payments, the business of the Company and the progress of the liquidation, and to present a final report to the Shareholders' general meeting on completion of the liquidation.

The liquidation committee shall within 10 days of its establishment send a notice to creditors, and within 60 days of its establishment make a public announcement in a newspaper.

The liquidation committee shall register creditors' claims so reported.

The liquidation committee shall, after examining the Company's assets, preparing the balance sheets and an inventory of assets, formulate a liquidation plan and present it to the Shareholders' general meeting or the relevant governing authority for confirmation.

If the liquidation committee, having thoroughly examined the Company's assets and having prepared a balance sheet and assets list, discovers that the Company's assets are insufficient to pay its debts in full, it shall immediately apply to the people's court for a declaration of insolvency. After the people's court has declared the Company insolvent, the company's liquidation committee shall turn over any matters regarding the liquidation to the people's court.

Following the completion of liquidation, the liquidation committee shall prepare a report on liquidation and a statement of the receipts and payments and financial books during the period of liquidation, which shall be examined and verified by the PRC certified public accountants and submitted to the Shareholders' general meeting or the people's court for

confirmation. The liquidation committee shall also within 30 days after such confirmation submit the preceding documents to the company registration authority and apply for cancellation of registration of the Company, and publish an announcement relating to the termination of the Company.

19. OTHER PROVISIONS MATERIAL TO THE COMPANY OR ITS SHAREHOLDERS

(a) General provisions

The Company is a joint stock limited company of perpetual existence.

The Company may invest in other limited liability companies, joint stock limited companies and other entities, unless otherwise stipulated by the law. In making such an investment, the Company shall not bear a liability greater than its investment.

The Articles of Association constitute a legally binding document against the Company, its Shareholders, Directors, Supervisors and other senior officers. Pursuant to the Articles of Association, Shareholders may institute legal proceedings against the Company; the Company may institute legal proceedings against Shareholders; Shareholders may institute legal proceedings against Shareholders; and Shareholders may institute legal proceedings against Directors, Supervisors and senior management members of the Company. Such proceedings may comprise court proceedings or arbitration proceedings.

(b) Shares and transfers

A1A7(6)

As referred to in the Articles of Association, “overseas investors” mean those investors within foreign countries, Hong Kong, Macau or Taiwan who subscribe for Shares; and “domestic investors” mean those investors within the territory of the PRC (excluding investors within Hong Kong, Macau and Taiwan) who subscribe for Shares.

The Company may increase its capital by, among other things, issuing new Shares to designated or non-designated investors; or placing new Shares or allotting bonus Shares to its existing Shareholders.

The Company’s increase of capital by issuing new Shares shall, after being approved in accordance with the provisions of the Articles of Association, be conducted in accordance with the procedures stipulated by the relevant laws and administrative regulations of the State.

The Company may reduce its registered capital in accordance with the procedures stipulated by the PRC Company Law and other regulations and the provisions of the Articles of Association. When the Company reduces its registered capital, it shall prepare a balance sheet and an inventory of assets.

(c) **Independent Directors**

The number of independent Directors shall be no less than three at any time.

(d) **Secretary of the Board**

The secretary of the Board shall be a natural person who has the requisite professional knowledge and experience, and shall be appointed by the Board.

(e) **Board of Supervisors**

The Company shall have a Board of Supervisors. The Board of Supervisors shall be composed of [●] members, one of whom shall be the chairman of the Board of Supervisors. The election or removal of the chairman of the Board of Supervisors shall be decided by two-thirds or more of the Supervisors. Decisions of the Board of Supervisors shall be made by the affirmative vote of two-thirds or more of the Supervisors.

The terms of office of Supervisors shall be three years, renewable upon re-election.

The Directors and the senior officers of the Company shall not act concurrently as Supervisors. The Board of Supervisors shall be accountable to the Shareholders' general meeting and exercise certain functions and powers in accordance with law, including (without limitation):

- (i) to supervise the Directors, the president and senior officers in their performance of duties and to propose the removal of Directors and senior officers who have contravened any law, administrative regulations, the Articles of Association or Shareholders' resolutions;
- (ii) to examine the Company's financial affairs and review the financial reports, operation reports and profit distribution schemes to be submitted by the Board to the Shareholders' general meetings;
- (iii) to propose to convene extraordinary meetings of the Board and/or Shareholders; and
- (iv) to institute a suit to the Directors or senior officers of the Company according to article 151 of the PRC Company Law.

Supervisors shall be present at meetings of the Board.

(f) **The president**

The Company shall have one president. The president shall be accountable to the Board and exercise certain functions and powers, including (without limitation):

- (i) to be in charge of the Company's production, operation and management and implementation of the resolutions of the Board, the Company's annual business plans and investment plans;
- (ii) to draft the Company's annual financial budget plans and final accounts, and to put forward the proposal to the Board;
- (iii) to propose the employment and dismissal of the general vice president, senior vice president, chief financial officer and other senior officers, and to employ and dismiss other employees; and
- (iv) to determine all investment, acquisition, disposal and financing projects which do not need to be decided by the Board or the Shareholders' general meeting.

(g) **Settlement of disputes**

Any disputes or claims, that arise based on the rights and obligations stipulated in the Articles of Association, the PRC Company Law and the relevant laws and administrative regulations and involve (among others) any Shareholder of overseas listed foreign Shares, shall be referred by the relevant parties to arbitration and unless otherwise provided in the laws and administrative regulations, shall be resolved in accordance with the laws of the PRC.

The claimant may refer the arbitration to either the China International Economic and Trade Arbitration Commission ("**CIETAC**") in accordance with its arbitration rules, or to the Hong Kong International Arbitration Centre ("**HKIAC**") 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 refers the arbitration to the HKIAC, either party may request the arbitration to be conducted in Shenzhen in accordance with the securities arbitration rules of the HKIAC.

The decision made by the arbitral body shall be final and conclusive, and shall be binding on the parties.

Disputes regarding the definition of Shareholders and registration of members may be resolved other than by way of arbitration.

PART II: SUMMARY OF PRC LAWS AND REGULATIONS

20. THE PRC LEGAL SYSTEM

The PRC legal system is based on *the PRC Constitution* (《中華人民共和國憲法》) and is made up of written laws, administrative regulations, local regulations, autonomy regulations, separate regulations, rules and regulations of State Council departments, rules and regulations of local governments and international treaties of which the PRC

R19.10(3)
R19A.27(3)
s342(1)(a)(ii)

government is a signatory. Decided court cases do not constitute binding precedents, although they may be used for the purposes of judicial reference and guidance.

The National People's Congress ("**NPC**") and the Standing Committee of the National People's Congress ("**SCNPC**") are empowered to exercise the legislative power of the State. The NPC has the power to formulate and amend basic laws governing State organs, civil and criminal matters and other matters. The SCNPC is empowered to formulate and amend laws other than those required to be enacted by the NPC and to supplement and amend any parts of laws enacted by the NPC during the adjournment of the NPC, provided such supplements and amendments are not in conflict with the basic principles of such laws.

The State Council is the highest organ of the PRC administration and has the power to formulate administrative regulations based on the constitution and laws.

The people's congresses of provinces, autonomous regions and municipalities and their respective standing committees may formulate local regulations based on the specific circumstances and actual requirements of their own respective administrative areas, subject to the constitution, laws and administrative regulations. The people's congresses of larger cities and their respective standing committees may formulate local regulations based on the specific circumstances and actual requirements of such cities, subject to the constitution, laws, administrative regulations and local regulations of their respective provinces or autonomous regions, which take effect after approval by the standing committee of the people's congresses of provinces or autonomous regions. "Larger cities" refer to cities where the people's governments of provinces or autonomous regions are located, cities where special economic zones are located and larger cities as approved by the State Council.

According to the PRC Constitution, the power to interpret laws is vested in the SCNPC. 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 has the power to give general interpretation on questions involving the specific application of laws and decrees in court trials. The State Council and its ministries and commissions are also vested with the power to give interpretation of the administrative regulations and department rules which they have promulgated. At the regional level, the power to give interpretations of the local laws and regulations is vested in the regional legislative and administrative organs which promulgate such laws, regulations and rules.

21. **THE PRC JUDICIAL SYSTEM**

Under *the PRC Constitution and the Law of Organization of the People's Courts of the PRC* (《中華人民共和國法院組織法》), the PRC 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 divided into three levels, namely, the primary people's courts, the intermediate people's courts and the high people's courts. The primary people's courts may set up civil, criminal and administrative divisions. The intermediate people's courts have divisions similar to those of the primary people's courts and other special divisions (such as the intellectual property division). These two levels of

people's courts are subject to supervision of the high 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 trial organ of the PRC. It supervises the administration of justice by the people's courts at all levels.

The people's court applies the system whereby the second instance is final, i.e., the judgment or ruling of the second instance at a people's court is final. A party to the case concerned may appeal to the people's court at the next higher level against the judgment or ruling of the first instance.

The Civil Procedure Law of the PRC (the "**Civil Procedure Law**") (《中華人民共和國民事訴訟法》) prescribes the provisions 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 ruling.

A foreign national or foreign enterprise is generally given the same litigation rights and obligations as a citizen or legal person of the PRC. Should a juridical system of a foreign country limit the litigation rights of PRC citizens and enterprises, subject to the principle of reciprocity, the PRC courts may apply the same limitations to the citizens and enterprises (in China) of that foreign country.

A party seeking to enforce a judgment or ruling of a people's court against a party who is not personally or whose property is not within the PRC may apply to a foreign court with jurisdiction over the case for recognition and enforcement of such judgment or ruling. Similarly, if the PRC has entered into a treaty relating to judicial enforcement with the relevant foreign country or a relevant international treaty, a foreign judgment or ruling may also be recognized and enforced according to PRC enforcement procedures by a PRC court based on the equity principle unless the people's court considers that the recognition or enforcement of a judgment or ruling will violate the basic legal principles of the PRC or its sovereignty or national security, or social and public interest.

22. **THE PRC COMPANY LAW, SPECIAL REGULATIONS AND MANDATORY PROVISIONS**

The PRC Company Law first came into effect on July 1, 1994. The latest revised PRC Company Law came into effect on March 1, 2014.

The Special Regulations on the Overseas Offering and Listing of Shares by Joint Stock Limited Companies (the "**Special Regulations**") are formulated in respect of the overseas share subscription and listing of joint stock limited companies. *The Mandatory Provisions* prescribe provisions which must be incorporated in the articles of association of joint stock limited companies to be listed on overseas stock exchanges. Accordingly, *the Mandatory Provisions* have been incorporated in the Articles of Association.

Set out below is a summary of the major provisions of *the PRC Company Law*, *the Special Regulations* and *the Mandatory Provisions*.

(a) **General**

A “company” is a corporate legal person incorporated within the PRC under *the PRC Company Law* with independent legal person properties and entitlements to such legal person properties. The liability of the company is limited to the full amount of its assets and the liability of its shareholders is limited to the extent of the capital contributions subscribed or the shares subscribed respectively by them. Companies can be divided into two different categories: limited liability companies and joint stock limited companies.

(b) **Incorporation**

A joint stock limited company may be incorporated by promotion or subscription. A joint stock limited company may be incorporated by a minimum of two but not more than 200 promoters. At least half of the promoters must have residence within the PRC.

Joint stock limited companies incorporated by promotion are companies the entire registered capital of which is subscribed for by the promoters. Shares in the company shall not be offered to other persons unless the registered capital has been paid up. For joint stock limited companies incorporated by public subscription, the registered capital is the amount of its total paid up capital as registered with the registration authorities. There is no limitation on the minimum registered capital of a joint stock limited company unless otherwise required by other laws or administrative regulation.

For joint stock limited companies incorporated by way of promotion, the promoters shall subscribe in full in writing for shares required to be subscribed for by them by the articles of association, and the capital contribution shall be paid according to the articles of association. Procedures relating to the transfer of title for non-monetary assets shall be duly completed if such assets are to be contributed as capital. After the promoters have completed the capital contribution according to the articles of association, a board of directors and a board of supervisors shall be elected and the board of directors shall apply for registration of incorporation by filing the articles of association with the company registration authorities, together with other documents required by the law or administrative regulations.

Where joint stock limited companies are incorporated by subscription, not less than 35% of their total shares must be subscribed for by the promoters and the remainder can be subscribed for by the public or particular persons, unless otherwise provided for by the law or administrative regulations. A promoter who offers shares to the public must publish a prospectus and draft a share subscription form to be signed and sealed by subscribers, specifying the number and amount of shares to be subscribed for and their addresses. The subscribers shall pay up the amounts for the number of shares they have subscribed for. Where a promoter is offering shares to the public, such offer shall be underwritten by securities firms established by law, in relation to which underwriting agreements shall be signed. A receiving bank shall receive and keep in custody the

subscription amounts, issue receipts to subscribers who have paid the subscription amounts and furnish evidence of receipt of subscription amounts to the relevant authorities.

After the subscription amounts for the share issuance have been paid in full, a capital verification institution established by law must be engaged to conduct capital verification and furnish a report thereon. The promoters shall convene an inauguration meeting within 30 days from the date the shares were fully paid up, and notify each subscriber of or publicly announce the date of the inaugural meeting no less than 15 days in advance of the meeting. The inauguration meeting shall be held only if the promoters and subscribers representing more than half of the total shares issued are present. Where shares issued remain undersubscribed by the cut-off date stipulated in the share offering prospectus, or where the promoter fails to convene an inauguration meeting within 30 days after subscription amounts for the shares issued have been fully paid up, the subscribers may demand the promoter return the subscription amounts so paid up together with interest at bank rates payable for a deposit of an equivalent amount for the same term. 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 joint stock limited company is formally established and has the status of a legal person after the approval of registration has been given by the relevant administration bureau for industry and commerce and a business licence has been issued.

- (i) where the company cannot be incorporated, they shall bear the joint and several liability both for all the debts and expenses incurred in the act of incorporation and for refunding the subscription moneys paid by the subscribers, plus their bank deposit interest calculated for the same period of time; and
- (ii) where the interests of the company are impaired due to a fault committed by the promoters in the process of the incorporation of the company, they shall bear the liability to pay compensation to the company.

According to the Provisional Regulations Concerning the Issue and Trading of Shares (which is only applicable to the issue and trading of shares in the PRC and their related activities), if a company is established by means of 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.

(c) **Share capital**

The promoter of a joint stock limited company may make capital contributions in currencies, in kind or by way of intellectual property rights, land-use rights or other lawfully transferable non-monetary assets based on their appraised monetary value, save for assets prohibited to be contributed as capital by the law or

administrative regulations. If a capital contribution is made other than in cash, fair valuation and verification of the asset contributed must be carried out. The provisions on the valuation of such property as prescribed by laws or administrative regulations shall prevail.

A joint stock limited company may issue registered or bearer share certificates. *The Special Regulations and the Mandatory Provisions* provide that shares issued to foreign investors and listed overseas be issued in registered form and shall be denominated in Renminbi and subscribed for in foreign currency. Shares issued to foreign investors and investors from the territories of Hong Kong, Macau and Taiwan and listed in Hong Kong are classified as H shares, and those shares issued to investors within the PRC other than the territories specified above are known as domestic shares. Under *the Special Regulations*, upon approval of the China Securities Regulatory Commission (“**CSRC**”), a company may agree, in the underwriting agreement in respect of an issue of H shares, to retain not more than 15% of the aggregate number of H shares proposed to be issued besides the amount of underwritten shares. The share offering price may not be less than the par value.

(d) **Increase in share capital**

According to *the PRC Company Law*, the issuance of shares shall be conducted in a fair and equitable manner. Shares in the same class shall rank *pari passu* with one another. Shares of the same class in the same offer shall be issued on the same conditions and at the same price.

When a joint stock limited company is issuing new shares, resolutions shall be passed by a shareholders’ general meeting, approving the class and number of the new shares, the issue price of the new shares, the commencement and end of the new share issue and the class and amount of new shares to be issued to existing shareholders. When a joint stock limited company launches a public issue of new shares with the approval of the securities regulatory authorities under the State Council, a new share offering prospectus and financial accounting report must be published and a subscription form must be prepared. After the new share issuance of the Company has been paid up, the change must be registered with the company registration authorities and an announcement must be made. Where a joint stock limited company is issuing new shares to increase its registered capital, the subscription for new shares by shareholders shall be conducted in accordance with provisions on the payment of subscription amounts in relation to the incorporation of the company.

(e) **Reduction of share capital**

A joint stock limited company may reduce its registered capital in accordance with the following procedures prescribed by *the PRC Company Law*:

- (i) the joint stock limited company shall prepare a balance sheet and a property list;

- (ii) the reduction of registered capital must be approved by shareholders in a shareholders' general meeting;
- (iii) the joint stock limited company shall inform its creditors of the reduction in capital within ten days and publish an announcement of the reduction in the newspaper within 30 days after the resolution approving the reduction has been passed;
- (iv) the creditors of the company may within the statutory prescribed time limit require the company to pay its debts or provide guarantees covering the debts; and
- (v) the company must apply to the relevant administration bureau for industry and commence the registration of the reduction in registered capital.

(f) **Transfer of shares**

Shares held by shareholders may be transferred in accordance with the relevant laws and regulations. A shareholder may only effect a transfer of its shares on a stock exchange established in accordance with law or otherwise as required by the State Council. Registered shares may be transferred after the shareholders endorse their signatures on the back of the share certificates or in any other manner specified by the law or administrative regulations. Following the transfer, the company shall enter the name of the transferee and its address into the share register. The transfer of bearer's share certificate shall become effective upon the delivery of such share certificate to the transferee by the shareholder. Subject to *the Mandatory Provisions*, the shareholders' register may not be modified within the 30 days preceding the shareholder's general meeting or within the five days preceding any ex-dividend date fixed by the company.

Shares held by a promoter may not be transferred within one year after the company's establishment. Shares of the company issued before the public issue of shares shall not be transferred within one year from the date of the company's listing on a stock exchange. Directors, supervisors and the senior management of a company shall declare to the company their shareholdings in the company and any changes in such shareholdings. During each year of their term of office, they shall transfer no more than 25% of the shares they hold in the company. They shall not transfer the shares they hold within one year from the date of the company's listing on a stock exchange, nor within six months after they have resigned from their positions with the company. The articles of association may specify other restrictions in respect of the transfer of shares in the company held by the directors, supervisors and the senior management of the company.

(g) **Shareholders**

A shareholder's rights and duties are all stipulated in the company's articles of association, which is binding on all shareholders. The rights of shareholders are prescribed in *the PRC Company Law and the Mandatory Provisions*.

The obligations of a shareholder include the obligation to abide by the company's articles of association, to pay the subscription moneys in respect of the shares subscribed for, to be liable for the company's debts and liabilities to the extent of the amount of subscription moneys agreed to be paid in respect of the shares taken up by him and any other shareholders' obligation specified in the company's articles of association.

(h) **Shareholders' general meetings**

The shareholders' general meeting is the organ of authority of the company, which exercises its powers in accordance with *the PRC Company Law*.

A company shall hold an annual shareholders' general meeting once every year. An extraordinary shareholders' general meeting is required to be held within two months after the occurrence of any of the following:

- (i) the number of directors becomes less than the number stipulated by the law or less than two-thirds of the number specified in the articles of association;
- (ii) the aggregate losses of the company which are not recovered reach one third of the company's total paid-in share capital;
- (iii) when shareholders alone or in aggregate holding 10% or more of the company's shares request the convening of an extraordinary general meeting;
- (iv) whenever the board of directors deems necessary;
- (v) when the board of supervisors so requests; or
- (vi) other circumstances as provided for in the articles of associations.

Shareholders' general meetings shall be convened by the board of directors, and presided over by the chairman of the board of directors. In the event that the chairman is incapable of performing or not performing his duties, the meeting shall be presided over by the vice chairman. In the event that the vice chairman is incapable of performing or not performing his duties, a director nominated by more than half of directors shall preside over the meeting. Where the board of directors is incapable of performing or not performing its duties of convening the shareholders' general meeting, the board of supervisors shall convene and preside over such meeting in a timely manner. In case the board of supervisors fails to convene and preside over such meeting, shareholders alone or in aggregate holding more than 10% of the company's shares for 90 days consecutively may unilaterally convene and preside over such meeting.

Subject to the PRC Company Law, notice of the annual general meeting stating the time and venue of and matters to be considered at the meeting shall be given to all shareholders 20 days before the meeting. Notice of extraordinary general

meetings shall be given to all shareholders 15 days prior to the meeting. Notice of the issuance of bearer shares shall be announced 30 days before the meeting. Subject to *the Special Regulations* and *the Mandatory Provisions*, such notice shall be delivered to all the shareholders 45 days in advance, and the matters to be considered at the meeting shall be specified. Subject to *the Special Regulations* and *the Mandatory Provisions*, the confirmation letter of the shareholders planning to attend the meeting shall be delivered to the company 20 days in advance of the meeting. Moreover, subject to the PRC Company Law, shareholders alone or in aggregate holding more than 3% of the company's shares may put forward a new proposal in writing to the board of directors ten days before the general meeting is held. The board of directors shall, within two days upon receipt of the proposal, notify the other shareholders, and submit the said proposal to the general meeting for deliberation.

Shareholders present at a shareholders' general meeting have one vote for each share they hold, save that shares held by the company are not entitled to any voting rights. Resolutions of the shareholders' general meeting must be adopted by more than half of the voting rights held by shareholders present at the meeting, with the exception of matters requiring a special resolution, as further described below.

Where *the PRC Company Law* and the articles of association provide that the transfer or acquisition of significant assets or the provision of external guarantees by a company must be approved by way of resolution of the shareholders' general meeting, the directors shall convene a shareholders' general meeting promptly to vote on the above matters. The accumulative voting system may be adopted pursuant to the provisions of the articles of association or a resolution of the shareholders' general meeting for the election of directors and supervisors at the shareholders' general meeting. Under the accumulative voting system, each share shall be entitled to votes equivalent to the number of directors or supervisors to be elected at the shareholders' general meeting and shareholders may consolidate their voting rights when casting a vote.

Minutes shall be prepared in respect of matters considered at the shareholders' general meeting and the president of the meeting and directors attending the meeting shall sign to endorse such minutes. The minutes shall be kept together with the shareholders' attendance register and the proxy forms.

According to *the Mandatory Provisions*, the increase or reduction of share capital, the issue of shares of any class, warrants or other similar securities, bonds or debentures, the merger, division, dissolution or liquidation of the company, conversion of the corporate form, amendments to the articles of association and any other matters as determined by the shareholders by ordinary resolution, must be approved through special resolutions by more than two-thirds of the voting rights held by shareholders present at the meeting.

There is no specific provision in *the PRC Company Law* regarding the number of shareholders constituting a quorum in a shareholders' general meeting, although

the *Special Regulations and the Mandatory Provisions* provide that a company's general meeting may be convened when replies to the notice of that meeting from shareholders holding shares representing at least 50% of the voting rights in the company have been received 20 days before the proposed date, or if that 50% level is not achieved, the company shall within five days of the last day for receipt of the replies notify shareholders again by public announcement of the matters to be considered at the meeting and the date and place of the meeting and the general meeting may be held thereafter. *The Mandatory Provisions* require class meetings to be held in the event of a variation or derogation of the class rights of a class.

(i) **Directors**

A joint stock limited company shall have a board of directors, which shall consist of five to 19 members. Members of the board of directors may include staff representatives of the company, who shall be democratically elected by the company's staff at the staff representative assembly, general staff meeting or otherwise. The term of a director shall be stipulated in the articles of association, provided that no term of office shall last for more than three years. A director may serve consecutive terms if re-elected. A director shall continue to perform his duties in accordance with the laws, administrative regulations and articles of association until a re-elected director takes office, if re-election is not conducted in a timely manner upon the expiry of his term of office or if the resignation of directors results in the number of directors being less than the quorum.

The powers of the board of directors are prescribed in *the PRC Company Law*.

Meetings of the board of directors shall be convened at least twice a year. Notice of meeting shall be given to all directors and supervisors ten days before the meeting. Interim board meetings may be convened by shareholders representing more than 10% of voting rights, more than one third of the directors or the board of supervisors. The chairman of the board of directors shall convene and preside over such meeting within ten days after receiving such proposal. The board of directors may provide for a different method of giving notice and notice period for convening an extraordinary meeting of the board of directors. Meetings of the board of directors shall be held only if half or more of the directors are present. Resolutions of the board of directors require the approval of more than half of all directors. Each director shall have one vote for resolutions to be approved by the board of directors. Directors shall attend board meetings in person. If a director is unable to attend a board meeting, he may appoint another director by a written power of attorney specifying the scope of the authorisation to attend the meeting on his behalf.

If a resolution of the board of directors violates the law, administrative regulations, the company's articles of association or the resolution of its shareholders' general meeting, and as a result of which the company sustains serious losses, the directors participating in adopting the resolution are liable to compensate the company. However, if it can be proved that a director expressly objected to the

resolution when the resolution was voted on, and that such objections were recorded in the minutes of the meeting, such director may be relieved from that liability.

The PRC Company Law stipulates certain persons who may not serve as a director of a company.

The election, appointment or engagement of directors elected or appointed by the company in violation of the relevant provisions of *the PRC Company Law* shall be null and void. If one of these restrictions becomes applicable to a director during his term of office, such director shall be released of his duties by the company.

Other circumstances under which a person is disqualified from acting as a director of a company are set out in *the Mandatory Provisions*.

The board of directors shall appoint a chairman and may appoint one or more vice chairmen. The chairman and the vice chairman are elected with approval of more than half of all the directors. The chairman shall convene and preside over board meetings and examine the implementation of board resolutions. The vice chairman shall assist in the work of the chairman. In the event that the chairman is not performing his duties, the duties shall be performed by the vice chairman. In the event that the vice chairman is incapable of performing or not performing his duties, a director nominated by more than half of directors shall perform his duties.

(j) **Supervisors**

A joint stock limited company shall have a board of supervisors composed of not less than three members. The board of supervisors is made up of representatives of the shareholders and an appropriate proportion of representatives of the company's staff; such proportion shall be stipulated in the articles of association, provided that the proportion of representatives of the company's staff shall not be less than one-third of the supervisors. Directors and officers may not act concurrently as supervisors. Representatives of the company's staff and workers at the board of supervisors shall be democratically elected at the staff representative assembly, general staff meeting or otherwise. The board of supervisors shall appoint a chairman and may appoint one or more vice chairmen. The chairman and the vice chairman of the board of supervisors are elected with approval of more than half of all the supervisors. The chairman of the board of supervisors shall convene and preside over the board of supervisors' meetings. In the event that the chairman of the board of supervisors is incapable of performing or not performing his duties, the vice chairman of the board of supervisors shall convene and preside over board of supervisors' meetings. In the event that the vice chairman of the board of supervisors is incapable of performing or not performing his duties, a supervisor nominated by more than half of supervisors shall convene and preside over board of supervisors' meetings.

Each term of office of a supervisor is three years and he or she may serve consecutive terms if re-elected. A supervisor shall continue to perform his duties in

accordance with the laws, administrative regulations and articles of association until a duly re-elected supervisor takes office, if re-election is not conducted in a timely manner upon the expiry of his term of office or if the resignation of supervisors results in the number of supervisor being less than the quorum.

The board of supervisors, inter alia, reviews, supervises the directors and senior officers and presents proposals to the shareholders' general meeting.

Supervisors may be in attendance at board meetings and make enquiries or proposals in respect of board resolutions. The board of supervisors of a company may initiate investigations into any irregularities identified in the operation of the company and, where necessary, may engage an accountant to assist in their work at the company's expense.

(k) **Managers and officers**

A company shall have a manager who shall be appointed or removed by the board of directors. The manager shall report to the board of directors and may, among other acts pursuant to the running of the business, supervise, arrange for the implementation of resolutions of the board, and strategies, administer, structure and govern the staffing of the business.

The manager shall be in attendance at board meetings.

(l) **Duties of the directors, supervisors, managers and other officers**

Directors, supervisors, managers and officers of a company are required under *the PRC Company Law* to comply with the relevant laws, administrative regulations and the articles of association, and carry out their duties honestly and diligently. Directors, supervisors, managers and officers are prohibited from abusing their powers to accept bribes or other unlawful income and from misappropriating the company's properties. *The PRC Company Law* contains a series of prohibitions on the behavior of directors and officers and prescribes for the appropriate means by which such directors and officers may use their position and powers.

According to *The PRC Company Law*, officers shall mean the manager, deputy manager(s), financial controller, board secretaries (in case of a listed company) of a company and other personnel as stipulated in the articles of association.

Income generated by directors or officers in violation of such provisions of *The PRC Company Law* shall revert to the company.

A director, supervisor or officer who contravenes any law, administrative regulation or the company's articles of association in the performance of his duties resulting in any loss to the company shall be liable for compensation.

Where the attendance of a director, supervisor or officer is requested by the shareholders' general meeting, such director, supervisor or officer shall attend the meeting as requested and answer enquiries of shareholders.

Directors and officers should furnish with all truthfulness facts and information to the board of supervisors without obstructing the discharge of duties by the board of supervisors.

The Special Regulations and the Mandatory Provisions provide that a company's directors, supervisors, managers and other officers shall have a duty of loyalty towards the company. They are required to perform their duties faithfully, protect the interests of the company and not use their positions for their own benefit. *The Mandatory Provisions* contain detailed stipulations on these duties.

(m) **Finance and accounting**

A company shall establish its financial and accounting systems according to laws, administrative regulations and the regulations of the responsible financial department of the State Council and at the end of each financial year prepare a financial and accounting report which shall be audited by an accountant as provided by law. The financial and accounting report shall be prepared in accordance with provisions of the laws, administrative regulations and the regulations of the financial department of the State Council.

A joint stock limited company shall deposit its financial and accounting report at the company for inspection by the shareholders at least 20 days before the convening of an annual general meeting of shareholders. A joint stock limited company issuing its shares in public must publish its financial and accounting report.

When distributing each year's after-tax profits, the company shall set aside 10% of its after-tax profits for the company's statutory surplus common reserve fund (except where the fund has reached 50% of the company's registered capital). When the company's statutory common reserve fund is not sufficient to make up for the company's losses of the previous year, current year profits shall be used to make good the losses before allocating such profits. After the company has made appropriations to the statutory common reserve fund from its after-tax profit, it may, with the approval of the shareholders' general meeting by way of resolution, make further appropriations from its after-tax profit to the discretionary common reserve fund. After the company has made good its losses and made allocations to its common reserve fund, the remaining profits are distributed in proportion to the number of shares held by the shareholders, or in any other manner as specified in its articles of associations. Profits distributed to shareholders by the shareholders' general meeting or the board of directors before losses have been made good and appropriations have been made to the statutory common reserve fund in violation of the foregoing provisions must be returned to the company. Company shares held by the company shall not be entitled to any distribution of profit.

The premium over the nominal value of the shares of the company on issue and other amounts required by the relevant governmental authority is to be treated as the capital common reserve fund and shall be accounted for as the capital common reserve fund. The common reserve fund (including each of the capital common reserve fund, the statutory common reserve fund and the discretionary

common reserve fund) of a company shall be applied to make up the company's losses, expand the business operations of the company or increase the company's capital, except that the capital common reserve fund shall not be used to make good the company's losses. Upon the conversion of the statutory common reserve fund into capital, the balance shall not be less than 25% of the registered capital of the company before such conversion.

The company shall have no other accounting books except the statutory accounting books. The company's assets shall not be deposited in any accounts opened in the name of any individual.

(n) **Appointment and retirement of auditors**

Pursuant to *the PRC Company Law*, the appointment or dismissal of accountants responsible for the company's auditing shall be determined by the shareholders' general meeting or the board of directors in accordance with the articles of association. An accountant should be allowed to make representations when a shareholders' general meeting or board of directors is scheduled to conduct a vote on the dismissal of such accountant. The company should provide true and complete accounting evidence, books, financial and accounting reports and other accounting data to any accountant it hires without any refusal, withholding and false information.

The Special Regulations require a company to employ an independent qualified firm of accountants to audit the company's annual report and review and check other financial reports. The accountant's term of office shall commence from the end of the shareholders' annual general meeting of the company and it shall expire on the end of the next shareholders' annual general meeting of the company.

(o) **Distribution of profits**

The Special Regulations provide that the dividends and other distributions to be paid to holders of H shares shall be declared and calculated in Renminbi and paid in foreign currency. Under *the Mandatory Provisions*, the payment of foreign currency to shareholders shall be made through a receiving agent.

(p) **Amendment of articles of association**

Any amendments to the articles of association must be made in accordance with the procedures set forth in applicable laws, administrative regulations and the articles of association. The amendment of articles of association involving content of *the Mandatory Provisions* will only be effective after approval by the company's approval department authorised by the State Council and the CSRC. Any changes of any registered item caused by such amendments shall be filed with the State Administration of Industry and Commerce or any of its local bureaus for registration. If the amendment to the articles of association falls to be registered and filed and has been adopted, the company must process registration of changes in accordance with applicable laws and regulations.

(q) **Dissolution and liquidation**

The PRC Company Law prescribes a series of scenarios whereby a company shall be dissolved, including, among other things, further to a shareholders' general meeting having resolved to dissolve the company; dissolution through merger or demerger; or dissolution by order of the People's Court, further to a request of shareholders holding more than 10% of the voting rights of the company's shareholders.

Where the company is dissolved in circumstances of the operation of the company's articles; a shareholders' general meeting; the company's business licence becoming invalidated, its operations are suspended or the company is ordered to dissolve; or dissolution by the Court following a shareholders' request, a liquidation committee shall be established and liquidation commenced within 15 days after the occurrence of an event of dissolution.

Members of the liquidation committee of a joint stock limited company shall comprise its directors or the person appointed by the shareholders' general meeting. If a liquidation committee is not established within the stipulated period, the company's creditors can apply to the people's court, requesting the court to appoint relevant personnel to form the liquidation committee.

The liquidation committee shall notify the company's creditors within ten days after its establishment, and issue public notices in the newspapers within 60 days. A creditor shall lodge his claim with the liquidation committee within thirty days after receiving notification, or within 45 days of the public notice if he did not receive any notification. A creditor shall state all matters relevant to his creditor rights in making his claim and furnish evidence. The liquidation committee shall register such creditor rights. The liquidation committee shall not make any debt settlement to creditors during the period of claim.

Upon liquidation of the company's properties and the preparation of the balance sheet and inventory of assets, the liquidation committee shall draw up a liquidation plan to be submitted to the shareholders' general meeting or people's court for endorsement.

The remaining assets of the company after payment of liquidation expenses, wages, social insurance expenses and statutory compensation, outstanding taxes and the company's debt shall be distributed to shareholders according to shareholding proportion in the case of joint stock limited companies. The company shall continue to exist during the liquidation period, although it can only engage in any operating activities that are related to the liquidation. The company's properties shall not be distributed to the shareholders before repayment is made in accordance to the foregoing provisions.

Upon liquidation of the company's properties and the preparation of the balance sheet and inventory of assets, if the liquidation committee becomes aware that the

company does not have sufficient assets to meet its liabilities, it must immediately apply to the people's court for a declaration for bankruptcy.

Following such declaration, the liquidation committee shall hand over all affairs of the liquidation to the people's court.

Upon completion of the liquidation, the liquidation committee shall submit a liquidation report to the shareholders' general meeting or the people's court for verification. Thereafter, the report shall be submitted to the company's registration authority in order to cancel the company's registration, and a public notice of its termination shall be issued. Members of the liquidation committee are required to discharge their duties honestly and in compliance with the relevant laws.

A member of the liquidation committee is liable to indemnify the company and its creditors in respect of any loss arising from his willful or material default.

(r) **Overseas Listing**

The shares of a company shall only be listed overseas after obtaining approval from the securities regulatory authority of the State Council and the listing must be arranged in accordance with procedures specified by the State Council.

According to *the Special Regulations*, a company's plan to issue H shares and domestic invested shares which has been approved by the CSRC may be implemented respectively by the board of directors of a company, within 15 months after approval is obtained from the CSRC.

(s) **Loss of share certificates**

A shareholder may apply, in accordance with the public notice procedures set out in *the PRC Civil Procedure Law*, to a people's court in the event that share certificates in registered form are either stolen, lost or destroyed, for a declaration that such certificates will no longer be valid. After such a declaration has been obtained, the shareholder may apply to the company for the issuance of replacement certificates.

The Mandatory Provisions have additional provisions on loss of share certificates and H share certificates of shareholders of overseas listed foreign shares, which are set out in the Articles of Association.

(t) **Suspension and Termination of Listing**

The PRC Securities Law (《中華人民共和國證券法》) provides for a series of circumstances in which the trading of shares of a company on a stock exchange may be suspended or the listing for trading of its shares terminated if so decided by the relevant stock exchange.

(u) **Merger and demerger**

Merger of companies may either be merger by consolidation or merger by incorporation. Merger by consolidation means that the company absorbs other companies and the absorbed companies are dissolved. Merger by incorporation means that two or more companies merge into a newly incorporated company and all the merged parties are dissolved.

23. **SECURITIES LAW AND OTHER RELEVANT REGULATIONS**

The PRC has promulgated a number of regulations that relate to the issue and trading of shares and disclosure of information by companies. The CSRC is the supervisory and regulatory institution for securities in the PRC. It is responsible for the formulation of the policies relating to securities, the drafting of securities laws and regulations, the supervision of the securities markets, market intermediaries and participants, the supervision and regulation of the domestic and overseas public offering of securities by Chinese companies, as well as the supervision and regulation of securities transactions.

The Provisional Regulations Concerning the Issue and Trading of Shares (《股票發行與交易管理暫行條例》) (the “**Securities Provisional 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, a company must obtain the approval of the Securities Committee (being currently the CSRC) to directly or indirectly offer its shares outside the PRC.

The Regulations of the State Council Concerning Domestic Listed Foreign Shares of Joint Stock Limited Companies deal mainly with the issue, subscription, trading and declaration of dividends and other distributions of domestic listed foreign shares and disclosure of information related to joint stock limited companies with domestically listed foreign shares.

The PRC Securities Law regulates, 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 PRC Securities Law* provides that a company must obtain prior approval from the State Council’s regulatory authorities to list shares outside the PRC and that specific measures with respect to shares of companies in the PRC that are to be subscribed for and traded in foreign currencies 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.

24. **ARBITRATION AND ENFORCEMENT OF ARBITRAL AWARDS**

A1A65(e)

The Arbitration Law of the People’s Republic of China (《中華人民共和國仲裁法》) (the “**Arbitration Law**”) is applicable to contract disputes and other property disputes between natural persons, legal persons and other organisations 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 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 unless the arbitration agreement is null and void.

Under *the Mandatory Provisions* and the Articles of Association, a claimant may select the CIETAC to conduct arbitration in accordance with its arbitration rules or the HKIAC to conduct arbitration in accordance with its securities arbitration rules.

If the claimant elects for arbitration to be carried out at the HKIAC, 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 HKIAC. In accordance with *the Arbitration Regulations of China International Economic and Trade Arbitration Commission* (《中國國際經濟貿易仲裁委員會仲裁規則》), the CIETAC shall deal with economic and trading disputes over contractual or non-contractual transactions, including disputes involving Hong Kong based on the agreement of the parties.

Under *the Arbitration Law and the 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 by a 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 recognised 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 has acceded to the Convention on *the Recognition and Enforcement of Foreign Arbitral Awards* (the "**New York Convention**") (《承認及執行外國仲裁裁決公約》). *The New York Convention* provides that all arbitral awards made in a state which is a party to *the New York Convention* shall be recognised 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 request for enforcement is made.

It was declared by the Standing Committee simultaneously with the accession of the PRC that (i) the PRC will only recognise 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. The Hong Kong Special Administration Region of the PRC ("**HKSAR**") and the PRC have an arrangement of mutual enforcement of arbitral awards. Under the arrangement, the Courts of the HKSAR agree to enforce the awards made pursuant to the Arbitration Law of the PRC by the arbitral authorities in the Mainland. The People's Court

of the Mainland agree to enforce the awards made in the HKSAR pursuant to the Arbitration Ordinance of Hong Kong.

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

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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 company established in the PRC that is seeking a listing of H Shares on the Stock Exchange, the Company is governed by *the PRC Company Law* and all the rules and regulations promulgated pursuant to *the PRC Company Law*.

The following sections contain a summary of 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 company incorporated and existing under *the PRC Company Law*. This summary is, however, not intended to be an exhaustive comparison.

(a) **Corporate Existence**

Under Hong Kong company law, a company having share capital is incorporated by the Registrar of Companies in Hong Kong and, upon its incorporation, the company will acquire an independent corporate existence. A company may be incorporated as a public company or a private company. Pursuant to the Companies Ordinance, the articles of association of a private company incorporated in Hong Kong shall contain certain pre-emptive provisions. The articles of association of a public company do not contain such pre-emptive provisions. Hong Kong law does not prescribe any minimum capital requirement for a Hong Kong company.

Under *the PRC Company Law*, a joint stock limited company may be incorporated by promotion or public subscription. *The PRC Company Law* has no provision on the minimum registered capital of joint stock limited company, except that laws, administrative regulations and State Council decisions have separate provisions on paid-in registered capital and the minimum registered capital, in which case the company should follow such provisions.

(b) **Share Capital**

Under Hong Kong law, a company may state in its articles of association the maximum number of shares that it may issue. If a maximum number of shares is stated, the company is not bound to issue the entire amount, and therefore the maximum number of shares it may issue may be larger than its issued share capital. In this case, 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 a maximum number of shares to be issued. A company's registered capital is the amount of its issued share capital.

Any increase in a company's registered capital must be approved by its shareholders' general meeting and must be in compliance with provisions stipulated by the relevant PRC governmental and regulatory authorities.

Under *the PRC Securities Law*, a company which is authorised by the relevant securities administration authority to list its shares on a stock exchange must have a registered capital of not less than RMB30 million. Hong Kong law does not prescribe any minimum capital requirements for companies incorporated in Hong Kong.

Under *the PRC Company Law*, shares may be subscribed for in the form of money or non-monetary assets (other than assets not entitled to be used as capital contributions under relevant laws and administrative regulations). For non-monetary assets to be used as capital contributions, appraisals and verification must be carried out to ensure no over-valuation or under-valuation of the assets. There is no such restriction on a Hong Kong company under Hong Kong law.

(c) **Restrictions on Shareholding and Transfer of Shares**

The Domestic Shares, which are denominated and subscribed for in Renminbi, may be subscribed for or traded by the State, PRC legal persons, natural persons and other entities as stipulated by PRC laws and regulations. The 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, or qualified domestic institutional investors.

Under *the PRC Company Law*, a promoter of a joint stock limited company is not allowed to transfer the shares it holds for a period of one year after the date of establishment of the company. Shares in issue prior to a public offering cannot be transferred within one year from the listing date of the shares on a stock exchange. Shares in a joint stock limited company held by a company's directors, supervisors and managers and transferred each year during their term of office shall not exceed 25% of the total shares they held in the company, and the shares they held in the company cannot be transferred within one year from the listing date of the shares, and also cannot be transferred within half a year after such personnel have left office. A company's articles of association may impose other restrictions on the transfer of the company's shares held by its directors, supervisors and officers. There are no such restrictions on shareholdings and transfers of shares under Hong Kong law, apart from a six-month lock-up on the company's issue of shares and a 12-month lock-up on controlling shareholders' disposal of shares.

(d) **Financial Assistance for Acquisition of Shares**

Although *the PRC Company Law* does not prohibit or restrict a company or its subsidiaries from providing financial assistance for the purpose of an acquisition of shares in the company, *the Mandatory Provisions* contain restrictions on a

company and its subsidiaries from providing such financial assistance similar to those under the Hong Kong company law.

(e) **Variation of Class Rights**

The PRC Company Law makes no special provision relating to variation of class rights. *The Mandatory Provisions* specify the circumstances which are deemed to be variations of class rights and the approval procedures required to be followed in respect of such variations. These provisions have been incorporated in the Articles of Association, which are summarised above.

Under the Companies Ordinance, the rights attached to any class of shares can be varied only (i) with the consent in writing of the holders representing at least 75% of the total voting rights of holders of shares in that class, (ii) with the approval by special resolution passed at a separate general meeting of holders of shares in the class or (iii) if there are provisions in the articles of association for the variation of those rights, then in accordance with those provisions.

As required by *the Listing Rules* and *the Mandatory Provisions*, the Company 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. However, the special voting procedures for shareholders of different classes shall not apply in the following circumstances:

- (i) if 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;
- (ii) if 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; or
- (iii) upon the listing and trading of domestic shares on an overseas stock exchange, provided that the listing and trading of such transferred shares shall have obtained the approval of the authorised securities approval authorities of the State Council, including the CSRC.

A1A65(b)

(f) **Directors**

The PRC Company Law, unlike Hong Kong company law, does not contain any requirements relating to the declaration of directors' interests in material contracts, restrictions on companies providing certain benefits 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 above.

(g) **Board of Supervisors**

Under *the PRC Company Law*, a company's directors and managers are subject to the supervision of a board of supervisors. *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 the best interests of the company and to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

There is no mandatory requirement for the establishment of a board of supervisors for a company incorporated in Hong Kong.

(h) **Derivative Action by Minority Shareholders**

A1A65(d) and A1a
para65(f)

Hong Kong law permits minority shareholders to start a derivative action on behalf of a company against directors who have committed a breach of their fiduciary duties to the company, if such 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.

The PRC Company Law gives shareholders the right to initiate proceedings in the people's court to restrain the implementation of any resolution passed by shareholders in a general meeting, or by the board of directors, that violates any law, administrative rules or articles of association or if the directors, supervisors or senior managers violate laws, administrative rules or articles of association when performing their duties and cause losses to the company. Moreover, *the Mandatory Provisions* provide shareholders with certain remedies against the directors, supervisors and officers who breach their duties to the company. In addition, as a condition to the listing of the H Shares on the Stock Exchange and in accordance with the Articles of Association, each of the Directors and Supervisors is required to give an undertaking in favor of the company acting as agent for each of its shareholders. This undertaking allows minority shareholders to take action against the Directors and Supervisors when they fail to perform their respective duties.

(i) **Protection of Minorities**

A1a para65(f)

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.

The PRC Company Law provides that if any company encounters any serious difficulty in its operations or management to the extent that the interests of its shareholders would be seriously harmed if the company continued to exist, and such difficulty cannot be resolved by any other means, the shareholders holding 10% or more of the voting rights of the issued shares of the company may petition the people's court to dissolve the company. *The Mandatory Provisions* contain provisions to the effect that a controlling shareholder may not exercise its voting rights (i) to relieve a director or supervisor of his duty to act honestly in the best interests of the company, (ii) to approve the expropriation by a director or supervisor of the company's assets, or (iii) to approve the deprivation by a director or supervisor of specific rights of other shareholders, in each case prejudicial to the interests of the shareholders generally or part of the shareholders of a company.

(j) **Notice of Shareholders' General Meetings**

Under *the PRC Company Law*, notice of a shareholders' annual general meeting must be given not less than 20 days before the meeting. Under *the Special Regulations* and *the Mandatory Provisions*, 45 days' written notice must be given to all shareholders and shareholders who wish to attend the meeting must reply in writing no less than 20 days before the date of the meeting.

For a limited company incorporated in Hong Kong, the minimum period of notice is 21 days for annual general meetings and 14 days for other general meetings.

(k) **Quorum for Shareholders' General Meetings**

A1A65(a)

Under Hong Kong law, the quorum for a meeting of a company must be at least two members unless the articles of association of the company provide otherwise. For companies with one member, one member shall constitute a quorum.

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 a general meeting may only be convened when replies to the notice of that meeting have been received from shareholders whose shares represent at least 50% of the voting rights at least 20 days before the proposed date of the meeting, or if that 50% level is not achieved, the company must within five days notify its shareholders again by way of a public announcement and may hold the shareholders' general meeting thereafter.

(l) **Voting**

A1A65(a)

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 at least 75% 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 affirmative votes of shareholders representing more than half of the voting rights represented

by the shareholders who attend the general meeting except in cases of proposed amendments to a company's articles of association, increase or reduction of registered capital, merger, division or dissolution, or change of corporation form, which require affirmative votes of shareholders representing more than two thirds of the voting rights represented by the shareholders who attend the general meeting.

(m) **Financial Disclosure**

The PRC Company Law requires a company to make available for inspection by shareholders its annual financial statements (including but not limited to balance sheet, income statement and other relevant documents) 20 days before the shareholders' annual general meeting. In addition, the company must publish its financial statements and its financial statements 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 financial statements, directors' report and auditor's report, which are to be laid before the company in its annual general meeting, at least 21 days before such meeting.

PRC companies are required to prepare their financial statements in accordance with PRC accounting standards. *The Mandatory Provisions* require that such a company must, in addition to preparing its accounts according to PRC standards, have its accounts prepared and audited in accordance with international or Hong Kong accounting standards and its 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 information should also be disclosed simultaneously.

(n) **Information on Directors and Shareholders**

The PRC Company Law gives shareholders the right to inspect a company's articles of association, minutes of shareholders' general meetings and financial and accounting reports. Under *the PRC Company Law*, shareholders have the right to inspect and copy (at reasonable charges) certain information on shareholders and on directors.

(o) **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 a PRC company listed on the Stock Exchange 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 such H Shares.

(p) **Corporate Reorganisation**

Corporate reorganisations 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 in the course of being wound up voluntarily to another company pursuant to *the Hong Kong Companies (Winding Up and Miscellaneous Provisions) Ordinance* or a compromise or arrangement between the company and its creditors or between the company and its members pursuant to the Companies Ordinance, which requires the approval of shareholders and the sanction of the court. Under *the PRC Company Law*, the merger, demerger, dissolution or change to the corporate form of a joint stock limited company has to be approved by shareholders' general meeting of the company.

(q) **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 or via arbitration. *The Mandatory Provisions* provide that such disputes should be submitted to arbitration at either the HKIAC or the CIETAC, at the claimant's choice.

(r) **Mandatory Deductions**

Under *the PRC Company Law*, the after-tax profits of a company are subject to deductions for the statutory surplus common reserve fund 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.

(s) **Remedies of the Company**

Under *the PRC Company Law*, if a director, supervisor or senior 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 senior 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 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.

(t) **Dividends**

Under PRC law, a company is required 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 in certain circumstances. Under Hong Kong law, there are no withholding taxes on dividends, interest or any other income, whether paid to residents or non-residents. 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 (as described under the heading "Receiving Agent" above).

(u) **Fiduciary Duties**

In Hong Kong, the common law concept of the fiduciary duty of directors exists. Under *the PRC Company Law* and *the Special Regulations*, directors, supervisors, officers owe a fiduciary duty towards their company and are not permitted to engage in any activities which damage the interests of their company or engage in any business similar to that of their company.

(v) **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, as required by *the Mandatory Provisions*, share transfers may not be registered within 30 days before the date of a shareholders' general meeting or within five days before the record date set for the purpose of distribution of dividends.

26. **LISTING RULES**

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

(a) **Compliance adviser**

Every company is required to appoint a compliance adviser acceptable to the Stock Exchange for the period commencing on the Listing Date and ending on the date of publication of its financial results for the first full financial year commencing after the Listing Date, to provide the company with professional advice on continuous compliance with *the Hong Kong Listing Rules*, and to act at all times, in addition to its two authorised representatives, as its principal channel of communication with the Stock Exchange. The appointment of the compliance adviser may not be terminated until a replacement acceptable to the Stock Exchange has been appointed.

If the Stock Exchange is not satisfied that the compliance adviser is fulfilling its responsibilities adequately, it may require the company to terminate the compliance adviser's appointment and appoint a replacement.

The compliance adviser must keep the company informed on a timely basis of changes in the 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 Stock Exchange if the authorised representatives of the company are expected to be frequently outside Hong Kong.

(b) **Accountant's Report**

An accountant's report will not normally be regarded as acceptable by the Stock Exchange unless the relevant accounts have been audited to a standard comparable to that required in Hong Kong or under International Standards on Auditing or China Auditing Standards. Such report will normally be required to conform to Hong Kong or international accounting standards or China Accounting Standards for Business Enterprises.

(c) **Process Agent**

Every overseas incorporated company is required to appoint and maintain a person authorised to accept service of process and notices on its behalf in Hong Kong throughout the period during which its securities are listed on the Stock Exchange and must notify the Stock Exchange of his, her or its appointment, the contract particulars of such appointment and the termination of the appointment.

(d) **Public Shareholding**

If at any time there are existing issued securities of a PRC issuer other than foreign shares ("**foreign shares**") which are listed on the Stock Exchange, the Listing Rules require that the aggregate amount of the H shares and other securities held by the public must constitute not less than 25% of a company's total issued share capital and that the class of securities for which listing is sought must not be less than 15% of the company's total issued share capital if the company has an expected market capitalisation at the time of listing of not less than HK\$50,000,000. The Stock Exchange may, at its discretion, accept a lower percentage of between 15% and 25% if a company has an expected market capitalisation at the time of listing of more than HK\$10,000,000,000.

(e) **Independent Directors and Supervisors**

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

(f) **Restrictions on Purchase of our Own Securities**

Subject to governmental approvals and the Articles of Association, a PRC company may repurchase its own H shares on the Stock Exchange in accordance with the provisions of *the 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, a company is required to provide information on any proposed or actual purchases of all or any of its equity securities, whether or not listed or traded on the Stock Exchange. A PRC company must also state the consequences of any purchases which will arise under either or both of the Hong Kong Takeovers Code 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 issued H shares.

(g) **Redeemable Shares**

A PRC company must not issue any redeemable shares unless the Stock Exchange is satisfied that the relative rights of the holders of its H shares are adequately protected.

(h) **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 authorising, allotting, issuing or granting shares or securities convertible into shares, options, warrants or similar rights to subscribe for any shares or such convertible securities.

No such approval will be required to the extent that 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 authorise, 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 of the date of the passing of the relevant special resolution, or such shares are issued as part of the plan at the time of a company's establishment to issue domestic shares and H shares and such plan is implemented within 15 months from the date of approval by the State Council Securities Policy Committee.

(i) **Supervisors**

A PRC company is required to adopt rules governing dealings by its supervisors in securities of the company in terms no less exacting than those of the model code (set out in Appendix 10 to *the Listing Rules*) issued by the Stock Exchange.

A PRC company is required to obtain the prior approval of its shareholders at a general meeting (at which the relevant supervisor and his associates shall not vote on the matter) prior to the company or any of its subsidiaries entering into a service contract of the following nature with a supervisor or proposed supervisor of the company or its subsidiary: (1) the duration of the service contract may exceed three years; or (2) in order to entitle the company or any of its subsidiaries to terminate the contract, the service contract expressly requires the company or any of its subsidiaries to give more than one year's notice or to pay compensation or make other payments equivalent to more than one year's emoluments of the relevant supervisor or proposed supervisor.

The remuneration committee of the company or an independent board committee must form a view in respect of service contracts that require shareholders' approval and advise shareholders (other than shareholders with a material interest in the service contracts and their associates) as to whether the terms are fair and reasonable, advise whether such contracts are in the interests of the company and its shareholders as a whole and advise shareholders on how to vote.

(j) **Amendment to Articles of Association**

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

(k) **Documents for Inspection**

Every company is required to make available a series of company documents prescribed by the Listing Rules at a place in Hong Kong for inspection by the public and its shareholders free of charge, and for copying by its shareholders at reasonable charges, such documents shall include, inter alia, a duplicate register of shareholders, the latest audited financial statements and the special resolutions of the company.

(l) **Receiving Agents**

Under Hong Kong law, a PRC company is 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.

(m) **Statements in Share Certificates**

A PRC company is required to ensure that all its listing documents and share certificates include the statements stipulated below and to instruct and cause each of its share registrars not to register the subscription, purchase or transfer of any of its 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 effect that the acquirer of shares:

- (i) agrees with the company and each shareholder, and the company agrees with each shareholder, to observe and comply with *the PRC Company Law, the Special Regulations* and the articles of association;
 - (ii) agrees with the company, each shareholder, director, supervisor, manager and other officer, and the company (acting both for itself and for each director, supervisor, manager and other officer), agrees with each shareholder to refer all differences and claims arising from the articles of association or any relevant laws or administrative regulations concerning the company's affairs to arbitration in accordance with the articles of association. Any reference to arbitration will be deemed to authorise the arbitration tribunal to conduct its hearing in open session and to publish its award. Such arbitration will be final and conclusive;
 - (iii) agrees with the company and each shareholder that shares are freely transferable by the holder thereof; and
 - (iv) authorises the company 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.
- (n) **Compliance with the PRC Company Law, the Special Regulations and the Articles of Association**

A PRC company is required to observe and comply with *the PRC Company Law, the Special Regulations* and the company's articles of association.

- (o) **Contract between the Company and Directors, Supervisors and other Senior Managers**

A PRC company is required to enter into a contract in writing with every director, supervisor and other senior manager containing at least the following provisions:

- (i) an undertaking by the director, supervisor or other senior manager to the company to observe and comply with *the PRC Company Law, the Special Regulations*, the company's articles of association, the Hong Kong Takeovers Code and an agreement that the company shall have the remedies provided in the articles of association and that neither the contract nor his office is capable of assignment;
- (ii) an undertaking by the director, supervisor or other senior manager to the company acting as agent for each shareholder to observe and comply with his obligations to the company's shareholders as stipulated in the articles of association; and
- (iii) an arbitration clause which provides that whenever any differences or claims arise from the contract, the company's articles of association or any other relevant laws and administrative regulations concerning affairs

between the company and its directors, supervisors or other senior managers and between a holder of H shares and a director, supervisor or other senior manager, 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.

A PRC company is 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.

(p) **Subsequent Listing**

A PRC company must not apply for the listing of its H shares on a PRC stock exchange unless the Stock Exchange is satisfied that the relative rights of the holders of the H shares are adequately protected.

(q) **English translation**

All notices or other documents required under *the Listing Rules* to be sent by a company to the Stock Exchange or to holders of H shares are required to be in the English language, or accompanied by a certified English translation.

27. **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 Stock Exchange may impose additional requirements or make listing of a PRC company's H shares subject to such special conditions as the Stock Exchange may consider appropriate. Whether or not any such changes in the PRC law or market practices occur, the Stock Exchange retains its general power under *the Listing Rules* to impose additional requirements and make special conditions in respect of a company's listing. Upon listing on the Stock Exchange, the provisions of *the Hong Kong Securities and Futures Ordinance*, *the Hong Kong Takeovers Code* and such other relevant ordinances and regulations as may be applicable to companies listed on the Stock Exchange will apply to the Company.

(a) **Other Legal and Regulatory Provisions**

Upon a company's listing, the provisions of *the Securities and Futures Ordinance*, *the Codes on Takeovers and Mergers and Share Repurchases* and such other relevant ordinances and regulations as may be applicable to companies listed on the Stock Exchange will apply.

(b) **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 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.

(c) **PRC Legal Matters**

Any person wishing to have detailed advice on PRC law or the laws of any jurisdiction is recommended to seek independent legal advice.