

# Company Information Sheet

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**Company Name (stock code):** Baidu, Inc. (stock code: 9888)

**Stock Short Name:** BIDU-SW

This information sheet is provided for the purpose of giving information to the public about Baidu, Inc. (the “**Company**”) as at the dates specified. The information does not purport to be a complete summary of information about the Company and/or its securities.

## Responsibility Statement

### Responsibility statement

The directors of the Company as at the date hereof hereby collectively and individually accept full responsibility for the accuracy of the information contained in this information sheet and confirm, having made all reasonable inquiries, that to the best of their knowledge and belief the information is accurate and complete in all material respects and not misleading or deceptive and that there are no other matters the omission of which would make any Information inaccurate or misleading.

The directors also collectively and individually undertake to publish a revised Company Information Sheet when there are changes to the information since the last publication.

## Summary Content

Document Type	Date
<b>A. Waivers and Exemptions</b>	
A1. Latest version	March 12, 2021
<b>B. Foreign Laws and Regulations</b>	
B1. Latest version	March 12, 2021
<b>C. Constitutional Documents</b>	
C1. Latest version	December 7, 2021
C2. Blacklined comparison against the previous version	December 7, 2021
<b>D. Deposit Agreement</b>	
D1. Latest version	March 1, 2021

Date of this information sheet: December 7, 2021

# SECTION A1

## WAIVERS AND EXEMPTIONS

In preparation for the Listing, we have sought the following waivers and exemptions from strict compliance with the relevant provisions of the Hong Kong Listing Rules, the SFO and the Companies (Winding Up and Miscellaneous Provisions) Ordinance and have applied for a ruling under the Takeovers Codes:

<b>Rules</b>	<b>Subject matter</b>
Rule 2.07A of the Hong Kong Listing Rules	Printed Corporate Communications
Rules 4.04(3)(a), 4.05(2) and 4.13 of the Hong Kong Listing Rules and Paragraph 31(3)(b) of the Third Schedule to the Companies (Winding Up and Miscellaneous Provisions) Ordinance	Disclosure Requirements Relating to the Accountants' Reports
Rule 9.09(b) of the Hong Kong Listing Rules	Dealings in Shares prior to Listing
Rules 12.04(3), 12.07 and 12.11 of the Hong Kong Listing Rules	Printed Prospectuses
Rule 13.25B of the Hong Kong Listing Rules	Monthly Return
Rule 13.46(2)(b) of the Hong Kong Listing Rules	Laying Annual Financial Statements Before Members at an Annual General Meeting Within Six Months After the End of Financial Year
Rules 19C.07(3) and 19C.07(7) of the Hong Kong Listing Rules	Shareholder Protection Requirements
Paragraphs 13 and 26 of Appendix 1A to the Hong Kong Listing Rules and Paragraphs 11, 14 and 25 of the Third Schedule to the Companies (Winding Up and Miscellaneous Provisions) Ordinance	Particulars of any Commissions, Discounts and Brokerages, Alterations of Capital and Authorized Debentures
Paragraph 29(1) of Appendix 1A to the Hong Kong Listing Rules and Paragraph 29 of the Third Schedule to the Companies (Winding Up and Miscellaneous Provisions) Ordinance	Disclosure of Information on Subsidiaries Whose Profits or Assets Make Material Contributions to Us
Guidance Letter HKEX-GL37-12	Timing Requirement of Liquidity Disclosure
Paragraphs 33(2), 33(3), 46(2), 46(3) of Appendix 1A to the Hong Kong Listing Rules	Disclosure Requirements of the Remuneration of Directors and Five Individuals Whose Emoluments Were Highest
Paragraphs 41(4) and 45 of Appendix 1A to and Practice Note 5 of the Hong Kong Listing Rules	Disclosure of Interests Information

<b>Rules</b>	<b>Subject matter</b>
Paragraph 15(2)(c) of Appendix 1A to the Hong Kong Listing Rules	Disclosure of Offer Price
Rule 10.04 and Paragraph 5(2) of Appendix 6 to the Hong Kong Listing Rules	Subscription for Shares by existing Shareholders
Paragraph 4.2 of Practice Note 18 to the Hong Kong Listing Rules	Clawback mechanism
Rules 4.04(2) and 4.04(a) of the Hong Kong Listing Rules	Investments after the Track Record Period
Paragraph 27 of Appendix 1A of the Hong Kong Listing Rules and Paragraph 10 of the Third Schedule to the Companies (Winding Up and Miscellaneous Provisions) Ordinance	Disclosure Requirements of Options
Paragraph 3(b) of Practice Note 15 of the Hong Kong Listing Rules	Rules related to spin-off listings
Rule 8A.39 of the Hong Kong Listing Rules	Disclosure of ultimate beneficial owners of Other WVR Beneficiaries
Section 4.1 of the Introduction to the Takeovers Codes	Not a public company in Hong Kong under Takeovers Code
Part XV of the SFO	Disclosure of interests under Part XV of the SFO

## **PRINTED CORPORATE COMMUNICATIONS**

Rule 2.07A of the Hong Kong Listing Rules provides that a listed issuer may send or otherwise make available to the relevant holders of its securities any corporate communication by electronic means, provided that either the listed issuer has previously received from each of the relevant holders of its securities an express, positive confirmation in writing or the shareholders of the listed issuer have resolved in a general meeting that the listed issuer may send or supply corporate communications to shareholders by making them available on the listed issuer's own website or the listed issuer's constitutional documents contain provision to that effect, and certain conditions are satisfied.

Our ADSs have been listed on the Nasdaq since 2005. We have a diverse shareholder base with ADS holders globally.

We do not currently produce or send out any corporate communications to our shareholders or holders of ADSs in printed form unless requested or in limited circumstances. We publicly file or furnish various corporate communications with the SEC which are posted on the SEC's website. Our annual reports on Form 20-F and current reports on Form 6-K and all amendments to these reports, are also available free of charge on our website as soon as reasonably practicable after they are filed with or furnished to the SEC. Further, we will post our proxy materials and notices to our shareholders and holders of ADSs on a publicly accessible website. Those documents will

also available on our website. In addition, the depositary bank which administers our ADS program will send a notice as well as an ADS voting instruction card to our ADS holders for annual general meetings and extraordinary general meetings.

Apart from the Hong Kong Offer Shares that we will offer for subscription by the public in Hong Kong, the International Offer Shares will be placed to professional, institutional, corporate and other investors in Hong Kong and elsewhere in the world. Given our diverse shareholder base and the potential number of countries in which our shareholders are located, we consider that it would not be practicable for us to send printed copies of all our corporate communications to all of our shareholders. Further, we consider that it would also not be practicable for us to approach our existing shareholders individually to seek confirmation from them of their wish to receive corporate communications in electronic form, or to provide them with the right to request corporate communications in printed form instead.

We have applied for, and the Hong Kong Stock Exchange has granted, a waiver from strict compliance with Rule 2.07A of the Hong Kong Listing Rules on the conditions that we will:

- (a) issue all future corporate communications as required by the Hong Kong Listing Rules on our own website in English and Chinese, and on the Hong Kong Stock Exchange's website in English and Chinese;
- (b) provide printed copies of proxy materials in English to our shareholders at no costs upon request; and
- (c) ensure that the "Investor Relations" page of our website ([ir.baidu.com](http://ir.baidu.com)) will direct investors to all of our future filings with the Hong Kong Stock Exchange.

## **DISCLOSURE REQUIREMENTS RELATING TO THE ACCOUNTANTS' REPORTS**

Rules 4.04(3)(a), 4.05(2) and 4.13 of the Hong Kong Listing Rules and Paragraph 31(3)(b) of the Third Schedule to the Companies (Winding Up and Miscellaneous Provisions) Ordinance set out certain historical financial information to be included in a listing document that is not required to be disclosed under U.S. GAAP, including in particular:

- (a) balance sheet at a company level;
- (b) aging analysis of accounts receivables;
- (c) aging analysis of accounts payables; and
- (d) adjustments made to show profits of all periods in accordance with the relevant accounting standards in relation to the last fiscal year reported on.

In accordance with U.S. GAAP, we have applied the modified retrospective transition method or prospective transition method to account for the impact of the adoption of the new accounting standards in the Track Record Period. Under the modified retrospective method and prospective method adopted by us, comparative periods in the latest consolidated financial statements are not retrospectively adjusted.

During the Track Record Period, we adopted, among other new accounting standards that did not have a material impact on our consolidated financial statements, Accounting Standards Update 2016-02 “Leases (Topic 842)”, including certain transitional guidance and subsequent amendments (“**ASU 2016-02**”), Accounting Standards Update 2016-13 “Financial Instruments — Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments”, including certain transitional guidance and subsequent amendments (“**ASC 2016-13**”), and Accounting Standards Update 2019-02 “Entertainment — Films — Other Assets — Film Costs (Subtopic 926-20) and Entertainment — Broadcasters — Intangibles— Goodwill and Other (Subtopic 920-350)” (“**ASC 2019-02**”). The relevant accounting policies upon the adoption of these new accounting standards are disclosed in the Accountants’ Report in Appendix IA and Accountant’s Report of YY Live in Appendix IB to this document.

ASU 2016-02 was adopted on January 1, 2019 using the modified retrospective transition method by applying the new lease standard to all leases existing as of January 1, 2019, and no adjustments were made to the comparative periods. The adoption of the new lease standard does not have any significant impact on the consolidated statements of comprehensive income and cash flows and there was no adjustment to the opening balance of retained earnings on January 1, 2019.

ASU 2016-13 was adopted on January 1, 2020 using the modified retrospective method. The cumulative effect of adopting ASU 2016-13 resulted in decreasing the opening balance of retained earnings on January 1, 2020 by RMB314 million, including the allowance for credit losses for account receivable, contract assets and debt securities. For YY Live, the cumulative effect of adopting ASU2016-13 resulted in increasing the opening balance of parent company deficit on January 1, 2020 by RMB785,000.

ASU 2019-02 was adopted on January 1, 2020 using the prospective transition method. After the adoption, the Company reported cash outflows for the costs incurred to obtain rights for both produced and licensed content as operating cash outflows in the statement of cash flows. The adoption of ASU 2019-02 does not have any significant impact on the consolidated balance sheets and there was no adjustment to the opening balance of retained earnings on January 1, 2020 as the prospective transition method was used.

This document includes the following alternative disclosures:

- (a) disclosure of the accounting policy for the adoption of ASU 2016-02 which came into effect on January 1, 2019, as well as the impact of adoption, if any, in the Accountants’ Report in Appendix IA and Accountant’s Report of YY Live in Appendix IB to this document;
- (b) disclosure of the accounting policies for the adoption of ASU 2016-13 and ASU 2019-02 which came into effect on January 1, 2020, as well as the impact of adoption, if any, in the Accountants’ Report in Appendix IA and Accountant’s Report of YY Live in Appendix IB to this document; and
- (c) for the new accounting standards that came into effect during the Track Record Period, the accounting policies as well as the impact of adoption, if any, to the retained earnings of initial application (i.e. January 1, 2019 and 2020) has been disclosed in the Accountants’ Report in Appendix IA and Accountant’s Report of YY Live in Appendix IB to this document, in accordance with the relevant requirements under U.S. GAAP.

As this document has included the above alternative disclosures and the current disclosure in this document contains all information which is necessary for the investors to make an informed assessment of the business, asset and liability, financial position, trading position, management and prospect of the Group, we believe that it would be of no material value to the Hong Kong investors and be unduly burdensome for the Accountants' Report in Appendix IA and Accountant's Report of YY Live in Appendix IB to this document to include certain required information pursuant to Rules 4.04(3)(a), 4.05(2) and 4.13 of the Hong Kong Listing Rules and Paragraph 31(3)(b) of the Third Schedule to the Companies (Winding Up and Miscellaneous Provisions) Ordinance and that the non-disclosure of such information will not prejudice the interests of investors.

We have applied for, and the Hong Kong Stock Exchange has granted, a waiver from strict compliance with the requirements under Rules 4.04(3)(a), 4.05(2) and 4.13 of the Hong Kong Listing Rules. We have applied for, and the SFC has granted, an exemption from the requirements under Paragraph 31(3)(b) of the Third Schedule to the Companies (Winding Up and Miscellaneous Provisions) Ordinance, to the extent not strictly met by the current disclosure in this document. The SFC has granted the above exemption on the conditions that: (i) the particulars of such exemption are set out in this document; and (ii) this document will be issued on or before March 12, 2021.

## **DEALINGS IN SHARES PRIOR TO LISTING**

According to Rule 9.09(b) of the Hong Kong Listing Rules, there must be no dealing in the securities of a new applicant for which listing is sought by any core connected person of the issuer from four clear business days before the expected hearing date until listing is granted (the "**Relevant Period**").

We had more than 200 subsidiaries and operating entities as of December 31, 2020, and our ADSs are widely held, publicly traded and listed on Nasdaq. We consider that we are therefore not in a position to control the investment decisions of our shareholders or the investing public in the US. As of the Latest Practicable Date, solely based on public filings with the SEC, other than Mr. Robin Yanhong Li, our chief executive officer, chairman of the Board and Controlling Shareholder, individually and through Handsome Reward Limited, which is wholly-owned and controlled by Mr. Robin Yanhong Li, there are no shareholders who held more than 10% of the total issued share capital of us.

Mr. Robin Yanhong Li (our chief executive officer, chairman of the Board and Controlling Shareholder) may from time to time use his Shares as security (including charges and pledges) in connection with financing activities. As of the Latest Practicable Date, none of the Shares beneficially owned by Mr. Li (both in his personal capacity and through Handsome Reward Limited) were used as security.

Furthermore, for a company whose securities are listed and traded in the U.S., we note that it is a common practice for substantial shareholders and corporate insiders, including directors, executives and other members of management, to set up trading plans that meet the requirements of Rule 10b5-1 under the U.S. Exchange Act (the “**Rule 10b5-1 Plans**”) to buy or sell the company’s securities. A Rule 10b5-1 Plan is a written plan, set up with a broker, to trade securities that (a) is entered into at a time when the person trading the securities is not aware of any material non-public information; (b) specifies the amount or value of securities to be purchased or sold and the price at which and the date on which the securities were to be purchased or sold; and (c) does not allow the person trading the securities to exercise any subsequent influence over how, when, or whether to effect purchases or sales. Persons who trade securities pursuant to a Rule 10b5-1 Plan have an affirmative defense against insider trading allegations under U.S. securities law.

On the basis of the above, we consider that the following categories of persons (collectively, the “**Permitted Persons**”) should not be subject to the dealing restrictions set out in Rule 9.09(b) of the Hong Kong Listing Rules:

- (a) Mr. Robin Yanhong Li, our chief executive officer, chairman of the Board and Controlling Shareholder, in respect of (i) use of his Shares as security (including, for the avoidance of doubt, using Shares as security in connection with entering into financing transactions during the Relevant Period as well as satisfying any requirements to top-up security under the terms of financing transactions entered into prior to the Relevant Period), provided that there will be no change in the beneficial ownership of the Shares at the time of entering into any such transactions during the Relevant Period and (ii) the respective dealings by Mr. Li and his close associates pursuant to Rule 10b5-1 Plan that they have set up prior to the Relevant Period (“**Category 1**”);
- (b) our directors other than Mr. Robin Yanhong Li, and the directors and chief executives of our Significant Subsidiaries, in respect of (i) their respective use of the Shares as security (including, for the avoidance of doubt, using Shares as security in connection with entering into financing transactions during the Relevant Period as well as satisfying any requirements to top-up security under the terms of financing transactions entered into prior to the Relevant Period), provided that there will be no change in the beneficial ownership of the Shares at the time of entering into any such transactions during the Relevant Period and (ii) their respective dealings pursuant to Rule 10b5-1 Plans that they have set up prior to the Relevant Period (“**Category 2**”);
- (c) directors, chief executives and substantial shareholders of our non-Significant Subsidiaries and their close associates (“**Category 3**”); and
- (d) any other person (whether or not an existing Shareholder) who may, as a result of dealings, become our substantial shareholder and who is not our director or chief executive, or a director or chief executive of our subsidiaries, or their close associates (“**Category 4**”).

For the avoidance of doubt:

- (a) as the foreclosure, enforcement or exercise of other rights by the lenders in respect of a security interest over the Shares (including, for the avoidance of doubt, any security interest created pursuant to any top-up of security) will be subject to the terms of the financing transaction underlying such security and not within the control of the pledgor, any change in the beneficial owner of the Shares during the Relevant Period resulting from the foreclosure, enforcement or exercise of other rights by the lenders in respect of such security interest will not be subject to Rule 9.09(b) of the Hong Kong Listing Rules; and
- (b) persons in Category 1 and Category 2 who use their respective Shares other than as described in this section headed “Dealings in Shares prior to Listing” are subject to the restrictions under Rule 9.09(b) of the Hong Kong Listing Rules.

We have applied for, and the Hong Kong Stock Exchange has granted, a waiver from strict compliance with Rule 9.09(b) of the Hong Kong Listing Rules to be granted on the following conditions:

- (a) Categories 1 and 2 of the Permitted Persons who entered into Rule 10b5-1 Plans have no discretion over dealings in the Company’s ADSs after the plans have been entered into. Where Categories 1 and 2 of the Permitted Persons use the Shares as security, there will be no change in the beneficial ownership of the Shares during the Relevant Period;
- (b) Categories 3 and 4 of the Permitted Persons do not have any influence over the Global Offering and do not possess any non-public inside information of our Company given that such persons are not in a position with access to information that is considered material to our Company taken as a whole. Given the large number of our subsidiaries and our vast ADS holder base, our Company and our management do not have effective control over the investment decisions of Categories 3 and 4 of the Permitted Persons in our ADSs;
- (c) we will promptly release any inside information to the public in the United States and Hong Kong in accordance with the relevant laws and regulations of the U.S. and Hong Kong. Accordingly, the Permitted Persons (other than Category 1 and Category 2 persons) are not in possession of any non-public inside information of which we are aware;
- (d) we will notify the Hong Kong Stock Exchange of any breaches of the dealing restrictions by any of our core connected persons during the Relevant Period when it becomes aware of the same other than dealings by the core connected persons who are Permitted Persons within the permitted scopes set out above; and
- (e) prior to the Listing Date, other than within the permitted scopes set out above, our directors and chief executive and the directors and chief executives of our Significant Subsidiaries and their close associates will not deal in the Shares or the ADSs during the Relevant Period provided that such prohibited dealing in the Shares shall not include the granting, vesting, payment or exercise (as applicable) of RSUs, incentive and non-statutory options, restricted shares, dividend equivalents, and share payments under the Group’s share incentive plans.

## PRINTED PROSPECTUS

Pursuant to Rules 12.04(3), 12.07 and 12.11 of the Hong Kong Listing Rules, we are required to make available copies of the Prospectus in printed form.

The waiver from the requirements to make available printed copies of the Prospectus is in line with recent amendments to the Hong Kong Listing Rules relating to paperless listing and environmental, social and governance (“ESG”) matters. As the Hong Kong Stock Exchange noted on page 1 of its Consultation Conclusions on Review of the Environmental, Social and Governance Reporting Guide and Related Listing Rules dated December 2019, such amendments relating to ESG matters “*echo the increasing international focus on climate change and its impact on business.*” Electronic, *in lieu of* printed, prospectuses and application forms will help mitigate the environmental impact of printing, including the exploitation of precious natural resources such as trees and water, the handling and disposal of hazardous materials, air pollution, among others. It is further noted that the Hong Kong Stock Exchange recently published its Consultation Conclusions on Proposals to Introduce a Paperless Listing & Subscription Regime, Online Display of Documents and Reduction of the Types of Documents on Display in December 2020.

It is noted that in light of the severity of the ongoing COVID-19 pandemic, the provision of printed prospectuses and printed application forms will elevate the risk of contagion of the virus through printed materials. As of the Latest Practicable Date, the government of Hong Kong continued to have in place social distancing measures to restrict public gatherings. While the government of Hong Kong may relax such restrictions as the local COVID-19 situation improves, it is possible that stricter social distancing measures may be necessary later if the number of cases of infection in the territory dramatically increases. In any event, it is impossible to accurately predict the development of the COVID-19 pandemic as of the Latest Practicable Date. In this uncertain environment, an electronic application process with a paperless prospectus will reduce the need for prospective investors to gather in public, including branches of the receiving bank and other designated points of collection, in connection with the Hong Kong Public Offering.

We propose to adopt a fully electronic application process for the Hong Kong Public Offering and will not provide printed copies of the Prospectus or printed copies of any application forms to the public in relation to the Hong Kong Public Offering. We also anticipate that our share registrar appointed in connection with the Listing and the Hong Kong Public Offering will implement enhanced measures to support White Form eIPO Service, including increasing its server capacity and making available a telephone hotline to answer investors’ queries in connection with the fully electronic application process.

We also expect to publish the formal notice with respect to our Hong Kong Public Offering on the official websites of the Hong Kong Stock Exchange and our Company and in selected English and Chinese local newspapers describing the fully electronic application process including the available channels for share subscription and the enhanced support provided by our appointed Hong Kong Share Registrar in relation to the Hong Kong Public Offering and reminding investors that no printed prospectus or application form will be provided. We will also issue a press release to highlight the available electronic channels for share subscription.

We have applied for, and the Hong Kong Stock Exchange has granted, a waiver from strict compliance with Rules 12.04(3), 12.07 and 12.11 of the Hong Kong Listing Rules in respect of providing copies of the Prospectus in printed form.

## **MONTHLY RETURN**

Rule 13.25B of the Hong Kong Listing Rules requires a listed issuer to publish a monthly return in relation to movements in our equity securities, debt securities and any other securitized instruments, as applicable, during the period to which the monthly return relates.

Under the Joint Policy Statement, this common waiver is subject to the condition that the issuer can meet one of the following three conditions:

- (a) it has received a relevant partial exemption from Part XV of the SFO; or
- (b) it publishes a “next day disclosure return” in strict compliance with Rule 13.25A of the Hong Kong Listing Rules, regardless of the waiver of general effect from this Rule for secondary listed issuers; or
- (c) it is subject to overseas laws or regulations that have a similar effect to Rule 13.25B of the Hong Kong Listing Rules and any differences are not material to shareholder protection.

We have obtained a relevant partial exemption from strict compliance with Part XV of the SFO. We have applied for, and the Hong Kong Stock Exchange has granted, a waiver from strict compliance with the continuing obligations under Rule 13.25B of the Hong Kong Listing Rules. We will disclose information about share repurchases, if material, in our quarterly earnings releases and annual reports on Form 20-F which are furnished or filed with the SEC in accordance with applicable U.S. rules and regulations.

## **LAYING ANNUAL FINANCIAL STATEMENTS BEFORE MEMBERS AT AN ANNUAL GENERAL MEETING WITHIN SIX MONTHS AFTER THE END OF FINANCIAL YEAR**

Rule 13.46(2)(b) of the Hong Kong Listing Rules requires an overseas issuer to lay its annual financial statements before its members at its annual general meeting within the period of six months after the end of the financial year or accounting reference period to which the annual financial statements relate.

Note 2 to Rule 13.46(2)(b) of the Hong Kong Listing Rules provides that if an issuer has significant interests outside of Hong Kong it may apply for an extension of the six-month period.

Our Company is an issuer with significant interests outside of Hong Kong. By way of illustration:

- (i) our Company was incorporated in the Cayman Islands;
- (ii) our Company is a secondary listed issuer in Hong Kong under Chapter 19C of the Listing Rules, with a primary listing on Nasdaq;

- (iii) our Company has applied for a ruling from the Securities and Futures Commission on the date hereof that our Company should not be considered a public company in Hong Kong within the meaning of Section 4.2 of the Introduction on the Codes on Takeovers and Mergers and Share Buy-backs; one of the reasons for the application is that our Company has significant interests outside of Hong Kong;
- (iv) as of December 31, 2020, our Group had more than 40,000 full-time employees based in the PRC and less than 20 full-time employees based in Hong Kong;
- (v) for the year ended December 31, 2020, more than 97% of our Group's net revenues were generated from the PRC, and as of December 31, 2020, more than 75% of our Group's total assets were based in the PRC; and
- (vi) for the year ended December 31, 2020, less than 2% of our Group's net revenues were generated from Hong Kong, and, as of December 31, 2020, less than 15% of our Group's total assets were based in Hong Kong.

Our Company is expected to be listed in March 2021 and will include in this document the audited financial information for the year ended December 31, 2020 and other financial disclosure. Upon the Listing, we will therefore have provided our shareholders with all of the information required under Rule 13.46(2)(b) of the Hong Kong Listing Rules to our shareholders. Accordingly, our shareholders would not be unfairly prejudiced by us not laying our annual financial statements for the financial year ending December 31, 2020 before our members at an annual general meeting no later than June 30, 2021, as required by Rule 13.46(2)(b) of the Hong Kong Listing Rules.

Furthermore, we have not historically held an annual general meeting every year since our listing on Nasdaq, and the procedures for convening an annual general meeting for a company with a dual listing in the U.S. and Hong Kong are burdensome and require global coordination among various parties, including, but not limited to, the ADS depository bank, Hong Kong share registrar, and Hong Kong Securities Clearing Company Limited.

Rule 5620(a) of the Nasdaq Stock Market Marketplace Rules (the “**Nasdaq Listing Rules**”) requires that each company listing common stock or voting preferred stock, and their equivalents, shall hold an annual general meeting no later than one year after the end of the company's fiscal year-end. However, pursuant to Rule 5615(a)(3) of the Nasdaq Listing Rules, a foreign private issuer such as our Company may follow our home country practice in lieu of the Rule 5600 Series corporate governance requirements, including the requirements to hold an annual general meeting under Rule 5620(a). The term “home country” is defined under the U.S. securities laws to mean the jurisdiction in which the company is legally organized, incorporated or established.

We have, in our past practice, elected to follow home country practice pursuant to Rule 5615(a)(3) of the Nasdaq Listing Rules in lieu of the requirement under the Rule 5620(a) to hold an annual general meeting every fiscal year, and has disclosed the same in our annual report on Form 20-F pursuant to the U.S. securities laws.

Under article 35 of our articles of association, our Company shall hold an annual general meeting every year if required by the Companies Law under the Cayman Islands.

Our Cayman Islands counsel confirmed that (a) the Companies Act (as revised) of the Cayman Islands does not require our Company to follow or comply with the requirements of Rule 5620(a); (b) our Company's non-compliance with Rule 5620(a) will not breach any law, public rule or regulation applicable to us currently in force in the Cayman Islands; (c) our memorandum and articles do not prohibit our Company from following our home country practice in lieu of the requirements of Rule 5620(a).

On the basis of the above, our Company's not holding an annual general meeting before the end of the financial year ending December 31, 2021 does not contravene the relevant requirements under the Nasdaq Listing Rules, U.S. securities laws, laws of the Cayman Islands and our articles of association.

We have applied for, and the Hong Kong Stock Exchange has granted, a one-off waiver from strict compliance with Rule 13.46(2)(b) of the Hong Kong Listing Rules in respect of the requirement to lay our Company's annual financial statements for the year ended December 31, 2020 before our members at an annual general meeting within six months after the financial year ended December 31, 2020, subject to the condition that we shall hold an annual general meeting for the financial year ending December 31, 2021 by June 30, 2022 and lay before our members at the annual general meeting in 2022 the financial statements for the financial year ending December 31, 2021.

## **SHAREHOLDER PROTECTION REQUIREMENTS**

For an overseas issuer seeking a secondary listing on the Hong Kong Stock Exchange, Rule 19.30(1)(b) of the Hong Kong Listing Rules requires the overseas issuer's primary listing is or is to be on an exchange where the standards of shareholder protection are at least equivalent to those provided in Hong Kong. Rule 19C.06 of the Hong Kong Listing Rules provides that Appendix 3 and Appendix 13 of the Hong Kong Listing Rules do not apply to an overseas issuer that is a Non-Greater China Issuer (as defined in the Hong Kong Listing Rules) or a Grandfathered Greater China Issuer seeking a secondary listing under Chapter 19C of the Hong Kong Listing Rules. Rule 19C.07 of the Hong Kong Listing Rules provides that the Hong Kong Stock Exchange will consider that a Non-Greater China Issuer or a Grandfathered Greater China Issuer seeking a secondary listing has met the requirements of Rule 19.30(1)(b) of the Hong Kong Listing Rules if it has met the shareholder protection standards by reference to eight criteria set out in Rule 19C.07 of the Hong Kong Listing Rules. We were listed on a Qualifying Exchange before December 15, 2017 and is therefore a Grandfathered Greater China Issuer under Chapter 19C of the Hong Kong Listing Rules.

### **Approval, removal and remuneration of auditors**

Rule 19C.07(3) of the Hong Kong Listing Rules requires the appointment, removal and remuneration of auditors to be approved by a majority of the Qualifying Issuer's members or other body that is independent of the issuer's board of directors (the "**Auditors Provision**").

Our Articles do not contain an equivalent Auditors Provision. Pursuant to our Articles, we may, at any general meeting appoint an auditor who shall hold office until the next annual general meeting, and may fix their remuneration. Although we may appoint auditors at annual general meetings, this function has been fulfilled by the audit committee of the Board (the "**Audit Committee**") since our listing on Nasdaq in 2005.

As a matter of Cayman Island law, our members may express their view on the appointment, removal and remuneration of auditors, by attending the general meeting and speaking, and voting where there are relevant resolutions. Our Articles also allow members holding not less than a majority of the voting rights of our issued Shares that are entitled to vote at general meetings to requisition a general meeting, in which resolutions in respect of appointment, removal and remuneration of auditors may be put forward.

The Audit Committee is an independent body of the Board on the basis of the independence requirements set out in applicable U.S. laws and Nasdaq rules. The Audit Committee comprises three members, all of whom are independent directors as required by applicable U.S. laws and applicable Nasdaq rules.

We have applied for, and the Hong Kong Stock Exchange has granted, a waiver from strict compliance with the requirements of Rule 19C.07(3) of the Hong Kong Listing Rules.

### **Changes to requisition of extraordinary general meetings by shareholders**

Rule 19C.07(4) of the Hong Kong Listing Rules requires a general meeting to be held each year as the Qualifying Issuer's annual general meeting. Our Company is not required to hold an annual general meeting under our Articles and the Cayman Companies Act.

Rule 19C.07(7) of the Hong Kong Listing Rules requires that members holding a minority shareholding in a Qualifying Issuer's total number of issued shares to be able to requisition an extraordinary general meeting and add resolutions to a meeting agenda. The minimum stake required to do so must not be higher than 10% of the voting rights, on a one vote per share basis, in the share capital of the Qualifying Issuer, while the minimum stake as currently set out in the Articles is not less than a majority of the voting rights of our issued Shares that are entitled to vote at general meetings. Under our Articles, a quorum for a shareholders' meeting consists of one or more shareholders holding at least one third of the paid up voting share capital (being the number of issued shares in our paid up voting share capital), present in person or by proxy or, if a corporation or other non-natural person, by its duly authorized representative.

We will amend the Articles after the Listing to comply with Rule 19C.07(4) and Rule 19C.07(7) of the Hong Kong Listing Rules.

We have applied for, and the Hong Kong Stock Exchange has granted, a waiver from strict compliance with the requirements of Rule 19C.07(4) and Rule 19C.07(7) of the Hong Kong Listing Rules, subject to the following conditions:

- (a) we will convene an extraordinary general meeting by December 31, 2021 (the "**2021 EGM**"), for which at least 14 days' notice will be given to our members, and put forth resolutions to revise the Articles, so that (sub-paragraph (i) to (iv) below, collectively the "**Proposed Resolutions**"):
  - (i) we are required to convene an annual general meeting each year;
  - (ii) we are required to provide at least 14 days' notice for any general meetings of the Company;

- (iii) a member's right to vote is subject to the requirements under the Hong Kong Listing Rules regarding circumstances requiring a member to abstain from voting to approve a matter under consideration, and any votes in contravention of such abstention shall not be counted; and
- (iv) the minimum stake required to convene an extraordinary general meeting and add resolutions to a meeting agenda will be 10% of the voting rights, on a one vote per share basis, in the share capital of our Company;
- (b) we will convene general meetings at the request of our Shareholders holding in aggregate not less than 10% of our Company's voting rights, on a one vote per share basis, prior to the Proposed Resolutions being passed;
- (c) we will provide 14 days' notice for any general meetings after the Listing, prior to the Proposed Resolutions being passed;
- (d) in the event that the Proposed Resolutions are not passed at the 2021 EGM, we will convene an annual general meeting each year with at least 14 days of notice beginning from 2022 and, for so long as we remain listed on the Hong Kong Stock Exchange, to continue to put forth the Proposed Resolutions (to the extent not yet passed) at each of the annual general meetings after the 2021 EGM, until the Proposed Resolutions are passed; and
- (e) we will obtain an irrevocable undertaking prior to the Listing from Mr. Robin Yanhong Li, Handsome Reward Limited and Ms. Melissa Ma, Mr. Robin Yanhong Li's spouse, being existing shareholders with a majority vote in our Company, that they will use their voting rights to vote at the 2021 EGM in favour of the Proposed Resolutions.

Our Cayman Islands counsel has confirmed that there is no legal impediment on the adoption of the transitional arrangements to comply with the relevant requirements before the Proposed Resolutions are passed (being the arrangements set out in (b) to (d) above), and such adoption is not in breach of our Articles or any rules and regulations in the Cayman Islands.

## **PARTICULARS OF ANY COMMISSIONS, DISCOUNTS AND BROKERAGES AND ALTERATIONS OF CAPITAL AND AUTHORIZED DEBENTURES**

Paragraphs 13 and 26 of Part A of Appendix 1 to the Hong Kong Listing Rules and paragraphs 11 and 14 of the Third Schedule of the Companies (Winding Up and Miscellaneous Provisions) Ordinance require the listing document to include the particulars of any commissions, discounts, brokerages or other special terms granted within two years immediately preceding the issue of the listing document in connection with the issue or sale of any capital of any member of the group and the particulars of any alterations of capital within two years immediately preceding the issue of the listing document.

Paragraph 25 of the Third Schedule of the Companies (Winding Up and Miscellaneous Provisions) Ordinance requires particulars of the authorized debentures of our Company and our subsidiaries to be disclosed in this document.

We have identified 12 entities as our Significant Subsidiaries. For further details, see the section headed “History and Corporate Structure — Corporate Structure — Significant Subsidiaries” in this document. We had more than 200 subsidiaries and operating entities as of December 31, 2020. We believe that it would be unduly burdensome for us to disclose this information in respect of all of our subsidiaries as we would have to incur additional costs and devote additional resources in compiling and verifying the relevant information for such disclosure, which would not be material or meaningful to investors.

The Significant Subsidiaries include all our subsidiaries that meet the financial threshold for “significant subsidiaries” under Regulation S-X in the U.S. and are representative of our business (including those that hold major assets and intellectual property rights). None of the non-Significant Subsidiaries is individually material to us in terms of the financial threshold for “significant subsidiaries” under Regulation S-X in the U.S., and none of the non-Significant Subsidiaries hold any major assets, patents, R&D or intellectual property rights as at the Latest Practicable Date. Based on the book value of the Significant Subsidiaries, the net revenues (taking into account of major adjustments for intra-group transactions) and net income (not taking into account adjustments for intra-group transactions) of the Significant Subsidiaries accounted for 91% and 195% of our total net revenues and total net income, respectively, for the year ended December 31, 2020. Based on the book value of the Significant Subsidiaries, the total assets (not taking into account adjustments for intra-group transactions) of the Significant Subsidiaries accounted for 115% of the our total assets as at December 31, 2020. As such, we have disclosed the particulars of the changes in our share capital and the Significant Subsidiaries in the section headed “Statutory and General Information — Further Information About Us” in Appendix IV to this document, and particulars of the commissions, discounts, brokerage fee and authorized debentures in respect of the Significant Subsidiaries and our Company are set out in the section headed “Statutory and General Information — Other Information — Miscellaneous” of Appendix IV to this document.

We are of the view that all material information necessary for the public to make an informed assessment of the business, asset and liability, financial position, trading position, management and prospect of our Group has been disclosed in this document, and as such the granting of the waiver and exemption from strict compliance with the relevant content requirements under the Companies (Winding Up and Miscellaneous Provisions) Ordinance and the Hong Kong Listing Rules will not prejudice the interest of the investing public.

We have applied for, and the Hong Kong Stock Exchange has granted, a waiver from the requirements under paragraphs 13 and 26 of Part A of Appendix 1 to the Hong Kong Listing Rules. We have applied for, and the SFC has granted, an exemption from the requirements under paragraphs 11, 14 and 25 of the Third Schedule of the Companies (Winding Up and Miscellaneous Provisions) Ordinance, to the extent not strictly met by the current disclosure in this document. The SFC has granted the above exemption on the conditions that: (i) the particulars of such exemption are set out in this document; and (ii) this document will be issued on or before March 12, 2021.

## **DISCLOSURE OF INFORMATION ON SUBSIDIARIES WHOSE PROFITS OR ASSETS MAKE MATERIAL CONTRIBUTIONS TO US**

Paragraph 29(1) of Part A of Appendix 1 to the Hong Kong Listing Rules and paragraph 29 of the Third Schedule to the Companies (Winding Up and Miscellaneous Provisions) Ordinance require the listing document to include information in relation to the name, date and country of incorporation, the public or private status and the general nature of the business, the issued capital and the proportion thereof held or intended to be held, of every company the whole of the capital of which or a substantial proportion thereof is held or intended to be held by us, or whose profits or assets make, or will make, a material contribution to the figures in the accountants' report or the next published accounts.

We believe that it would be unduly burdensome for us to procure this information for the reasons as set out in this section headed “ — Particulars of any Commissions, Discounts and Brokerages and Alteration of Capital and Authorized Debentures” above. As such, only the particulars in relation to the Significant Subsidiaries are set out in this document under the sections headed “History and Corporate Structure — Corporate Structure — Significant Subsidiaries” and “Statutory and General Information — Further Information About Us” in Appendix IV to this document, which should be sufficient for potential investors to make an informed assessment of our Company in their investment decisions. We are of the view that all material information necessary for the public to make an informed assessment of the business, asset and liability, financial position, trading position, management and prospect of our Group has been disclosed in this document, and as such the granting of the waiver and exemption from strict compliance with the relevant content requirements under the Companies (Winding Up and Miscellaneous Provisions) Ordinance and the Hong Kong Listing Rules will not prejudice the interest of the investing public.

We have applied for, and the Hong Kong Stock Exchange has granted, a waiver from strict compliance with the requirements under paragraph 29(1) of Part A of Appendix 1 to the Hong Kong Listing Rules. We have applied for, and the SFC has granted, an exemption from the requirements under Paragraph 29 of the Third Schedule of the Companies (Winding Up and Miscellaneous Provisions) Ordinance, to the extent not strictly met by the current disclosure in this document. The SFC has granted the above exemption on the conditions that: (i) the particulars of such exemption are set out in this document; and (ii) this document will be issued on or before March 12, 2021.

## **TIMING REQUIREMENT OF LIQUIDITY DISCLOSURE**

Paragraph 32 of Part A of Appendix 1 to the Hong Kong Listing Rules requires a listing document to include a statement (or an appropriate negative statement) of a new applicant's indebtedness as at a specified most recent practicable date (the “**Most Recent Practicable Date**”), and a commentary on its liquidity, financial resources and capital structure (together, the “**Liquidity Disclosure**”).

In accordance with Hong Kong Stock Exchange's Guidance Letter HKEX-GL37-12 (“**GL37-12**”), the Hong Kong Stock Exchange normally expects that the Most Recent Practicable Date for the Liquidity Disclosure, including, among other things, commentary on liquidity and financial resources such as net current assets (liabilities) position and management discussion on this position, in a listing document to be dated no more than two calendar months before (a) the date of the application proof of the listing document and (b) the final date of the listing document.

As this document is expected to be published in March 2021, we would otherwise be required to make the relevant indebtedness and liquidity disclosures no earlier than January 2021 pursuant to GL37-12. Given that we included in this document an accountants' report incorporating the audited consolidated financial information of our Group for the year ended December 31, 2020, it would be unduly burdensome for us to re-arrange information for similar liquidity disclosures on a consolidated basis shortly after the end of our current financial year.

Strict compliance with the Liquidity Disclosure requirements would constitute an additional one-off disclosure by us of our liquidity position on a date that would fall within the first quarter of our financial year, which would otherwise not be required to be disclosed to investors in the U.S. under applicable U.S. regulations and Nasdaq listing rules, because we are required to announce quarterly results at the end and not in the middle of each quarter of our financial year. Such a one-off disclosure would likely confuse our existing investors and deviate from our customary practice and that of other U.S. listed companies.

In any event, if there are any material changes to such disclosures, we would be required to make an announcement pursuant to U.S. regulations and Nasdaq rules and disclose relevant material facts in this document pursuant to the Hong Kong Listing Rules.

In the event that there is no material change to such disclosures, any similar disclosures made pursuant to GL37-12 would not give additional meaningful information to investors.

We have applied for, and the Hong Kong Stock Exchange has granted, a waiver from strict compliance with the timing requirement for the Liquidity Disclosure in this document under GL37-12, such that the reported date of indebtedness and liquidity information in this document will not exceed the requirement under GL37-12 by one calendar month (i.e. the time gap between the reported date of our indebtedness and liquidity information and the date of this document would be no more than three calendar months).

## **DISCLOSURE REQUIREMENTS OF THE REMUNERATION OF DIRECTORS AND FIVE INDIVIDUALS WHOSE EMOLUMENTS WERE HIGHEST**

Paragraph 33(2) of Part A of Appendix 1 to the Hong Kong Listing Rules requires the listing document to include information in respect of directors' emoluments during the financial years ended December 31, 2018, 2019 and 2020. Paragraph 46(2) of Part A of Appendix 1 to the Hong Kong Listing Rules requires the listing document to include the aggregate of the remuneration paid and benefits in kind granted to the directors of the issuer in respect of the last completed financial year, and Paragraph 46(3) of Part A of Appendix 1 to the Hong Kong Listing Rules requires information in relation to an estimate of the aggregate remuneration and benefits in kind payable to directors in respect of the current financial year to be set out in the listing document.

Paragraph 33(3) of Part A of Appendix 1 to the Hong Kong Listing Rules requires the listing document to include information with respect to the five individuals whose emoluments were highest in the group for the year if one or more individuals whose emoluments were the highest have not been included under paragraph 33(2) of Part A of Appendix 1 to the Hong Kong Listing Rules.

The aggregate fees, salaries and benefits paid and accrued to our directors and executive officers as a group are disclosed in the section headed “Directors and Senior Management — Compensation” in this document. We confirm that the current disclosure complies with U.S. annual reporting requirements and is in line with our disclosure in our annual reports on Form 20-F.

We believe that additional disclosure required by Paragraphs 33(2), 33(3), 46(2) and 46(3) of Part A of Appendix 1 to the Hong Kong Listing Rules would be unduly burdensome and would not provide additional meaningful disclosure for potential Hong Kong investors.

We have applied for, and the Hong Kong Stock Exchange has granted, a waiver from strict compliance with the requirements under Paragraphs 33(2), 33(3), 46(2) and 46(3) of Part A of Appendix 1 to the Hong Kong Listing Rules, to the extent not strictly met by the current disclosure in this document.

## **DISCLOSURE OF INTERESTS INFORMATION**

Part XV of the SFO imposes duties of disclosure of interests in shares. Practice Note 5 and paragraphs 41(4) and 45 of Part A of Appendix 1 to the Hong Kong Listing Rules require the disclosure of interests information in respect of shareholders’ and directors’ interests in this document.

The U.S. Exchange Act and the rules and regulations promulgated thereunder require disclosure of interests by shareholders that are broadly equivalent to Part XV of the SFO. Relevant disclosure in respect of the substantial shareholder’s interests can be found in the section headed “Major Shareholders” in this document.

We have applied for, and the Hong Kong Stock Exchange has granted, a waiver from strict compliance with Practice Note 5 and Paragraphs 41(4) and 45 of Part A of Appendix 1 to the Hong Kong Listing Rules is to be granted on the following conditions:

- (a) the SFC granting us and our shareholders a partial exemption from strict compliance with Part XV of the SFO;
- (b) our undertaking to file with the Hong Kong Stock Exchange, as soon as practicable, any declaration of shareholding and securities transactions filed with the SEC; and
- (c) our undertaking to disclose in present and future listing documents any shareholding interests as disclosed in an SEC filing and the relationship between our directors, officers, members of committees and their relationship to any controlling shareholders.

## **DISCLOSURE OF OFFER PRICE**

Paragraph 15(2)(c) of Part A of Appendix 1 to the Hong Kong Listing Rules provides that the issue price or offer price of each security must be disclosed in the listing document.

The Public Offer Price will be determined by reference to, among other factors, the closing price of our ADS price on Nasdaq on the last trading date on or before the price determination date and we have no control on the market price of our ADSs traded on Nasdaq. Given the ADSs of our Company are freely tradable on Nasdaq, there may be price fluctuations in the ADSs as a result of market volatility and other factors during the period from the bulk-printing of this document until the pricing of the Global Offering.

Setting a fixed price or a price range with a low end offer price per Offer Share may adversely affect the market price of the ADSs and the Hong Kong Offer Shares considering, among other factors, that this may indicate an arbitrary floor price and may potentially prejudice our ability to price in the best interest of us and our Shareholders.

A maximum Public Offer Price will be disclosed in this document and the Green Application Form. This alternative disclosure approach would not prejudice the interests of the investing public in Hong Kong.

Given in no circumstances will the Public Offer Price for the Hong Kong Offer Shares be greater than the maximum Public Offer Price as stated in this document and the Green Application Form, the disclosure of the maximum Public Offer Price in this document will be in compliance with the requirement to disclose the “amount payable on application and allotment on each share” as required by paragraph 9 of the Third Schedule of the Companies (Winding Up and Miscellaneous Provisions) Ordinance.

We have applied for, and the Hong Kong Stock Exchange has granted, a waiver from strict compliance with paragraph 15(2)(c) of Part A of Appendix 1 to the Hong Kong Listing Rules.

## **SUBSCRIPTION FOR SHARES BY EXISTING SHAREHOLDERS**

Rule 10.04 of the Hong Kong Listing Rules requires that existing shareholders may only subscribe for or purchase any securities for which listing is sought that are being marketed by or on behalf of a new applicant either in his or its own name or through nominees if the conditions in Rule 10.03 of the Hong Kong Listing Rules are fulfilled. Paragraph 5(2) of Appendix 6 to the Hong Kong Listing Rules states that, without the prior written consent of the Hong Kong Stock Exchange, no allocations will be permitted to be made to directors, existing shareholders of a listing applicant or their close associates, unless the conditions set out in Rules 10.03 and 10.04 of the Hong Kong Listing Rules are fulfilled.

We have been listed on Nasdaq since 2005 and has a wide and diverse shareholder base. Solely based on public filings with the SEC available as of the Latest Practicable Date, with the exception of Ms. Melissa Ma, the spouse of Mr. Robin Yanhong Li, we had no shareholder who was not a director and who held 5% or more of our Company’s voting rights. Category 4 of the Permitted Persons (as defined in “ — Dealings in Shares prior to the Listing” above) have no influence over the Global Offering and are not in possession of any non-public inside information in relation to the Listing given that such persons are not in a position with access to information that is considered material to the Company as a whole, and are effectively in the same positions as the public investors of the Company. Category 4 of the Permitted Persons and other public investors are referred to as “**Permitted Existing Shareholders**”.

Considering the nature of those investors and as our Shares are publicly traded on Nasdaq, we are not in the position to prevent any person or entity from acquiring listed securities of our Company prior to the Global Offering. In addition, we will only be able to ascertain the change in the shareholding of the relevant Shareholder after we make public disclosure. It would therefore be unduly burdensome for us to seek the prior consent of the Hong Kong Stock Exchange for each of our existing shareholders or their close associates who subscribe for Shares in the Global Offering.

We have applied for, and the Hong Kong Stock Exchange has granted, a waiver from strict compliance with the requirements of Rule 10.04 and Paragraph 5(2) of Appendix 6 to the Hong Kong Listing Rules in respect of the restriction on Permitted Existing Shareholders to subscribe for or purchase Shares in the Global Offering, subject to the following conditions:

- each Permitted Existing Shareholder is interested in less than 5% of our Company's voting rights before the Listing;
- each Permitted Existing Shareholder is neither a director nor a member of senior management of our Company, and is not a director of any of our Company's subsidiaries;
- other than the persons in Category 4 of the Permitted Persons, each Permitted Existing Shareholder is not a core connected person of our Company;
- the Permitted Existing Shareholders do not have the power to appoint directors of our Company or any other special rights in our Company;
- the Permitted Existing Shareholders and their close associates do not have influence over the offering process and will be treated the same as other applicants and places in the Global Offering;
- the Permitted Existing Shareholders and their close associates will be subject to the same book-building and allocation process as other applicants and places in the Global Offering; and
- to the best of their knowledge and belief, each of our Company, the Joint Sponsors and the Joint Representatives (based on its discussions with and the confirmations from our Company and the Joint Representatives (for itself and on behalf of the Underwriters)), confirms to the Hong Kong Stock Exchange in writing that no preferential treatment has been, nor will be, given to the Permitted Existing Shareholders and their close associates as a placee in the International Offering by virtue of their relationship with our Company.

Allocation to the Permitted Existing Shareholders and/or their close associates will not be disclosed in our allotment results announcement (other than to the extent that such Permitted Existing Shareholders or close associates subscribe for shares as cornerstone investors) unless such Permitted Existing Shareholders are interested in 5% or more of our issued share capital after the Global Offering as disclosed in any of their public filings with the SEC (the “**Available Information**”). It would be unduly burdensome for us to disclose such information other than the Available Information given that there is no requirement to disclose interests in equity securities under the U.S. Exchange Act unless the beneficial ownership of a person reaches 5% or more, and when there is a subsequent change of ownership of 1% or more, in our issued share capital.

## CLAWBACK MECHANISM

Paragraph 4.2 of Practice Note 18 of the Hong Kong Listing Rules requires a clawback mechanism to be put in place, which would have the effect of increasing the number of Hong Kong Offer Shares to certain percentages of the total number of the Offer Shares offered in the Global Offering if certain prescribed total demand levels are reached.

We have applied to the Hong Kong Stock Exchange for, and the Hong Kong Stock Exchange has granted us, a waiver from strict compliance with paragraph 4.2 of Practice Note 18 of the Hong Kong Listing Rules such that, provided the initial allocation of Offer Shares under the Hong Kong Public Offering shall not be less than 5% of the Global Offering, in the event of over-subscription, the Joint Representatives (for itself and on behalf of the Underwriters) shall apply a clawback mechanism following the closing of the application lists on the following basis:

- (i) if the number of the Offer Shares validly applied for under the Hong Kong Public Offering represents 15 times or more but less than 50 times of the number of the Offer Shares initially available for subscription under the Hong Kong Public Offering, then the number of Offer Shares to be reallocated to the Hong Kong Public Offering from the International Offering will be increased, so that the total number of Offer Shares available under the Hong Kong Public Offering will be 8,550,000 Offer Shares, representing 9% of the Offer Shares initially available under the Global Offering;
- (ii) if the number of the Offer Shares validly applied for under the Hong Kong Public Offering represents 50 times or more but less than 100 times of the number of the Offer Shares initially available for subscription under the Hong Kong Public Offering, then the number of Offer Shares to be reallocated to the Hong Kong Public Offering from the International Offering will be increased, so that the total number of the Offer Shares available under the Hong Kong Public Offering will be 9,500,000 Offer Shares, representing 10% of the Offer Shares initially available under the Global Offering; and
- (iii) if the number of the Offer Shares validly applied for under the Hong Kong Public Offering represents 100 times or more of the number of the Offer Shares initially available for subscription under the Hong Kong Public Offering, then the number of Offer Shares to be reallocated to the Hong Kong Public Offering from the International Offering will be increased, so that the total number of the Offer Shares available under the Hong Kong Public Offering will be 11,400,000 Offer Shares, representing 12% of the Offer Shares initially available under the Global Offering.

In each case, the additional Offer Shares reallocated to the Hong Kong Public Offering will be allocated between pool A and pool B and the number of Offer Shares allocated to the International Offering will be correspondingly reduced in such manner as the Joint Representatives (for itself and on behalf of the Underwriters) deem appropriate. In addition, the Joint Representatives (for itself and on behalf of the Underwriters) may allocate Offer Shares from the International Offering to the Hong Kong Public Offering to satisfy valid applications under the Hong Kong Public Offering.

If the Hong Kong Public Offering is not fully subscribed, the Joint Representatives (for itself and on behalf of the Underwriters) have the authority to reallocate all or any unsubscribed Hong Kong Public Offer Shares to the International Offering, in such proportions as the Joint Global Coordinator (for itself and on behalf of the Underwriters) deem appropriate.

See “Structure of the Global Offering — The Hong Kong Public Offering — Reallocation.”

## **INVESTMENTS AFTER THE TRACK RECORD PERIOD**

Pursuant to Rules 4.04(2) and 4.04(4)(a) of the Hong Kong Listing Rules, the accountants’ report to be included in a listing document must include the income statements and balance sheets of any subsidiary or business acquired, agreed to be acquired or proposed to be acquired since the date to which its latest audited accounts have been made up in respect of each of the three financial years immediately preceding the issue of the listing document.

Pursuant to Rule 4.02A of the Hong Kong Listing Rules, acquisitions of business include acquisitions of associates and any equity interest in another company. Pursuant to Note 4 to Rule 4.04 of the Hong Kong Listing Rules, the Hong Kong Stock Exchange may consider granting a waiver of the requirements under Rules 4.04(2) and 4.04(4) on a case-by-case basis, and having regard to all relevant facts and circumstances and subject to certain conditions set out thereunder.

## Ordinary course Investments since December 31, 2020

During the Track Record Period, we have made minority investments in a number of companies both in China and overseas in our ordinary and usual course of business to further our strategic objectives. Since December 31, 2020 and up to the Latest Practicable Date, we have made or proposed to make minority investments in a number of companies, and we expect to continue to enter into further minority investments subsequent to the Latest Practicable Date and prior to the date of this document (collectively, the “Investments”). Details of the Investments up to the Latest Practicable Date include (other than those, the considerations of which were less than RMB20 million — being less than 0.02% of our total assets as of December 31, 2020 and revenue for the year ended December 31, 2020):

<u>Investment</u> <sup>(2)(3)</sup>	<u>Consideration</u> (approx. in RMB millions)	<u>Percentage of shareholding/ equity interest</u> <sup>(1)</sup>	<u>Principal business activities</u>
Company A	350	28%	Consulting
Company B	100	9%	Medical
Company C	80	40%	Medical
Company D	50	10%	Consulting
Company E	50	9%	Consulting
Company F	33	8%	Medical
Company G	30	5%	E-commerce
Company H	25	23%	Entertainment
Company I	22	11%	Education
Company J	20	6%	Commerce
Company K	20	8%	Medical
Company L	20	1%	Medical
Company M	20	1%	Technology

*Notes:*

- (1) The approximate consideration disclosed in the table represents each of the Investments. The percentage of shareholding/equity interest represents our total pro forma shareholding in each of the Investments after the completion of the relevant transaction.
- (2) None of the core connected persons at the level of our Company is a controlling shareholder of any of the Investments.
- (3) Given that we have not yet entered into legally binding agreements for certain of the above Investments as at the Latest Practicable Date, the terms and information set out above may be subject to further changes.

We confirm that the investment amounts for each of the Investments are the result of commercial arm’s length negotiations, based on factors including market dynamics, a mutually agreed valuation, and/or capital need of the relevant company’s operations.

## *Conditions for granting the waiver and its scope in respect of the Investments*

We have applied for, and the Hong Kong Stock Exchange has granted, a waiver from strict compliance with Rules 4.04(2) and 4.04(4)(a) of the Hong Kong Listing Rules in respect of the Investments on the following grounds:

### Ordinary and usual course of business

We make equity investments in sectors relating to our business as part of our ordinary and usual course of business. We have a history of making minority investments and have conducted a number of minority investments during the Track Record Period.

### The percentage ratios of each Investment are all less than 5% by reference to the most recent fiscal year of our Company's Track Record Period

The relevant percentage ratios calculated in accordance with Rule 14.07 of the Hong Kong Listing Rules for each of the Investments are all less than 5% by reference to the most recent fiscal year of the Track Record Period. We do not believe that the Investments are subject to aggregation under Rule 14.22 of the Hong Kong Listing Rules, because (i) each of the Investments involves the acquisition of interests in a different company and (ii) the Investments were entered into, or are expected to be entered into, with different counterparties.

Accordingly, we believe that the Investments have not resulted in, and does not expect the Investments to result in, any significant changes to its financial position since December 31, 2020, and all information that is reasonably necessary for potential investors to make an informed assessment of our activities or financial position has been included in this document. As such, we consider that a waiver from compliance with the requirements under Rules 4.04(2) and 4.04(4)(a) of the Hong Kong Listing Rules would not prejudice the interests of the investors.

### We are not able to exercise any control over the underlying company or business

We only hold and/or expect to only hold a minority equity interest in each of the Investments and does not control their boards of directors, and expects this to remain the case for any subsequent Investments. The minority rights given to us are generally commensurate to its status as a minority shareholder and are for the protection of our interests as a minority stakeholder in the Investments. These rights are neither intended, nor sufficient to compel or require the relevant companies to prepare or to disclose in this document audited financial statements for the purposes of compliance with Rules 4.04(2) and 4.04(4)(a) of the Hong Kong Listing Rules. These disclosures are also not required pursuant to applicable U.S. securities laws. It could be prejudicial and potentially harmful to our portfolio relationships and commercial interests to make such disclosures. In addition, as some portfolio companies are private, disclosing this information could harm their interests and bring them into an unfavorable competitive position. Accordingly, as we do not expect the Investments to result in any material changes to its financial position after the Track Record Period, we do not believe the non-disclosure of the required information pursuant to Rules 4.04(2) and 4.04(4)(a) of the Hong Kong Listing Rules would prejudice the interest of the investors.

## Alternative disclosure of the Investments in this document

We have disclosed alternative information about the Investments in this document. Such information includes those which would be required for a discloseable transaction under Chapter 14 of the Hong Kong Listing Rules that our directors consider to be material, including, for example, descriptions of the relevant companies' principal business activities, the investment amounts, and a statement as to whether the core connected persons at the level of our Company is a controlling shareholder of any of the Investments. We have however excluded disclosure on the names of companies in connection with the Investments in this document because: (i) we have entered into confidentiality agreements with these companies and do not have consent for such disclosure; and/or (ii) the transactions have not been disclosed, and are not required to be disclosed, under U.S. regulations. It is commercially sensitive to disclose the identities of the companies we have invested in or proposes to invest in as such information may enable our competitors to anticipate our investment strategy. Since the relevant percentage ratio of each Investment is less than 5% by reference to the most recent fiscal year of the Company's Track Record Period, we believe the current disclosure is adequate for potential investors to form an informed assessment of us.

## **DISCLOSURE REQUIREMENTS OF OPTIONS**

Paragraph 27 of Part A of Appendix 1 to the Hong Kong Listing Rules requires an issuer to set out in the listing document particulars of any capital of any member of the group that is under option, or agreed conditionally or unconditionally to be put under option, including the consideration for which the option was or will be granted and the price and duration of the option, and the name and address of the grantee.

Paragraph 10 of the Third Schedule to the Companies (Winding Up and Miscellaneous Provisions) Ordinance further requires an issuer to set out in the Prospectus, among other things, details of the number, description and amount of any of its shares or debentures which any person has, or is entitled to be given, an option to subscribe for, together with the certain particulars of the option, namely the period during which it is exercisable, the price to be paid for shares or debentures subscribed for under it, the consideration given or to be given (if any) and the names and addresses of the persons to whom it was given.

We and our subsidiaries (including its consolidated affiliated entities) may, from time to time, adopt equity incentive plans, including: (a) our share incentive plan adopted in December 2008 and which expired in 2018 (the "**2008 Share Incentive Plan**"); (b) our share incentive plan adopted in July 2018 (the "**2018 Share Incentive Plan**", and together with the 2008 Share Incentive Plan, the "**Share Incentive Plans**"); (c) the equity incentive plan adopted in 2010 (the "**iQIYI 2010 Equity Incentive Plan**") by iQIYI, our majority-controlled subsidiary listed on the New York Stock Exchange, and (d) the share incentive plan adopted in 2017 by iQIYI (the "**iQIYI 2017 Share Incentive Plan**" and, together with the "**iQIYI 2010 Equity Incentive Plan**", the "**iQIYI Incentive Plans**"). These equity incentive plans are not subject to Chapter 17 of the Hong Kong Listing Rules pursuant to Rule 19C.11 of the Hong Kong Listing Rules. The equity incentive plans allow us, iQIYI and our subsidiaries to grant awards (including options) to employees, directors and consultants. The waiver and exemption therefore only relates to the options that are granted under the Share Incentive Plans and the iQIYI Incentive Plans.

As of December 31, 2020, the outstanding options pursuant to the Share Incentive Plans only accounted for approximately 0.9% of our total issued and outstanding shares. Assuming full exercise of these outstanding options, the shareholding of our Shareholders will be diluted by approximately 0.9%, based on the outstanding shares of our Company in issue as of December 31, 2020.

As of December 31, 2020, the outstanding options pursuant to the iQIYI Incentive Plans only accounted for approximately 7.7% of iQIYI's total issued and outstanding shares. Assuming full exercise of these outstanding options, the shareholding of iQIYI's Shareholders will be diluted by approximately 7.1%, based on the outstanding shares of iQIYI in issue as of December 31, 2020.

Details of the Share Incentive Plans are disclosed in the section headed "Directors and Senior Management — Compensation — Share Incentive Plans" and details of the iQIYI Incentive Plans are disclosed in "Statutory and General Information — Further Information About us — Share incentive plans of iQIYI" in Appendix IV to this document. The disclosure is substantially the same as those in our and iQIYI's 20-F filings and comply with applicable U.S. laws and regulations, and certain details of the options as required under Paragraph 27 of Part A of Appendix 1 to the Hong Kong Listing Rules and Paragraph 10 of the Third Schedule to the Companies (Winding Up and Miscellaneous Provisions) Ordinance are not required to be and have not been disclosed in our Company's and iQIYI's previous regulatory filings. In addition, the Share Incentive Plans and iQIYI Incentive Plans are not subject to Chapter 17 of the Hong Kong Listing Rules as it is not applicable pursuant to Rule 19C.11 of the Hong Kong Listing Rules, and the SFC has granted a partial exemption from strict compliance with Part XV of the SFO (other than Divisions 5, 11 and 12 of Part XV of the SFO).

For the above reasons, the current disclosure in this document relating to the Share Incentive Plans and the iQIYI Incentive Plans is not in strict compliance with the requirements under Paragraph 27 of Part A of Appendix 1 to the Hong Kong Listing Rules, and the current disclosure in this document relating to the Share Incentive Plans is not in strict compliance with the requirements under Paragraph 10 of the Third Schedule to the Companies (Winding Up and Miscellaneous Provisions) Ordinance.

For the reasons stated above, we believe that strict compliance with the above requirements would be unduly burdensome, unnecessary and/or inappropriate for us, and would not be material or meaningful to Hong Kong investors.

We are of the view that all material information necessary for the public to make an informed assessment of the business, asset and liability, financial position, trading position, management and prospect of the Group has been disclosed in this document, and as such the granting of the waiver and exemption from strict compliance with the relevant content requirements under the Companies (Winding Up and Miscellaneous Provisions) Ordinance and the Hong Kong Listing Rules will not prejudice the interest of the investing public.

We have applied for, and the Hong Kong Stock Exchange has granted, a waiver from strict compliance with the requirements under Paragraph 27 of Part A of Appendix 1 to the Hong Kong Listing Rules in relation to the Share Incentive Plans and the iQIYI Incentive Plans. We have applied for, and the SFC has granted, an exemption from the requirements under Paragraph 10 of the Third Schedule to the Companies (Winding Up and Miscellaneous Provisions) Ordinance in relation to the Share Incentive Plans, to the extent not strictly met by the current disclosure in this document, on the conditions that: (i) the particulars of such exemption are set out in this document; and (ii) this document will be issued on or before March 12, 2021.

## **RULES RELATING TO SPIN-OFF LISTINGS**

Rule 19C.11 of the Hong Kong Listing Rules provides that, among other things, paragraphs 1 to 3(b) and 3(d) to 5 of Practice Note 15 of the Hong Kong Listing Rules do not apply to a Qualifying Issuer that has, or is seeking, a secondary listing on the Hong Kong Stock Exchange. Such exception limited to circumstances where the spun-off assets or businesses are not to be listed on the Hong Kong Stock Exchange's markets and the approval of shareholders of the issuer is not required.

Paragraph 3(b) of Practice Note 15 to the Hong Kong Listing Rules provides that the Listing Committee would not normally consider a spin-off application within three years of the date of listing of the issuer, given the original listing of the issuer will have been approved on the basis of the issuer's portfolio of businesses at the time of listing, and that the expectation of investors at that time would have been that the issuer would continue to develop those businesses.

While we do not have any specific plans with respect to the timing or details of any potential spin-off listing on the Hong Kong Stock Exchange as at the date of this document, in light of our Group's overall business scale, we may consider spinning off one or more of its mature business units through a listing on the Hong Kong Stock Exchange (each a "**Potential Spin-off**") within three years after the Listing, if there are clear commercial benefits both to us and the businesses to be potentially spun-off and there will be no adverse impact on the interests of our shareholders. As of the Latest Practicable Date, we have not identified any target for a potential spin-off; as a result, we do not have any information relating to the identity of any spin-off target or any other details of any spin off and accordingly, there is no material omission of any information relating to any possible spin-off in this document. We cannot assure that any spin-off will ultimately be consummated, whether within the three-year period after the Listing or otherwise, and any such spin-off will be subject to market conditions at the relevant time and approval by the Listing Committee of the Hong Kong Stock Exchange. In the event that we proceed with a spin-off, our interest in the entity to be spun off (and its corresponding contribution to the financial results of our Group) will be reduced accordingly.

We have applied for, and the Hong Kong Stock Exchange has granted, a waiver from strict compliance with the requirements in paragraph 3(b) of Practice Note 15 to the Hong Kong Listing Rules, on the following grounds:

- (i) no shareholders' approval with respect to a Potential Spin-off will be required under the Articles under applicable U.S. regulations and Nasdaq listing rules. Further, as we are a Grandfathered Greater China Issuer and therefore exempt from the requirements under Chapter 14 of the Hong Kong Listing Rules pursuant to Rule 19C.11 of the Hong Kong Listing Rules, no shareholders' approval will be required under the Hong Kong Listing Rules as well;
- (ii) the effect of a spin-off to our shareholders should be the same regardless of whether or not the businesses to be potentially spun-off are to be listed on the Hong Kong Stock Exchange (save with respect to any preferential rights to subscribe for shares that are commonly provided in spin-offs on the Hong Kong Stock Exchange). Given the fact that certain spin-offs by Grandfathered Greater China Issuers are allowed within three years after their listing in Hong Kong pursuant to Rule 19C.11 of the Hong Kong Listing Rules, we believe that the three-year restriction on spin-offs on the Hong Kong Stock Exchange should also be waived and shall not apply to a Potential Spin-off by our Company;
- (iii) in any event, our Company and any subsidiary in respect of which a Potential Spin-off is contemplated will be subject to compliance with all other applicable requirements under the Hong Kong Listing Rules, including the remaining requirements of Practice Note 15 and (in the case of the company to be spun-off) the listing eligibility requirements of Chapter 8, 8A or 19C of the Hong Kong Listing Rules (as the case may be), unless otherwise waived by the Hong Kong Stock Exchange;
- (iv) under U.S. securities laws and Nasdaq rules, we are not subject to any restrictions similar to the three-year restriction under paragraph 3(b) of Practice Note 15 to the Hong Kong Listing Rules in relation to the spin-offs of our businesses, nor is there any requirement for us to disclose any details of its potential spin-off entities when such information is not available because of the absence of any concrete spin-off plan; and
- (v) the directors owe fiduciary duties to our Company, including the duty to act in what they consider in good faith to be in our best interests; as such they will only pursue a potential spin-off if there are clear commercial benefits both to us and the entity or entities to be spun off; and the directors will not direct our Company to conduct any spin-off if they believe it will have an adverse impact on the interests of our shareholders.

The waiver was granted by the Hong Kong Stock Exchange on the following conditions:

- (i) prior to any spin-off of our business through a listing on the Hong Kong Stock Exchange within three years after the Listing, we will confirm to the Hong Kong Stock Exchange with basis that the spin-off would not render us, excluding the business to be spun off, incapable of fulfilling either the eligibility or suitability requirements under Rules 19C.02 and 19C.05 of the Hong Kong Listing Rules based on the financial information of the entity to be spun-off at the time of our listing (calculated accumulatively where more than one entity is to be spun-off);
- (ii) we will disclose in this document our intention relating to any potential spin-off within three years after the Listing and the risks relating to the uncertainty and timing of any potential spin-offs (see section headed “Risk Factors — Risks Related to Our Shares, ADSs and the Listing — We are exposed to risks associated with the potential spin-off of one or more of our businesses” in this document);
- (iii) any potential spin-offs by our Company will be subject to the requirements of Practice Note 15 to the Hong Kong Listing Rules (other than paragraph 3(b) thereof), including that each of our Company and our businesses to be spun off will satisfy the applicable listing eligibility requirements on a standalone basis; and
- (iv) disclosure of this waiver in this document.

## **DISCLOSURE OF ULTIMATE BENEFICIAL OWNER OF OTHER WVR BENEFICIARY**

Rule 8A.39 of the Hong Kong Listing Rules provides that an issuer with a WVR structure must identify the beneficiaries of weighted voting rights in its listing documents and in its interim and annual reports.

Immediately upon completion of the Global Offering, the WVR beneficiaries will be Mr. Robin Yanhong Li, the chairman and chief executive officer of the Company; Ms. Melissa Ma, the spouse of Mr. Li, and Shimoda Holdings, LLC and Integrity Partners V, LLC, which are affiliated with early stage investors of our Company that invested in our Company before its US IPO in 2005. Details of the WVR beneficiaries are disclosed in “Share Capital — WVR Beneficiaries” in this document.

To our best knowledge Shimoda Holdings, LLC and Integrity Partners V, LLC (together the “**Other WVR Beneficiaries**”) and their respective ultimate beneficial owners are independent third parties of our Company and are not core connected persons of our Company, and the ultimate beneficial owners of the Other WVR Beneficiaries do not have a role in our business and operations.

The disclosure in this document does not include information on the ultimate beneficial owners of the Other WVR Beneficiaries. We applied for, and the Stock Exchange has granted, a waiver from strict compliance with the requirements in Rule 8A.39 in relation to this document and our future interim and annual reports on the following grounds:

- (i) **Voting rights controlled by the Other WVR Beneficiaries are immaterial.** Immediately upon the completion of the Global Offering, the Other WVR Beneficiaries will control in aggregate approximately 0.6% of our voting rights. We undertake that we will not issue additional Class B ordinary shares to the Other WVR Beneficiaries in the future.
- (ii) **No consent to disclosure has been obtained.** As of the Latest Practicable Date, no consent for disclosure of ultimate beneficial ownership has been received from the Other WVR Beneficiaries.
- (iii) **Risk of breach of the Data Protection Act (As Revised) of the Cayman Islands.** Our adviser as to Cayman Islands law has advised us that there is a risk that disclosure of the ultimate beneficial owners of the Other WVR Beneficiaries without their consent would be in breach of the Data Protection Act (As Revised) of the Cayman Islands, the breach of which may lead to remedial action by the relevant Cayman Islands regulator (the Ombudsman), the imposition of penalties, and criminal sanctions.
- (iv) **Other WVR Beneficiaries are affiliated with early stage investors of the Company.** These early stage investors invested in our Company before its initial public offering on Nasdaq in 2005, which dates back to more than a decade ago.
- (v) **No specific disclosure of ultimate beneficial owner in US filings.** We are an issuer seeking a secondary listing as a Grandfathered Greater China Issuer pursuant to Chapter 19C of the Hong Kong Listing Rules. We have had a long history of listing on Nasdaq, and we have consistently disclosed details of our major shareholders (being holders known to own beneficially more than 5% of our total outstanding shares) pursuant to applicable US laws and Nasdaq rules. The prospectus relating to our initial public offering on Nasdaq in 2005 and our subsequent 20-Fs did not explicitly name the ultimate beneficial owners of the Other WVR Beneficiaries.
- (vi) **Interests of investing public not prejudiced.** The exclusion of the ultimate beneficial owners of the Other WVR Beneficiaries from this document, especially given their immaterial shareholding, would not prejudice the interests of the investing public. This document currently contains, and the Company expects to include in its future interim and annual reports, alternative disclosure relating to the Other WVR Beneficiaries, including their names, their shareholding, that they are affiliated with early stage investors of the Company that invested in the Company before its US IPO in 2005, and that they and their respective ultimate beneficial owners are an independent third party of and not a core connected person of the Company and the ultimate beneficial owners of the Other WVR Beneficiaries do not have a role in the Company's business and operations to the best knowledge of the Company.

For the reasons stated above, we believe that strict compliance with the requirements of Rule 8A.39 of the Listing Rules would be inappropriate and not in the best interests of the Company.

## **NOT A PUBLIC COMPANY IN HONG KONG UNDER THE TAKEOVERS CODE**

Section 4.1 of the Introduction to Takeovers Codes provides that the Takeovers Codes apply to takeovers, mergers and share buy-backs affecting, among others, public companies in Hong Kong and companies with a primary listing of their securities in Hong Kong. According to the Note to Section 4.2 of the Introduction to the Takeovers Codes, a Grandfathered Greater China Issuer within the meaning of Rule 19C.01 of the Hong Kong Listing Rules with a secondary listing on the Hong Kong Stock Exchange will not normally be regarded as a public company in Hong Kong under Section 4.2 of the Introduction to the Takeovers Codes. We have applied for a ruling that we are not a “public company in Hong Kong” for the purposes of the Takeovers Codes. The executive issued a ruling and confirmed that, we, as a Grandfathered Greater China Issuer within the meaning of Rule 19C.01 of the Hong Kong Listing Rules after our proposed secondary listing on the Hong Kong Stock Exchange, will not be regarded as a public company in Hong Kong for the purposes of the Takeovers Codes. Therefore, the Takeovers Codes do not apply to us. In the event that the bulk of trading in our Shares migrates to Hong Kong such that we would be treated as having a dual-primary listing pursuant to Rule 19C.13 of the Hong Kong Listing Rules, the Takeovers Codes will apply to us.

## **DISCLOSURE OF INTERESTS UNDER PART XV OF SFO**

Part XV of the SFO imposes duties of disclosure of interests in the securities of companies whose securities are listed on the Hong Kong Stock Exchange on the relevant company, its substantial shareholders and its directors/chief executives. Under the U.S. Exchange Act, which we are subject to, any person (including directors and officers of the company concerned) who acquires beneficial ownership, as determined in accordance with the rules and regulations of the SEC and which includes the power to direct the voting or the disposition of the securities, of more than 5% of a class of equity securities registered under Section 12 of the U.S. Exchange Act must file beneficial owner reports with the SEC, and such person must promptly report any material change in the information provided (including any acquisition or disposition of 1% or more of the class of equity securities concerned), unless exceptions apply. Therefore, compliance with Part XV of the SFO would subject our corporate insiders to a second level of reporting, which would be unduly burdensome to them, would result in additional costs and would not be meaningful, since the statutory disclosure of interest obligations under the U.S. Exchange Act that apply to us and our corporate insiders would provide our investors with sufficient information relating to the shareholding interests of our significant shareholders.

We have applied for, and the SFC has granted, a partial exemption under section 309(2) of the SFO from the provisions of Part XV of the SFO (other than Divisions 5, 11 and 12 of Part XV of the SFO), on the conditions that (i) the bulk of trading in the Shares is not considered to have migrated to Hong Kong on a permanent basis in accordance with Rule 19C.13 of the Hong Kong Listing Rules; (ii) all disclosures of interest filed with the SEC are also filed with the Hong Kong Stock Exchange as soon as practicable, which will then publish such disclosures in the same manner as disclosures made under Part XV of the SFO; and (iii) we will advise the SFC if there is any material change to any of the information which has been provided to the SFC, including any significant changes to the disclosure requirements in the U.S. and any significant changes in the volume of our worldwide share turnover that takes place on the Hong Kong Stock Exchange. This exemption may be reconsidered by the SFC in the event there is a material change in information provided to the SFC.

## SECTION B1

### FOREIGN LAWS AND REGULATIONS

Our Company is incorporated in the Cayman Islands and governed by its Articles of Association, as amended from time to time, and subject to the Companies Act, Cap.22 (Act 3 of 1961, as consolidated and revised) of the Cayman Islands, as amended or supplemented or otherwise modified from time to time (the “**Cayman Companies Act**”). Our ADSs are also listed in the U.S. on Nasdaq under the symbol “**BIDU**”; we are considered a “foreign private issuer” and are subject to certain U.S. laws and regulations and the Nasdaq Marketplace rules. We set out below a summary of key laws and regulations that concern shareholder rights and taxation that may differ from comparable provisions in Hong Kong. This summary does not contain all applicable laws and regulations, nor does it set out all the differences with laws and regulations in Hong Kong, or constitute legal or tax advice.

#### Foreign Laws and Regulations: Cayman Islands

### RIGHTS OF SHAREHOLDERS

#### 1. Dividends

##### *Under our constitution*

The holders of our Shares are entitled to such dividends as may be declared by our board of directors. Under Cayman Islands law, dividends may be declared and paid only out of funds legally available therefor, namely out of either profit or our share premium account, and provided further that a dividend may not be paid if this would result in our Company being, immediately following such payment, unable to pay its debts as they fall due in the ordinary course of business.

Dividends received by each Class B ordinary share and Class A ordinary share in any dividend distribution shall be the same.

There are no provisions in our Articles governing the time limit after which entitlement to dividend lapses and an indication of the party in whose favor the lapse operates.

#### 2. Voting Rights

##### *Under our constitution*

Holders of Class A ordinary shares and Class B ordinary shares vote together as a single class on all matters submitted to a vote of the shareholders, except as may otherwise be required by law or provided for in the Memorandum and Articles of Association. In respect of matters requiring shareholders’ vote, they should be decided by a poll, where each Class A ordinary share is entitled to one vote, and each Class B ordinary share is entitled to ten votes.

An ordinary resolution to be passed by the shareholders requires the affirmative vote of a simple majority of the votes cast by those shareholders entitled to vote who are present in person or by proxy at a general meeting. Holders of the ordinary shares may, among other things, divide or consolidate their shares by ordinary resolution. A special resolution requires the affirmative vote of no less than two-thirds of the votes cast by those shareholders entitled to vote who are present in person or by proxy at a general meeting. A special resolution will be required for important matters such as a change of name or making changes to the Memorandum and Articles of Association. Both ordinary resolutions and special resolutions may also be passed by a unanimous written resolution signed by all the shareholders of our Company, as permitted by the Cayman Companies Act and the Memorandum and Articles of Association.

### **3. Liquidation**

#### *Under our constitution*

On a return of capital on winding up or otherwise (other than on conversion, redemption or purchase of shares) assets available for distribution among the holders of our Shares shall be distributed among the holders of our Shares pro rata. If the assets available for distribution are insufficient to repay all of the paid-up capital, the assets will be distributed so that the losses are borne by our Shareholders proportionately.

#### *Under the Cayman Companies Act*

A company may be placed in liquidation compulsorily by an order of the court, or voluntarily (a) by a special resolution of its members if our company is solvent, or (b) by an ordinary resolution of its members if our company is insolvent.

### **4. Shareholders' Suits**

#### *Under the Cayman Companies Act*

The Cayman Islands courts can be expected to follow English case law precedents. The rule in *Foss v. Harbottle* (and the exceptions thereto which permit a minority shareholder to commence a class action against or derivative actions in the name of our Company to challenge (a) an act which is ultra vires our Company or illegal, (b) an act which constitutes a fraud against the minority where the wrongdoers are themselves in control of our Company, and (c) an action which requires a resolution with a qualified (or special) majority which has not been obtained) has been applied and followed by the courts in the Cayman Islands.

## **5. Protection of Minorities**

### *Under the Cayman Companies Act*

In the case of a company (not being a bank) having a share capital divided into shares, the Grand Court of the Cayman Islands may, on the application of members holding not less than one-fifth of the shares of our Company in issue, appoint an inspector to examine into the affairs of our Company and to report thereon in such manner as the Grand Court shall direct.

Any shareholder of a company may petition the Grand Court of the Cayman Islands which may make a winding up order if the court is of the opinion that it is just and equitable that our Company should be wound up.

Claims against a company by its shareholders must, as a general rule, be based on the general laws of contract or tort applicable in the Cayman Islands or their individual rights as shareholders as established by our Company's memorandum and articles of association.

The English common law rule that the majority will not be permitted to commit a fraud on the minority has been applied and followed by the courts of the Cayman Islands.

## **DIRECTORS' POWERS AND INVESTOR PROTECTION**

## **6. Director's Borrowing Powers**

### *Under our constitution*

Our directors may exercise all the powers of our Company to borrow money and to mortgage or charge its undertaking, property and uncalled capital or any part thereof, to issue debentures, debenture stock and other securities whenever money is borrowed or as security for any of our debts, liabilities, or obligations or those of any third party.

## **7. Shareholders' Suits**

### *Under the Cayman Companies Act*

See item 4 above.

## **8. Protection of Minorities**

### *Under the Cayman Companies Act*

See item 5 above.

# TAKEOVER OR SHARE REPURCHASES

## 9. Redemption, Purchase and Surrender of Shares

### *Under our constitution*

Our Company may issue shares on terms that such shares are subject to redemption, at the option of our Company or at the option of the holders thereof, on such terms and in such manner as may be determined, before the issue of such shares, by the board of directors. Our Company may repurchase any of our Company's shares provided that the manner and terms of such purchase have been approved by an ordinary resolution of the shareholders or are otherwise authorized by the Memorandum and Articles of Association. Our Company may also purchase any of our Company's shares listed on an internationally recognized stock exchange in the manner of purchase as authorized by the Memorandum and Articles of Association. Under the Cayman Companies Act, the redemption or repurchase of any share may be paid out of our Company's profits or out of the proceeds of a fresh issue of shares made for the purpose of such redemption or repurchase, or out of capital (including share premium account and capital redemption reserve) if our Company can, immediately following such payment, pay our debts as they fall due in the ordinary course of business. In addition, under the Cayman Companies Act no such share may be redeemed or repurchased (a) unless it is fully paid up, (b) if such redemption or repurchase would result in there being no shares outstanding, or (c) if our Company has commenced liquidation.

## 10. Mergers and Consolidations

### *Under the Cayman Companies Act*

The Cayman Companies Act permits mergers and consolidations between Cayman Islands companies and between Cayman Islands companies and non-Cayman Islands companies. For these purposes, (a) "merger" means the merging of two or more constituent companies and the vesting of their undertaking, property and liabilities in one of such companies as the surviving company, and (b) "consolidation" means the combination of two or more constituent companies into a consolidated company and the vesting of the undertaking, property and liabilities of such companies to the consolidated company. In order to effect such a merger or consolidation, the directors of each constituent company must approve a written plan of merger or consolidation, which must then be authorised by (a) a special resolution of each constituent company and (b) such other authorisation, if any, as may be specified in such constituent company's articles of association. The written plan of merger or consolidation must be filed with the Registrar of Companies of the Cayman Islands together with a declaration as to the solvency of the consolidated or surviving company, a list of the assets and liabilities of each constituent company and an undertaking that a copy of the certificate of merger or consolidation will be given to the members and creditors of each constituent company and that notification of the merger or consolidation will be published in the Cayman Islands Gazette. Dissenting shareholders have the right to be paid the fair value of their shares (which, if not agreed between the parties, will be determined by the Cayman Islands court) if they follow the required procedures, subject to certain exceptions. Court approval is not required for a merger or consolidation which is effected in compliance with these statutory procedures.

## **11. Reconstructions**

### *Under the Cayman Companies Act*

There are statutory provisions which facilitate reconstructions and amalgamations approved by a majority in number representing 75% in value of shareholders or creditors, depending on the circumstances, as are present at a meeting called for such purpose and thereafter sanctioned by the Grand Court of the Cayman Islands. Whilst a dissenting shareholder would have the right to express to the Grand Court his view that the transaction for which approval is sought would not provide the shareholders with a fair value for their shares, the Grand Court is unlikely to disapprove the transaction on that ground alone in the absence of evidence of fraud or bad faith on behalf of management and if the transaction were approved and consummated the dissenting shareholder would have no rights comparable to the appraisal rights (i.e. the right to receive payment in cash for the judicially determined value of his shares) ordinarily available, for example, to dissenting shareholders of United States corporations.

## **12. Take-overs**

### *Under the Cayman Companies Act*

Where an offer is made by a company for the shares of another company and, within four months of the offer, the holders of not less than 90% of the shares which are the subject of the offer accept, the offeror may at any time within two months after the expiration of the said four months, by notice require the dissenting shareholders to transfer their shares on the terms of the offer. A dissenting shareholder may apply to the Grand Court of the Cayman Islands within one month of the notice objecting to the transfer. The burden is on the dissenting shareholder to show that the Grand Court should exercise its discretion, which it will be unlikely to do unless there is evidence of fraud or bad faith or collusion as between the offeror and the holders of the shares who have accepted the offer as a means of unfairly forcing out minority shareholders.

## **TAXATION**

### **13. Stamp duty on transfers**

#### *Under the Cayman Companies Act*

No stamp duty is payable in the Cayman Islands on transfers of shares of Cayman Islands companies except those which hold interests in land in the Cayman Islands.

## 14. Taxation

### *Under the Cayman Companies Act*

Pursuant to section 6 of the Tax Concessions Act (As Revised) of the Cayman Islands, our Company may obtain an undertaking from the Financial Secretary of the Cayman Islands:

- (a) that no law which is enacted in the Cayman Islands imposing any tax to be levied on profits, income, gains or appreciations shall apply to our Company or its operations; and
- (b) in addition, that no tax to be levied on profits, income, gains or appreciations or which is in the nature of estate duty or inheritance tax shall be payable:
  - (i) on or in respect of the shares, debentures or other obligations of our Company; or
  - (ii) by way of the withholding in whole or in part of any relevant payment as defined in section 6(3) of the Tax Concessions Act (As Revised).

The Cayman Islands currently levy no taxes on individuals or corporations based upon profits, income, gains or appreciations and there is no taxation in the nature of inheritance tax or estate duty. There are no other taxes likely to be material to our Company levied by the Government of the Cayman Islands save certain stamp duties which may be applicable, from time to time, on certain instruments executed in or brought within the jurisdiction of the Cayman Islands. The Cayman Islands are not party to any double tax treaties that are applicable to any payments made by or to our Company.

# Foreign Laws and Regulations: United States and Nasdaq

## RIGHTS OF SHAREHOLDERS AND HOW THEY MAY EXERCISE THEIR RIGHTS

### 1. Shareholder Rights Under the Deposit Agreement

- *Prompt receipt of distributions.* Whenever the depositary receives any dividend or other distribution on the underlying shares, the depositary must promptly distribute the amount received (net of taxes and the fees/expenses of the depositary) to the ADR holders.
- *Voting of deposited securities.* Upon receipt of notice of any shareholders meeting, if requested in writing by the Company, the depositary must, as soon as practicable, mail to ADR holders a notice containing key information received by the depositary; and upon written instruction by the ADR holder, the depositary will, as far as practicable, vote the underlying shares in accordance with the ADR holder's instructions. If no instructions are received, the depositary may give a discretionary proxy to a person designated by the Company.
- *Reports.* ADR holders have a right to inspect reports and communications, including proxy soliciting material, received from the Company by the depositary or generally made available to shareholders.
- *Withdrawal.* Subject to limited exceptions, ADR holders have the right to cancel their ADSs and withdraw the underlying shares at any time.

### 2. Shareholder Proposals and Approvals

As a foreign private issuer, our Company is not subject to SEC rules regarding proxy statements to shareholders. Instead, shareholder proposals must be made in accordance with our Company's Articles of Association, as amended.

Each Nasdaq-listed company is generally required to obtain shareholder approval of certain issuances of securities, including in connection with: (i) acquiring the stock or assets of another company; (ii) equity-based compensation of officers, directors, employees or consultants; (iii) a change of control; and (iv) private placements. However, as our Company is a foreign private issuer, it can follow "home country practice" (i.e., the practice in the Cayman Islands) in lieu of complying with the above Nasdaq rule.

### 3. Corporate Governance

The Nasdaq Marketplace Rules contain a number of corporate governance requirements for Nasdaq-listed companies, the principal of which are:

- *Majority Independent Directors.* A majority of the board of directors must be comprised of “Independent Directors.”
- *Audit Committee.* Each Nasdaq-listed company must have an audit committee of at least three members consisting of independent directors who satisfy certain requirements.
- *Compensation Committee.* Each Nasdaq-listed company must have a compensation committee of at least two members consisting of independent directors.
- *Nomination Committee.* The independent directors or a committee of independent directors must select or recommend nominees for directors.

However, as a foreign private issuer, our Company can opt to be exempt from most of the requirements if they choose to follow “home country practice”, which would be disclosed in our annual report (Form 20-F). Notwithstanding, our Company cannot opt out of the requirement to maintain an audit committee, which would be responsible for establishing procedures for handling complaints regarding our Company’s accounting practices.

### 4. Sarbanes-Oxley Requirements

The Company is also subject to the *U.S. Sarbanes-Oxley Act of 2002* (“**Sarbanes-Oxley**”). Sarbanes-Oxley addresses issues such as the composition of the audit committee of the board of directors and the adoption of the company codes of ethics, including:

- *No loans to directors or executive officers.* A company cannot extend loans to its directors and executive officers.
- *Whistle-blower protection.* The company is required to establish procedures for confidential and anonymous submission by employees of accounting-related concerns.

### 5. Takeover Regulations

*Mergers.* As our Company is a foreign private issuer, we are required to file with the SEC a proxy statement in the form of a Form 6-K, containing certain mandated information, in connection with a proposed merger transaction. Foreign private issuers may elect to follow their “home country practices” in lieu of complying with applicable shareholder approval requirements under the Nasdaq Marketplace Rules.

*Tender Offers.* Neither the U.S. federal securities laws nor the Nasdaq Marketplace Rules have the concept of a “general offer.” Therefore, a party making a tender offer is free to decide how many shares will be subject to the offer. All holders of the same class of securities must be treated equally and the highest consideration paid to any one shareholder of that class of securities must be paid to all shareholders of that same class. A tender offer must remain open for a minimum of 20 business days after commencement, and may be extended in circumstances. Within 10 business days of commencement, the subject company must send a notice to its shareholders recommending whether to accept or reject a tender offer, or expressing a neutral position.

*Disclosure of Interests for Major Shareholders.* Any person who, after acquiring beneficial ownership of a class of equity securities (which includes the power to direct the voting or the disposition of the securities) registered under Section 12 of the Exchange Act (“**Registered Equity Class**”), is a beneficial owner of more than 5% of the Registered Equity Class, must publicly file beneficial owner reports (Schedule 13D or Schedule 13G) with the SEC, and such person must promptly report any material change in the information provided (including any acquisition or disposition of 1% or more of the class of equity securities concerned), unless exceptions apply. Schedule 13D must be filed by all shareholders who are not otherwise eligible to use Schedule 13G.

# **THE COMPANIES ACT (AS REVISED)**

## **Company Limited by Shares**

### **FOURTH AMENDED AND RESTATED MEMORANDUM OF ASSOCIATION**

#### **OF**

#### **BAIDU, INC. 百度集團股份有限公司**

Adopted by special resolution passed on 7 December 2021

1. The name of the Company is Baidu, Inc. 百度集團股份有限公司.
2. The Registered Office of the Company shall be at the offices of Maples Corporate Services Limited, PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands or at such other place as the Directors may from time to time decide.
3. The objects for which the Company is established are unrestricted and the Company shall have full power and authority to carry out any object not prohibited by the Companies Act (As Revised), as amended from time to time, or any other law of the Cayman Islands.
4. The liability of each Member is limited to the amount from time to time unpaid on such Member's shares.
5. The authorized share capital of the Company is US\$43,520 divided into 66,000,000,000 Class A ordinary shares of a nominal or par value of US\$0.000000625 each, 2,832,000,000 Class B ordinary shares of a nominal or par value of US\$0.000000625 each and 800,000,000 preferred shares of a nominal or par value of US\$0.000000625 each, with the power for the Company, insofar as is permitted by law, to redeem or purchase any of its shares and to increase or reduce the said capital subject to the provisions of the Companies Act (As Revised) and the Articles of Association and to issue any part of its capital, whether original, redeemed or increased with or without any preference, priority or special privilege or subject to any postponement of rights or to any conditions or restrictions and so that unless the conditions of issue shall otherwise expressly declare every issue of shares whether declared to be preference or otherwise shall be subject to the powers hereinbefore contained, provided that, notwithstanding any provision to the contrary contained in this Memorandum of Association, the Company shall have no power to issue bearer shares, warrants, coupons or certificates.

6. If the Company is registered as exempted, its operations will be carried on subject to the provisions of Section 193 of the Companies Act (As Revised) and, subject to the provisions of the Companies Act (As Revised) and the Articles of Association, it shall have the power to register by way of continuation as a body corporate limited by shares under the laws of any jurisdiction outside the Cayman Islands and to be deregistered in the Cayman Islands.
7. Capitalized terms that are not defined in this Amended and Restated Memorandum of Association bear the same meaning as those given in the Amended and Restated Articles of Association of the Company adopted by Special Resolution passed on 7 December 2021.

# THE COMPANIES ACT (AS REVISED)

## Company Limited by Shares

### FOURTH AMENDED AND RESTATED ARTICLES OF ASSOCIATION

#### OF

#### BAIDU, INC. 百度集團股份有限公司

Adopted by special resolution passed on 7 December 2021

1. In these Articles, Table A in the Schedule to the Statute does not apply and, unless there be something in the subject or context inconsistent therewith,

“Affiliate”	means (i) in the case of a natural person, such person’s parents, parents-in-law, spouse, children or grandchildren, a trust for the benefit of any of the foregoing, a company, partnership or any natural person or entity wholly or jointly owned by any of the foregoing, (ii) in the case of an entity, a partnership, a corporation or any natural person or entity which directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such entity. The term “control” shall mean the ownership, directly or indirectly, of shares possessing more than fifty percent (50%) of the voting power of the corporation, or the partnership or other entity (other than, in the case of corporation, share having such power only by reason of the happening of a contingency), or having the power to control the management or elect a majority of members to the board of directors or equivalent decision-making body of such corporation, partnership or other entity.
“Articles”	means the Fourth Amended and Restated Articles of Association adopted by Special Resolution, as from time to time altered or added to in accordance with the Statutes and these Articles.
“Auditors”	means the persons for the time being performing the duties of auditors of the Company.
“Class A Ordinary Share”	means a Class A Ordinary Share in the capital of the Company.
“Class B Ordinary Share”	means a Class B Ordinary Share in the capital of the Company.

“Company”	means Baidu, Inc. 百度集團股份有限公司.
“debenture”	means debenture stock, mortgages, bonds and any other such securities of the Company whether constituting a charge on the assets of the Company or not.
“Directors” and “Board of Directors”	means the current directors of the board of the Company.
“dividend”	includes bonus.
“Listing Rules”	means the Rules Governing the Listing of Securities on the The Stock Exchange of Hong Kong Limited as amended from time to time.
“Member”	has the meaning as ascribed to it in the Statute.
“month”	means calendar month.
“Ordinary Shares”	means collectively the Class A Ordinary Shares and the Class B Ordinary Shares.
“paid up”	means paid up and/or credited as paid up.
“registered office”	means the current registered office of the Company in the Cayman Islands.
“Seal”	means the common seal of the Company and includes every duplicate seal.
“Secretary”	includes an Assistant Secretary and any person appointed to perform the duties of Secretary of the Company.
“share”	includes a fraction of a share.
“Special Resolution”	has the same meaning as in the Statute and includes a resolution approved in writing as described therein.
“Statute”	means the Companies Act of the Cayman Islands (As Revised) and every statutory modification or re-enactment thereof currently in force.
“written” and “in writing”	include all modes of representing or reproducing words in visible form.

2. In these Articles, save where the context requires otherwise:
  - (a) words importing the singular number shall include the plural number and vice versa;
  - (b) words importing the masculine gender only shall include the feminine gender;
  - (c) words importing persons only shall include companies or associations or bodies of persons, whether corporate or not;
  - (d) “**may**” shall be construed as permissive and “**shall**” shall be construed as imperative;
  - (e) a reference to a dollar or dollars (or \$) is a reference to dollars of the United States;
  - (f) references to a statutory enactment shall include reference to any amendment or re-enactment thereof for the time being in force; and
  - (g) any phrase introduced by the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
3. Subject to the last two preceding Articles, any words defined in the Companies Act shall, if not inconsistent with the subject or context, bear the same meaning in these Articles.

## **CERTIFICATES FOR SHARES**

4. Certificates representing shares of the Company shall be in such form as shall be determined by the Directors. Such certificates may be under Seal. All certificates for shares shall be consecutively numbered or otherwise identified and shall specify the shares to which they relate. The name and address of the person to whom the shares represented thereby are issued, with the number of shares and date of issue, shall be entered in the register of Members of the Company. All certificates surrendered to the Company for transfer shall be cancelled and no new certificate shall be issued until the former certificate for a like number of shares shall have been surrendered and cancelled. The Directors may authorize certificates to be issued with the Seal and authorized signature(s) affixed by some method or system of mechanical process.
5. Notwithstanding Article 4 of these Articles, if a share certificate be defaced, lost or destroyed, it may be renewed on payment of a fee of one dollar (US\$1.00) or such less sum and on such terms (if any) as to evidence and indemnity and the payment of the expenses incurred by the Company in investigating evidence, as the Directors may prescribe.

## SHARE CAPITAL

6. The authorized share capital of the Company is US\$43,520 divided into 66,000,000,000 Class A ordinary shares of a nominal or par value of US\$0.000000625 each, 2,832,000,000 Class B ordinary shares of a nominal or par value of US\$0.000000625 each and 800,000,000 preferred shares of a nominal or par value of US\$0.000000625 each, with the power for the Company, insofar as is permitted by law, to redeem or purchase any of its shares and to increase or reduce the said capital subject to the provisions of the Companies Act (As Revised) and the Articles of Association and to issue any part of its capital, whether original, redeemed or increased with or without any preference, priority or special privilege or subject to any postponement of rights or to any conditions or restrictions and so that unless the conditions of issue shall otherwise expressly declare every issue of shares whether declared to be preference or otherwise shall be subject to the powers hereinbefore contained.
7. The Directors from time to time may, in their absolute discretion and without approval of Members, cause the Company to issue such amounts of preferred shares or other similar securities in one or more series as they deem necessary and appropriate and determine designations, powers, preferences, privileges and other rights, including dividend rights, conversion rights, terms of redemption and liquidation preferences, any or all of which may be greater than the powers and rights associated with the Ordinary Shares.

## RIGHTS AND RESTRICTIONS ATTACHING TO ORDINARY SHARES

8. The rights and restrictions attaching to the Ordinary Shares are as follows:

- (a) Income

Holders of Ordinary Shares shall be entitled to such dividends as the Directors may in their absolute discretion lawfully declare from time to time.

- (b) Capital

Holders of Ordinary Shares shall be entitled to a return of capital on liquidation, dissolution or winding-up of the Company (other than on a conversion, redemption or purchase of shares, or an equity financing or series of financings that do not constitute the sale of all or substantially all of the shares of the Company).

- (c) Attendance at General Meetings and Voting

Holders of Ordinary Shares have the right to receive notice of, attend, speak and vote at general meetings of the Company. Holders of shares of Class A Ordinary Shares and Class B Ordinary Shares shall at all time vote together as one class on all matters submitted to a vote for Members' consent. Each share of Class A Ordinary Share shall be entitled to one vote on all matters subject to the vote at general meetings of the Company, and each share of Class B Ordinary Share shall be entitled to ten (10) votes on all matters subject to the vote at general meetings of the Company.

(d) Conversion

- (i) Each share of Class B Ordinary Share is convertible into one (1) share of Class A Ordinary Share at any time by the holder thereof. In no event shall Class A Ordinary Shares be convertible into Class B Ordinary Shares.
- (ii) If at any time Yanhong (Robin) Li and his Affiliates collectively own less than 5% of the total number of the issued and outstanding Class B Ordinary Shares of the Company, each issued and outstanding share of Class B Ordinary Share shall be automatically and immediately converted into one share of Class A Ordinary Share, and no Class B Ordinary Shares shall be issued by the Company thereafter.
- (iii) Upon any sale, pledge, transfer, assignment or disposition of Class B Ordinary Shares by a holder thereof to any person or entity which is not an Affiliate of such holder, such Class B Ordinary Shares shall be automatically and immediately converted into an equal number of Class A Ordinary Shares; provided that, except as set forth in Article 8(d)(iv) below, a change in the beneficial ownership of Class B Ordinary Shares shall not cause a conversion under this Article 8(d)(iii).
- (iv) Within six months after a transfer by a holder of Class B Ordinary Shares to an Affiliate of such holder, if there is a change of the beneficial ownership of the Class B Ordinary Shares held by the Affiliate, such Class B Ordinary Shares shall be automatically and immediately converted into an equal number of Class A Ordinary Shares. For purposes of this Article 8(d)(iv), a transfer shall be deemed to be effective upon the Company's registration of such transfer in its register of Members. For purposes of Article 8(d)(iii) and Article 8(d)(iv), "beneficial ownership" shall have the meaning defined in Rule 13d-3 under the U.S. Securities Exchange Act of 1934, as amended.

9. The Company shall maintain a register of its Members and every person whose name is entered as a Member in the register of Members shall be entitled, without payment, to receive within two months after allotment or lodgment of transfer (or within such other period as the conditions of issue shall provide) one certificate for all his shares, provided that, in respect of a share or shares held jointly by several persons, the Company shall not be bound to issue more than one certificate and delivery of a certificate for a share to one of the several joint holders shall be sufficient delivery to all such holders.

## **TRANSFER OF SHARES**

10. The instrument of transfer of any share shall be in writing and shall be executed by or on behalf of the transferor and the transferor shall be deemed to remain the holder of a share until the name of the transferee is entered in the register in respect thereof.

11. The Directors may, in their absolute discretion (except with respect to a transfer from a Member to its Affiliate(s)), decline to register any transfer of shares without assigning any reason therefor. If the Directors refuse to register a transfer they shall notify the transferee within two months of such refusal. Notwithstanding the foregoing, if a transfer complies with the holder's transfer obligations and restrictions set forth under applicable law (including but not limited to U.S. securities law provisions related to insider trading) and these Articles, Directors shall promptly register such transfer. Further, any Director is authorized to confirm in writing addressed to the registered office to authorize a share transfer and to instruct that the register of members be updated accordingly, provided that the transfer complies with the holder's transfer obligations and restrictions set forth under applicable law and these Articles and such holder is not the Director who authorizes the transfer or an entity affiliated with such Director. Any Director is authorized to execute a share certificate in respect of such shares for and on behalf of the Company.
12. The registration of transfers may be suspended at such time and for such periods as the Directors may from time to time determine, provided always that such registration shall not be suspended for more than forty-five days in any year.

## **REDEMPTION AND PURCHASE OF OWN SHARES**

- 13A. Subject to the provisions of the Statute and these Articles, the Company may:
  - (a) issue shares on terms that they are to be redeemed or are liable to be redeemed at the option of the Member or the Company on such terms and in such manner as the Directors may, before the issue of the shares, determine;
  - (b) purchase its own shares (including any redeemable shares) provided that the Members shall have approved the manner of purchase by ordinary resolution or the manner of purchase shall be in accordance with the following Articles (this authorisation is in accordance with section 37(2) of the Statute or any modification or re-enactment thereof for the time being in force); and
  - (c) make a payment in respect of the redemption or purchase of its own shares in any manner permitted by the Statute, including out of capital.
- 13B. Purchase of shares listed on an internationally recognized stock exchange where the Company's securities are traded (a "**Designated Stock Exchange**"): the Company is authorised to purchase any share listed on a Designated Stock Exchange in accordance with the following manner of purchase:
  - (a) the maximum number of shares that may be repurchased shall be equal to the number of issued and outstanding shares less one share; and

- (b) the repurchase shall be at such time, at such price and on such other terms as determined and agreed by the Directors in their sole discretion provided however that:
  - (i) such repurchase transactions shall be in accordance with the relevant code, rules and regulations applicable to the listing of the shares on the Designated Stock Exchange; and
  - (ii) at the time of the repurchase, the Company is able to pay its debts as they fall due in the ordinary course of its business.

13C. The purchase of any share shall not oblige the Company to purchase any other share other than as may be required pursuant to applicable law and any other contractual obligations of the Company.

13D. The holder of the shares being purchased shall be bound to deliver to the Company at its registered office or such other place as the Directors shall specify, the certificate(s) (if any) thereof for cancellation and thereupon the Company shall pay to him the purchase or redemption monies or consideration in respect thereof.

## **VARIATION OF RIGHTS OF SHARES**

14. Except as otherwise provided in these Articles, if at any time the share capital of the Company is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class and as set forth in the Articles) may, whether or not the Company is being wound up, liquidated or dissolved, be varied with the consent in writing of the holders of at least a majority of the issued shares of that class, or with the sanction of a Special Resolution passed at a general meeting of the holders of the shares of that class.

The provisions of these Articles relating to general meetings shall apply to every such general meeting of the holders of one class of shares except that the necessary quorum shall be one person holding or representing by proxy at least one third of the issued shares of the class and that any holder of shares of the class present in person or by proxy may demand a poll.

The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall not, subject to any rights or restrictions for the time being attached to the shares of that class, be deemed to be materially adversely varied by, inter alia, the creation, allotment or issue of further shares ranking *pari passu* with or subsequent to them or the redemption or purchase of any shares of any class by the Company. The rights of the holders of shares shall not be deemed to be materially adversely varied by the creation or issue of shares with preferred or other rights including, without limitation, the creation of shares with enhanced or weighted voting rights.

## **COMMISSION ON SALE OF SHARES**

15. The Company may, in so far as the Statute from time to time permits, pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the Company. Such commissions may be satisfied by the payment of cash or the lodgment of fully or partly paid-up shares or partly in one way and partly in the other. The Company may also on any issue of shares pay such brokerage as may be lawful.

## **NON-RECOGNITION OF TRUSTS**

16. No person shall be recognized by the Company as holding any share upon any trust and the Company shall not be bound by or be compelled in any way to recognize (even when having notice thereof) any equitable, contingent, future, or partial interest in any share, or any interest in any fractional part of a share, or (except only as is otherwise provided by these Articles or the Statute) any other rights in respect of any share except an absolute right to the entirety thereof in the registered holder.

## **CALL ON SHARES**

17. (a) The Directors may from time to time make calls upon the Members in respect of any monies unpaid on their shares (whether on account of the nominal value of the shares or by way of premium or otherwise) and not by the conditions of allotment thereof made payable at fixed terms, provided that no call shall be payable at less than one month from the date fixed for the payment of the last preceding call, and each Member shall (subject to receiving at least fourteen days notice specifying the time or times of payment) pay to the Company, at the time or times so specified, the amount called on the shares. A call may be revoked or postponed as the Directors may determine. A call may be made payable by installments.
- (b) A call shall be deemed to have been made at the time when the resolution of the Directors authorizing such call was passed.
- (c) The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.
18. If a sum called in respect of a share is not paid before or on a day appointed for payment thereof, the persons from whom the sum is due shall pay interest on the sum from the day appointed for payment thereof to the time of actual payment at such rate not exceeding, ten percent (10%) per annum as the Directors may determine, but the Directors shall be at liberty to waive payment of such interest either wholly or in part.

19. Any sum which by the terms of issue of a share becomes payable on allotment or at any fixed date, whether on account of the nominal value of the share or by way of premium or otherwise, shall, for the purposes of these Articles, be deemed to be a call duly made, notified and payable on the date on which by the terms of issue the same becomes payable, and in the case of non-payment all the relevant provisions of these Articles as to payment of interest, forfeiture or otherwise shall apply as if such sum had become payable by virtue of a call duly made and notified.
20. The Directors may, on the issue of shares, differentiate between the holders as to the amount of calls or interest to be paid and the times of payment.
21. (a) The Directors may, if they think fit, receive from any Member willing to advance the same, all or any part of the monies uncalled and unpaid upon any shares held by him, and upon all or any of the monies so advanced may (until the same would but for such advances, become payable) pay interest at such rate not exceeding (unless the Company in general meeting shall otherwise direct) seven percent (7%) per annum, as may be agreed upon between the Directors and the Member paying such sum in advance.  
  
(b) No such sum paid in advance of calls shall entitle the Member paying such sum to any portion of a dividend declared in respect of any period prior to the date upon which such sum would, but for such payment, become presently payable.

## **FORFEITURE OF SHARES**

22. (a) If a Member fails to pay any call or installment of a call or to make any payment required by the terms of issue on the day appointed for payment thereof, the Directors may, at any time thereafter during such time as any part of the call, installment or payment remains unpaid, give notice requiring payment of so much of the call, installment or payment as is unpaid, together with any interest which may have accrued and all expenses that have been incurred by the Company by reason of such non-payment. Such notice shall name a day (not earlier than the expiration of fourteen days from the date of giving of the notice) on or before which the payment required by the notice is to be made, and shall state that, in the event of non-payment at or before the time appointed, the shares in respect of which such notice was given will be liable to be forfeited.  
  
(b) If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the Directors to that effect. Such forfeiture shall include all dividends declared in respect of the forfeited share and not actually paid before the forfeiture.  
  
(c) A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the Directors think fit and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the Directors think fit.

23. A person whose shares have been forfeited shall cease to be a Member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the Company all monies which, at the date of forfeiture were payable by him to the Company in respect of the shares together with interest thereon, but his liability shall cease if and when the Company shall have received payment in full of all monies whenever payable in respect of the shares.
24. A certificate in writing under the hand of one Director or the Secretary of the Company that a share in the Company has been duly forfeited on a date stated in the declaration shall be conclusive evidence of the fact therein stated as against all persons claiming to be entitled to the share. The Company may receive the consideration given for the share on any sale or disposition thereof and may execute a transfer of the share in favor of the person to whom the share is sold or disposed of and he shall thereupon be registered as the holder of the share and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.
25. The provisions of these Articles as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the nominal value of the share or by way of premium as if the same had been payable by virtue of a call duly made and notified.

## **REGISTRATION OF EMPOWERING INSTRUMENTS**

26. The Company shall be entitled to charge a fee not exceeding one dollar (US\$1.00) on the registration of every probate, letters of administration certificate of death or marriage, power of attorney, notice in lieu of distringas, or other instrument.

## **TRANSMISSION OF SHARES**

27. In case of the death of a Member, the survivor or survivors where the deceased was a joint holder, and the legal personal representatives of the deceased where he was a sole holder, shall be the only persons recognized by the Company as having any title to his interest in the shares, but nothing herein contained shall release the estate of any such deceased holder from any liability in respect of any shares which had been held by him solely or jointly with other persons.
28. (a) Any person becoming entitled to a share in consequence of the death or bankruptcy or liquidation or dissolution of a Member (or in any other way than by transfer) may, upon such evidence being produced as may from time to time be required by the Directors and subject as hereinafter provided, elect either to be registered himself as holder of the share or to make such transfer of the share to such other person nominated by him as the deceased or bankrupt person could have made and to have such person registered as the transferee thereof, but the Directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by that Member before his death or bankruptcy as the case may be.

- (b) If the person so becoming entitled shall elect to be registered himself as holder, he shall deliver or send to the Company a notice in writing signed by him stating that he so elects.
29. A person becoming entitled to a share by reason of the death or bankruptcy or liquidation or dissolution of the holder (or in any other case than by transfer) shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a Member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the Company PROVIDED HOWEVER that the Directors may at any time give notice requiring any such person to elect either to be registered himself or to transfer the share and, if the notice is not complied with within ninety days, the Directors may thereafter withhold payment of all dividends, bonuses or other monies payable in respect of the share until the requirements of the notice have been complied with.

**AMENDMENT OF MEMORANDUM OF  
ASSOCIATION, CHANGE OF  
LOCATION OF REGISTERED OFFICE &  
ALTERATION OF CAPITAL**

30. (a) Subject to and in so far as permitted by the provisions of the Statute, the Company may from time to time by special resolution alter or amend its Memorandum of Association otherwise than with respect to its name and objects and may by ordinary resolution, without restricting the generality of the foregoing:
- (i) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
  - (ii) by subdivision of its existing shares or any of them divide the whole or any part of its share capital into shares of smaller amount than is fixed by the Memorandum of Association or into shares without nominal or par value;
  - (iii) cancel any shares which at the date of the passing of the resolution have not been taken or agreed to be taken by any person.
- (b) All new shares created hereunder shall be subject to the same provisions with reference to the payment of calls, liens, transfer, transmission, forfeiture and otherwise as the shares in the original share capital.
- (c) Subject to the provisions of the Statute, the Company may by resolution of the Directors change the location of its registered office.

## **CLOSING REGISTER OF MEMBERS OR FIXING RECORD DATE**

31. For the purpose of determining Members entitled to notice of or to vote at any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any dividend, or in order to make a determination of Members for any other proper purpose, the Directors of the Company may provide that the register of Members shall be closed for transfers for a stated period but not to exceed in any case forty days. If the register of Members shall be so closed for the purpose of determining Members entitled to notice of or to vote at a meeting of Members such register shall be so closed for at least ten days immediately preceding such meeting and the record date for such determination shall be the date of the closure of the register of Members.
32. In lieu of or apart from closing the register of Members, the Directors may fix in advance a date as the record date for any such determination of Members entitled to notice of or to vote at a meeting of the Members and for the purpose of determining the Members entitled to receive payment of any dividend the Directors may, at or within 90 days prior to the date of declaration of such dividend, fix a subsequent date as the record date for such determination.
33. If the register of Members is not so closed and no record date is fixed for the determination of Members entitled to notice of or to vote at a meeting of Members or Members entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the Directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this section, such determination shall apply to any adjournment thereof.

## **GENERAL MEETINGS**

34. All general meetings of Members other than annual general meetings shall be called extraordinary general meetings.
35. The Company shall in each year hold a general meeting of Members as its annual general meeting and shall specify the meeting as such in the notices calling it. The annual general meeting shall be held at such time and place as may be determined by the Directors. At these meetings the report of the Directors (if any) shall be presented.
36. (a) The Directors may call extraordinary general meetings, and they shall on a Members requisition forthwith proceed to convene an extraordinary general meeting of the Company.  
  
(b) A Members requisition to convene an extraordinary general meeting and add resolutions to a meeting agenda is a requisition of Members of the Company holding at the date of deposit of the requisition not less than ten percent (10%) the voting power represented by the issued shares of the Company as at that date carries the right of voting at general meetings of the Company, on a one vote per share basis.

- (c) The requisition must state the objects of the meeting and must be signed by the requisitionists and deposited at the Registered Office, and may consist of several documents in like form each signed by one or more requisitionists.
- (d) If the Directors do not within 21 days from the date of the deposit of the requisition duly proceed to convene a general meeting to be held within the next 60 days, the requisitionists may themselves convene a general meeting, but any meeting so convened shall not be held after the expiration of 120 days after the deposit of the requisition.
- (e) A general meeting convened as aforesaid by requisitionists shall be convened in the same manner as nearly as possible as that in which general meetings are to be convened by Directors.

## **NOTICE OF GENERAL MEETINGS**

- 37. At least 14 calendar days' notice shall be given for any general meeting of Members. Every notice shall be inclusive of the day on which it is given or deemed to be given and of the day for which it is given and shall specify the place, the day and the hour of the meeting and the general nature of the business and shall be given in manner hereinafter mentioned or in such other manner if any as may be prescribed by the Company PROVIDED that a general meeting of the Company shall be deemed to have been duly convened if it is called as an annual general meeting by all the Members entitled to attend and vote thereat or their proxies.
- 38. The accidental omission to give notice of a general meeting to, or the non-receipt of notice of a meeting by any person entitled to receive notice shall not invalidate the proceedings of that meeting.
- 39. Notices shall be in writing and may be given by the Company to any Member either personally or by sending it by post, cable, telex, telecopy or e-mail to him or to his address as shown in the register of Members or e-mail address last known to the Company, such notice, if mailed, to be forwarded airmail if the address be outside the Cayman Islands.
- 40. (a) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, pre-paying and posting a letter containing the notice, and to have been effected at the expiration of sixty hours after the letter containing the same is posted as aforesaid.  
  
(b) Where a notice is sent by cable, telex, telecopy or e-mail, service of the notice shall be deemed to be effected by properly addressing, and sending such notice through a transmitting organization and to have been effected on the day the same is sent as aforesaid.
- 41. A notice may be given by the Company to the joint holders of record of a share by giving the notice to the joint holder first named on the register of Members in respect of the share.

42. A notice may be given by the Company to the person or persons which the Company has been advised are entitled to a share or shares in consequence of the death or bankruptcy of a Member by sending it through the post as aforesaid in a pre-paid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description at the address supplied for that purpose by the persons claiming to be so entitled, or at the option of the Company by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.
43. Notice of every general meeting shall be given in any manner hereinbefore authorized to:
- (a) every person shown as a Member in the register of Members as of the record date for such meeting except that in the case of joint holders the notice shall be sufficient if given to the joint holder first named in the register of Members.
  - (b) every person upon whom the ownership of a share devolves by reason of his being a legal personal representative or a trustee in bankruptcy of a Member of record where the Member of record but for his death or bankruptcy would be entitled to receive notice of the meeting; and

No other person shall be entitled to receive notices of general meetings.

## **PROCEEDINGS AT GENERAL MEETINGS**

44. No business shall be transacted at any general meeting unless a quorum of Members is present at the time when the meeting proceeds to business. Save as otherwise provided by these Articles, one or more Members holding at least one third of the paid up voting share capital of the Company present in person, by proxy, via telephone conference or other communications equipment by means of which all the persons participating in the meeting can communicate with each other, shall be a quorum.
45. A resolution (including a Special Resolution) in writing (in one or more counterparts) signed by all Members for the time being entitled to receive notice of and to attend and vote at general meetings (or being corporations by their duly authorized representatives) shall be as valid and effective as if the same had been passed at a general meeting of the Company duly convened and held.
46. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of Members, shall be dissolved and in any other case it shall stand adjourned to the same day in the next week at the same time and place or to such other time or such other place as the Directors may determine and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the Members present shall be a quorum.
47. The Chairman of the Board of Directors shall preside as Chairman at every general meeting of the Company, or if there is no such Chairman, or if he shall not be present within fifteen minutes after the time appointed for the holding of the meeting, or is unwilling to act, the Directors present shall elect one of their number to be Chairman of the meeting.

48. If at any general meeting no Director is willing to act as Chairman or if no Director is present within fifteen minutes after the time appointed for holding the meeting, the Members present shall choose one of their members to be Chairman of the meeting.
49. The Chairman may, with the consent of any general meeting duly constituted hereunder, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a general meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting; save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned general meeting.
50. At any general meeting, a resolution put to the vote of the meeting shall be decided on a poll conducted by the Chairman.
51. A person may participate at a general meeting by telephone conference or other communications equipment by means of which all the persons participating in the meeting can communicate with each other. Participating by a person in a general meeting in this manner is treated as presence in person at that meeting.
52. A poll demanded on the election of a Chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the Chairman of the general meeting directs and any business other than that upon which a poll has been demanded or is contingent thereon may be proceeded with pending the taking of the poll.

## **VOTES OF MEMBERS**

53. A Member's right to vote is subject to the requirements under the Listing Rules regarding circumstances requiring a member to abstain from voting to approve a matter under consideration, and any votes in contravention of such abstention shall not be counted.
54. In the case of joint holders of record, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders, and for this purpose seniority shall be determined by the order in which the names stand in the register of Members.
55. A Member of unsound mind, or in respect of whom an order has been made by any court, having jurisdiction in lunacy, may vote, on a poll, by his committee, receiver, curator bonis, or other person in the nature of a committee, receiver or curator bonis appointed by that court, and any such committee, receiver, curator bonis or other persons may vote by proxy.
56. No Member shall be entitled to vote at any general meeting unless he is registered as a shareholder of the Company on the record date for such meeting nor unless all calls or other sums presently payable by him in respect of shares in the Company have been paid.

57. No objection shall be raised to the qualification of any voter except at the general meeting or adjourned general meeting at which the vote objected to is given or tendered and every vote not disallowed at such general meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the Chairman of the general meeting whose decision shall be final and conclusive.
58. On a poll votes may be given either personally or by proxy.

## **PROXIES**

59. The instrument appointing a proxy shall be in writing and shall be executed under the hand of the appointor or of his attorney duly authorized in writing, or, if the appointor is a corporation under the hand of an officer or attorney duly authorized in that behalf. A proxy need not be a Member of the Company.
60. The instrument appointing a proxy shall be deposited at the registered office of the Company or at such other place as is specified for that purpose in the notice convening the meeting no later than the time for holding the meeting, or adjourned meeting provided that the Chairman of the Meeting may at his discretion direct that an instrument of proxy shall be deemed to have been duly deposited upon receipt of telex, cable or telecopy confirmation from the appointor that the instrument of proxy duly signed is in the course of transmission to the Company.
61. The instrument appointing a proxy may be in any usual or common form and may be expressed to be for a particular meeting or any adjournment thereof or generally until revoked. An instrument appointing a proxy shall be deemed to include the power to demand or join or concur in demanding a poll.
62. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal 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 intimation in writing of such death, insanity, revocation or transfer as aforesaid shall have been received by the Company at the registered office before the commencement of the general meeting, or adjourned meeting at which it is sought to use the proxy.
63. Any corporation which is a Member of record of the Company may in accordance with its Articles or in the absence of such provision by resolution of its Directors or other governing body authorize such person as it thinks fit to act as its representative at any meeting of the Company or of any class of Members of the Company, and the person so authorized shall be entitled to exercise the same powers on behalf of the corporation which he represents as the corporation could exercise if it were an individual Member of record of the Company.
64. Shares of its own capital belonging to the Company or held by it in a fiduciary capacity shall not be voted, directly or indirectly, at any meeting and shall not be counted in determining the total number of outstanding shares at any given time.

## DIRECTORS

65. There shall be a Board of Directors consisting of no more than nine persons (exclusive of alternate Directors) PROVIDED HOWEVER that the Company may from time to time by ordinary resolution increase or reduce the limits in the number of Directors. The Directors shall be elected or appointed in the first place by subscribers to the Memorandum of Association or by a majority of them and thereafter by the Members at the general meeting.
66. Each Director shall hold office until the expiration of his term and until his successor shall have been elected and qualified.
67. The remuneration to be paid to the Directors shall be such remuneration as the Directors shall determine. Such remuneration shall be deemed to accrue from day to day. The Directors shall also be entitled to be paid their reasonable traveling, hotel and other expenses properly incurred by them in going to, attending and returning from meetings of the Directors, or any committee of the Directors, or general meetings of the Company, or otherwise in connection with the business of the Company, or to receive a fixed allowance in respect thereof as may be determined by the Directors from time to time, or a combination partly of one such method and partly the other.
68. The Directors may by resolution award special remuneration to any Director of the Company undertaking any special work or services for, or undertaking any special mission on behalf of, the Company other than his ordinary routine work as a Director. Any fees paid to a Director who is also counsel or solicitor to the Company, or otherwise serves it in a professional capacity shall be in addition to his remuneration as a Director.
69. A Director or alternate Director may hold any other office or place of profit under the Company (other than the office of Auditor) in conjunction with his office of Director for such period and on such terms as to remuneration and otherwise as the Directors may determine.
70. A Director or alternate Director may act by himself or his firm in a professional capacity for the Company and he or his firm shall be entitled to remuneration for professional services as if he were not a Director or alternate Director.
71. A shareholding qualification for Directors may be fixed by the Company in general meeting, but unless and until so fixed no qualification shall be required.
72. A Director or alternate Director of the Company may be or become a director or other officer of or otherwise interested in any company promoted by the Company or in which the Company may be interested as shareholder or otherwise and no such Director or alternate Director shall be accountable to the Company for any remuneration or other benefits received by him as a director or officer of, or from his interest in, such other company.

73. No person shall be disqualified from the office of Director or alternate Director or prevented by such office from contracting with the Company, either as vendor, purchaser or otherwise, nor shall any such contract or any contract or transaction entered into by or on behalf of the Company in which any Director or alternate Director shall be in any way interested be or be liable to be avoided, nor shall any Director or alternate Director so contracting or being so interested be liable to account to the Company for any profit realized by any such contract or transaction by reason of such Director holding office or of the fiduciary relation thereby established. A Director (or his alternate Director in his absence) shall be at liberty to vote in respect of any contract or transaction in which he is so interested as aforesaid PROVIDED HOWEVER that the nature of the interest of any Director or alternate Director in any such contract or transaction shall be disclosed by him or the alternate Director appointed by him at or prior to its consideration and any vote thereon.
74. A general notice that a Director or alternate Director is a shareholder of any specified firm or company and is to be regarded as interested in any transaction with such firm or company shall be sufficient disclosure under Article 73 and after such general notice it shall not be necessary to give special notice relating to any particular transaction.

## **APPOINTMENT AND REMOVAL OF DIRECTORS**

75. The Company may by ordinary resolution appoint any person to be a Director and may in like manner remove any Director and may in like manner appoint another person in his stead notwithstanding anything in these Articles or in any agreement between the Company and such Director. A vacancy on the Board created by the removal of a Director under this Article may be filled by the election or appointment by ordinary resolution at the meeting at which such Director is removed or pursuant to Article 76 below.
76. The Directors, by the affirmative vote of a simple majority of the remaining Directors present and voting at a Board meeting, shall have power at any time and from time to time to appoint any person to be a Director, either to fill a casual vacancy or as an addition to the existing Directors but so that the total amount of Directors (exclusive of alternate Directors) shall not at any time exceed the number fixed in accordance with these Articles.

## **VACATION OF OFFICE OF DIRECTOR**

77. The office of a Director shall be vacated:
- (a) if he gives notice in writing to the Company that he resigns the office of Director;
  - (b) if he dies, becomes bankrupt or makes any arrangement or composition with his creditors generally;
  - (c) if he is found a lunatic or becomes of unsound mind.

## **ALTERNATE DIRECTORS AND VISITATION RIGHTS**

78. A Director who expects to be unable to attend Directors' Meetings because of absence, illness or otherwise may appoint any person to be an alternate Director to act in his stead and such appointee whilst he holds office as an alternate Director shall, in the event of absence therefrom of his appointor, be entitled to attend meetings of the Directors and to vote thereat and to do, in the place and stead of his appointor, any other act or thing which his appointor is permitted or required to do by virtue of his being a Director as if the alternate Director were the appointor, other than appointment of an alternate to himself, and he shall ipso facto vacate office if and when his appointor ceases to be a Director or removes the appointee from office-Any appointment or removal under this Article shall be effected by notice in writing under the hand of the Director making the same.

## **POWERS AND DUTIES OF DIRECTORS**

79. The business of the Company shall be managed by the Directors (or a sole Director if only one is appointed) who may pay all expenses incurred in promoting, registering and setting up the Company, and may exercise all such powers of the Company as are not, from time to time by the Statute, or by these Articles, or such regulations, being not inconsistent with the aforesaid, as may be prescribed by the Company in general meeting required to be exercised by the Company in general meeting PROVIDED HOWEVER that no regulations made by the Company in general meeting shall invalidate any prior act of the Directors which would have been valid if that regulation had not been made.
80. The Directors may from time to time and at any time by powers of attorney appoint any company, firm, person or body of persons, whether nominated directly or indirectly by the Directors, to be the attorney or attorneys of the Company for such purpose and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under these Articles) and for such period and subject to such conditions as they may think fit, and any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorneys as the Directors may think fit and may also authorize any such attorney to delegate all or any of the powers, authorities and discretions vested in him.
81. All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for monies paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed as the case may be in such manner as the Directors shall from time to time by resolution determine.
82. The Directors shall cause minutes to be made in books provided for the purpose:
- (a) of all appointments of officers made by the Directors;
  - (b) of the names of the Directors (including those represented thereat by an alternate or by proxy) present at each meeting of the Directors and of any committee of the Directors;

- (c) of all resolutions and proceedings at all meetings of the Company and of the Directors and of committees of Directors.
83. The Directors on behalf of the Company may pay a gratuity or pension or allowance on retirement to any Director who has held any other salaried office or place of profit with the Company or to his widow or dependants and may make contributions to any fund and pay premiums for the purchase or provision of any such gratuity, pension or allowance.
84. The Directors may exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking, property and uncalled capital or any part thereof and to issue debentures, debenture stock and other securities whether outright or as security for any debt, liability or obligation of the Company or of any third party.
85. The Directors may, from time to time, and except as required by applicable law or the listing rules of the recognized stock exchange or automated quotation system where the Company's securities are traded, adopt, institute, amend, modify or revoke the corporate governance policies or initiatives, which shall be intended to set forth the policies of the Company and the Board of Directors on various corporate governance related matters as the Directors shall determine by resolution from time to time.

## **PROCEEDINGS OF DIRECTORS**

86. Except as otherwise provided by these Articles, the Directors shall meet together for the dispatch of business, convening, adjourning and otherwise regulating their meetings as they think fit. Questions arising at any meeting shall be decided by a majority of votes of the Directors and alternate Directors present at a meeting at which there is a quorum, the vote of an alternate Director not being counted if his appointor be present at such meeting. In case of an equality of votes, the Chairman of the Board of Directors shall have a second or casting vote.
87. A Director or alternate Director may, and the Secretary on the requisition of a Director or alternate Director shall, at any time summon a meeting of the Directors by at least three days' notice in writing to every Director and alternate Director which notice shall set forth the general nature of the business to be considered unless notice is waived by all the Directors (or their alternates) either at, before or after the meeting is held and PROVIDED FURTHER if notice is given in person, by cable, telex, telecopy or email the same shall be deemed to have been given on the day it is delivered to the Directors or transmitting organization as the case may be.

88. The quorum necessary for the transaction of the business of the Directors may be fixed by the Directors and unless so fixed shall be a majority of the then existing Directors and shall include Robin Yanhong Li, provided that a Director and his appointed alternate Director shall be considered only one person for this purpose. If at any time there is only a sole Director the quorum shall be one. For the purposes of this Article, an alternate Director or proxy appointed by a Director shall be counted in a quorum at a meeting at which the Director appointing him is not present. A meeting of the Directors at which a quorum is present when the meeting proceeds to business shall be competent to exercise all powers and discretions for the time being exercisable by the Directors. A meeting of the Directors may be held by means of telephone or teleconferencing or any other telecommunications facility provided that all participants are thereby able to communicate immediately by voice with all other participants.
89. The continuing Directors may act notwithstanding any vacancy in their body, but if and so long as their number is reduced below the number fixed by or pursuant to these Articles as the necessary quorum of Directors the continuing Directors or Director may act for the purpose of increasing the number of Directors to that number, or of summoning a general meeting of the Company, but for no other purpose.
90. The Directors may elect a Chairman of the Board and determine the period for which he is to hold office; but if no such Chairman is elected, or if at any meeting the Chairman is not present within fifteen minutes after the time appointed for holding the same, the Directors present may choose one of their numbers to be Chairman of the meeting.
91. The Directors may delegate any of their powers to committees consisting of such member or members of the Board of Directors (including Alternate Directors in the absence of their appointors) as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the Directors.
92. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the case of an equality of votes the Chairman shall have a second or casting vote.
93. All acts done by any meeting of the Directors or of a committee of Directors (including any person acting as an alternate Director) shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any Director or alternate Director, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and qualified to be a Director or alternate Director as the case may be.
94. Members of the Board of Directors or of any committee thereof may participate in a meeting of the Board or of such committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other and participation in a meeting pursuant to this provision shall constitute presence in person at such meeting. A resolution in writing (in one or more counterparts), signed by all the Directors for the time being or all the members of a committee of Directors (an alternate Director being entitled to sign such resolution on behalf of his appointor) shall be as valid and effectual as if it had been passed at a meeting of the Directors or committee as the case may be duly convened and held.

95. A Director may be represented at any meetings of the Board of Directors by a proxy appointed by him in which event the presence or vote of the proxy shall for all purposes be deemed to be that of the Director.

## **PRESUMPTION OF ASSENT**

96. A Director of the Company who is present at a meeting of the Board of Directors at which action on any Company matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the Minutes of the meeting or unless he shall file his written dissent from such action with the person acting as the Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to such person immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of such action.

## **MANAGEMENT OF THE COMPANY**

97. (a) The Directors may from time to time provide for the management of the affairs of the Company in such manner as they shall think fit and the provisions contained in the three next following paragraphs shall be without prejudice to the general powers conferred by this paragraph.
- (b) The Directors from time to time and at any time may establish any committees, local boards or agencies for managing any of the affairs of the Company and may appoint any persons to be members of such committees or local boards or any managers or agents and may fix their remuneration.
- (c) The Directors from time to time and at any time may delegate to any such committee, local board, manager or agent any of their powers, authorities and discretions for the time being vested in the Directors and may authorize the members for the time being of any such local board, or any of them to fill up any vacancies therein and to act notwithstanding vacancies and any such appointment or delegation may be made on such terms and subject to such conditions as the Directors may think fit and the Directors may at any time remove any person so appointed and may annul or vary any such delegation, but no person dealing in good faith and without notice of any such annulment or variation shall be affected thereby.
- (d) Any such delegates as aforesaid may be authorized by the Directors to sub-delegate all or any of the powers, authorities, and discretions for the time being vested in them.

## **OFFICERS**

98. Subject to these Articles, the Directors may from time to time appoint any person, whether or not a director of the Company to hold such office in the Company as the Directors may think necessary for the administration of the Company, including without prejudice to the foregoing generality, the office of the Chief Executive Officer, Chief Financial Officer, Chief Operating Officer and/or one or more Vice Presidents, and for such term and at such remuneration (whether by way of salary or commission or participation in profits or partly in one way and partly in another), and with such powers and duties as the Directors may think fit.

## **SEAL**

99. (a) The Company may, if the Directors so determine, have a Seal which shall, subject to paragraph (c) hereof, only be used by the authority of the Directors or of a committee of the Directors authorized by the Directors in that behalf and every instrument to which the Seal has been affixed shall be signed by one person who shall be either a Director or the Secretary or Secretary- Treasurer or some person appointed by the Directors for the purpose.
- (b) The Company may have for use in any place or places outside the Cayman Islands a duplicate Seal or Seals each of which shall be a facsimile of the Common Seal of the Company and, if the Directors so determine, with the addition on its face of the name of every place where it is to be used.
- (c) A Director, Secretary or other officer or representative or attorney may without further authority of the Directors affix the Seal of the Company over his signature alone to any document of the Company required to be authenticated by him under Seal or to be filed with the Registrar of Companies in the Cayman Islands or elsewhere.

## **DIVIDENDS, DISTRIBUTIONS AND RESERVE**

100. Subject to the Statute, the Directors may from time to time declare dividends (including interim dividends) and distributions on shares of the Company outstanding and authorize payment of the same out of the funds of the Company lawfully available therefore.
101. The Directors may, before declaring any dividends or distributions, set aside such sums as they think proper as a reserve or reserves which shall at the discretion of the Directors, be applicable for any purpose of the Company and pending such application may, at the like discretion, be employed in the business of the Company.
102. No dividend or distribution shall be payable except out of the profits of the Company, realized or unrealized, or out of the share premium account or as otherwise permitted by the Statute.

103. Subject to the rights of persons, if any, entitled to shares with special rights as to dividends or distributions, if dividends or distributions are to be declared on a class of shares they shall be declared and paid according to the amounts paid or credited as paid on the shares of such class outstanding on the record date for such dividend or distribution as determined in accordance with these Articles but no amount paid or credited as paid on a share in advance of calls shall be treated for the purpose of this Article as paid on the share.
104. The Directors may deduct from any dividend or distribution payable to any Member all sums of money (if any) presently payable by him to the Company on account of calls or otherwise.
105. The Directors may declare that any dividend or distribution be paid wholly or partly by the distribution of specific assets and in particular of paid up shares, debentures, or debenture stock of any other company or in any one or more of such ways and where any difficulty arises in regard to such distribution, the Directors may settle the same as they think expedient and in particular may issue fractional certificates and fix the value for distribution of such specific assets or any part thereof and may determine that cash payments shall be made to any Members upon the footing of the value so fixed in order to adjust the rights of all Members and may vest any such specific assets in trustees as may seem expedient to the Directors.
106. Any dividend, distribution, interest or other monies payable in cash in respect of shares may be Paid by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the holder who is first named on the register of Members or to such person and to such address as such holder or joint holders may in writing direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent. Any one of two or more joint holders may give effectual receipts for any dividends, bonuses, or other monies payable in respect of the share held by them as joint holders.
107. No dividend or distribution shall bear interest against the Company.

## **CAPITALIZATION**

108. The Company may upon the recommendation of the Directors by ordinary resolution authorize the Directors to capitalize any sum standing to the credit of any of the Company's reserve accounts (including share premium account and capital redemption reserve fund) or any sum standing to the credit of profit and loss account or otherwise available for distribution and to appropriate such sum to Members in the proportions in, which such sum would have been divisible amongst them had the same been a distribution of profits by way of dividend and to apply such sum on their behalf in paying up in full unissued shares for allotment and distribution credited as fully paid up to and amongst them in the proportion aforesaid. In such event the Directors shall do all acts and things required to give effect to such capitalization, with full power to the Directors to make such provisions as they think fit for the case of shares becoming distributable in fractions (including provisions whereby the benefit of fractional entitlements accrue to the Company rather than to the Members concerned). The Directors may authorize any person to enter on behalf of all of the Members interested into an agreement with the Company providing for such capitalization and matters incidental thereto and any agreement made under such authority shall be effective and binding on all concerned.

## **BOOKS OF ACCOUNT**

109. The Directors shall cause proper books of account to be kept with respect to:
- (a) all sums of money received and expended by the Company and the matters in respect of which the receipt or expenditure takes place;
  - (b) all sales and purchases of goods by the Company;
  - (c) the assets and liabilities of the Company.

Proper books shall not be deemed to be kept if there are not kept such books of account as are necessary to give a true and fair view of the state of the Company's affairs and to explain its transactions.

110. The Directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Company or any of them shall be open to the inspection of Members not being Directors and no Member (not being a Director) shall have any right of inspecting any account or book or document of the Company except as conferred by Statute or authorized by the Directors or by the Company in general meeting.
111. The Directors may from time to time cause to be prepared and to be laid before the Company in general meeting profit and loss accounts, balance sheets, group accounts (if any) and such other reports and accounts as may be required by law.

## **AUDIT**

112. The Company may at any annual general meeting appoint an Auditor or Auditors of the Company who shall hold office until the next annual general meeting and may fix his or their remuneration.
113. The Directors may before the first annual general meeting appoint an Auditor or Auditors of the Company who shall hold office until the first annual general meeting unless previously removed by an ordinary resolution of the Members in general meeting in which case the Members at that meeting may appoint Auditors. The Directors may fill any casual vacancy in the office of Auditor but while any such vacancy continues the surviving or continuing Auditor or Auditors, if any, may act. The remuneration of any Auditor appointed by the Directors under this Article may be fixed by the Directors.
114. Every Auditor of the Company shall have a right of access at all times to the books and accounts and vouchers of the Company and shall be entitled to require from the Directors and Officers of the Company such information and explanation as may be necessary for the performance of the duties of the auditors.

115. Auditors shall at the next annual general meeting following their appointment and at any other time during their term of office, upon request of the Directors or any general meeting of the Members, make a report on the accounts of the Company in general meeting during their tenure of office.

## **INFORMATION**

116. No Member shall be entitled to require discovery of any information in respect of any detail of the Company's trading or any information which is or may be in the nature of a trade secret or secret process which may relate to the conduct of the business of the Company and which in the opinion of the Directors would not be in the interests of the members of the Company to communicate to the public.
117. The Directors shall be entitled to release or disclose any information in its possession, custody or control regarding the Company or its affairs to any of its Members including, without limitation, information contained in the Register of Members and transfer books of the Company.

## **WINDING UP**

118. If the Company shall be wound up the liquidator may, with the sanction of a Special Resolution of the Company and any other sanction required by the Statute, divide amongst the Members in specie or kind the whole or any part of the assets of the Company (whether they shall consist of property of the same kind or not) and may for such purpose set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the Members or different classes of Members. The liquidator may with the like sanction, vest the whole or any part of such assets in trustees upon such trusts for the benefit of the contributories as the liquidator, with the like sanction, shall think fit, but so that no Member shall be compelled to accept any shares or other securities whereon there is any liability.
119. If the Company shall be wound up, and the assets available for distribution amongst the Members as such shall be insufficient to repay the whole of the paid-up capital, such assets shall be distributed so that, as nearly as may be, the losses shall be borne by the Members in proportion to the capital paid up, or which ought to have been paid up, at the commencement of the winding up on the shares held by them respectively. And if in a winding up the assets available for distribution amongst the Members shall be more than sufficient to repay the whole of the capital paid up at the commencement of the winding up, the excess shall be distributed amongst the Members in proportion to the capital paid up at the commencement of the winding up on the shares held by them respectively. This Article is to be without prejudice to the rights of the holders of shares issued upon special terms and conditions.

## **INDEMNITY**

120. The Directors and officers for the time being of the Company and any trustee for the time being acting in relation to any of the affairs of the Company and their heirs, executors, administrators and personal representatives respectively shall be indemnified out of the assets of the Company from and against all actions, proceedings, costs, charges, losses, damages and expenses which they or any of them shall or may incur or sustain by reason of any act done or omitted in or about the execution of their duty in their respective offices or trusts, except such (if any) as they shall incur or sustain by or through their own willful neglect or default respectively and no such Director, officer or trustee shall be answerable for the acts, receipts, neglects or defaults of any other Director, officer or trustee or for joining in any receipt for the sake of conformity or for the solvency or honesty of any banker or other persons with whom any monies or effects belonging to the Company may be lodged or deposited for safe custody or for any insufficiency of any security upon which any monies of the Company may be invested or for any other loss or damage due to any such cause as aforesaid or which may happen in or about the execution of his office or trust unless the same shall happen through the willful neglect or default of such Director, Officer or trustee. Each Member agrees to waive any claim or right of action he might have, whether individually or by or in the right of the Company, against any Director or officer on account of any action taken by such Director, or the failure of such Director to take any action in the performance of his duties with or for the Company; PROVIDED THAT such waiver shall not extend to any matter in respect of any fraud or dishonesty which may attach to such Director.

## **FINANCIAL YEAR**

121. Unless the Directors otherwise prescribe, the financial year of the Company shall end on 31st December in each year and, following the year of incorporation, shall begin on 1st January in each year.

## **AMENDMENTS OF ARTICLES**

122. Subject to the Statute, the Company may at any time and from time to time by Special Resolution alter or amend these Articles in whole or in part.

## **REGISTRATION BY WAY OF CONTINUATION**

123. If the Company is exempted as defined in the Statute, it shall, subject to the provisions of the Statute and with the approval of a Special Resolution, have the power to register by way of continuation as a body corporate under the laws of any jurisdiction outside the Cayman Islands and to be deregistered in the Cayman Islands.

**THE COMPANIES LAW (2007 REVISION) ACT (AS REVISED)**

**Company Limited by Shares**

**THIRDFOURTH AMENDED AND RESTATED  
MEMORANDUM OF ASSOCIATION**

**OF**

**BAIDU, INC.  
百度集團股份有限公司**

Adopted by special resolution passed on 7 December 16-20082021

1. The name of the Company is Baidu, Inc. 百度集團股份有限公司.
2. The Registered Office of the Company shall be at the offices of Maples Corporate Services Limited, PO Box 309, Uglund House, Grand Cayman, KY1-1104, Cayman Islands or at such other place as the Directors may from time to time decide.
3. The objects for which the Company is established are unrestricted and the Company shall have full power and authority to carry out any object not prohibited by the Companies Law (2007 Revision) Act (As Revised), as amended from time to time, or any other law of the Cayman Islands.
4. The liability of each Member is limited to the amount from time to time unpaid on such Member's shares.
5. The authorized share capital of the Company is US\$43,520 divided into ~~825,000,000~~66,000,000,000 Class A ordinary shares of a nominal or par value of ~~US\$0.000050~~0.000000625 each, ~~35,400,000~~2,832,000,000 Class B ordinary shares of a nominal or par value of ~~US\$0.00005~~ each, and ~~10,000,000~~0.000000625 each and ~~800,000,000~~ preferred shares of a nominal or par value of ~~US\$0.000050~~0.000000625 each, with the power for the Company, insofar as is permitted by law, to redeem or purchase any of its shares and to increase or reduce the said capital subject to the provisions of the Companies Law (2007 Revision) Act (As Revised) and the Articles of Association and to issue any part of its capital, whether original, redeemed or increased with or without any preference, priority or special privilege or subject to any postponement of rights or to any conditions or restrictions and so that unless the conditions of issue shall otherwise expressly declare every issue of shares whether declared to be preference or otherwise shall be subject to the powers hereinbefore contained, provided that, notwithstanding any provision to the contrary contained in this Memorandum of Association, the Company shall have no power to issue bearer shares, warrants, coupons or certificates.

6. If the Company is registered as exempted, its operations will be carried on subject to the provisions of Section 193 of the Companies Law ~~(2007 Revision Act (As Revised))~~ and, subject to the provisions of the Companies Law ~~(2007 Revision Act (As Revised))~~ and the Articles of Association, it shall have the power to register by way of continuation as a body corporate limited by shares under the laws of any jurisdiction outside the Cayman Islands and to be deregistered in the Cayman Islands.
  
7. Capitalized terms that are not defined in this Amended and Restated Memorandum of Association bear the same meaning as those given in the Amended and Restated Articles of Association of the Company adopted by Special Resolution passed on 7 December ~~16~~ 20082021.

**THE COMPANIES LAW (2007 REVISION) ACT (AS REVISED)**

**Company Limited by Shares**

**THIRDFOURTH AMENDED AND RESTATED  
ARTICLES OF ASSOCIATION**

**OF**

**BAIDU, INC.  
百度集團股份有限公司**

Adopted by special resolution passed on 7 December 16-20082021

1. In these Articles, Table A in the Schedule to the Statute does not apply and, unless there be something in the subject or context inconsistent therewith,

- “Affiliate” means (i) in the case of a natural person, such person’s parents, parents-in-law, spouse, children or grandchildren, a trust for the benefit of any of the foregoing, a company, partnership or any natural person or entity wholly or jointly owned by any of the foregoing, (ii) in the case of an entity, a partnership, a corporation or any natural person or entity which directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such entity. The term “control” shall mean the ownership, directly or indirectly, of shares possessing more than fifty percent (50%) of the voting power of the corporation, or the partnership or other entity (other than, in the case of corporation, share having such power only by reason of the happening of a contingency), or having the power to control the management or elect a majority of members to the board of directors or equivalent decision-making body of such corporation, partnership or other entity.
- “Articles” means the ThirdFourth Amended and Restated Articles of Association adopted by Special Resolution, as from time to time altered or added to in accordance with the Statutes and these Articles.
- “Auditors” means the persons for the time being performing the duties of auditors of the Company.
- “Class A Ordinary Share” means a Class A Ordinary Share in the capital of the Company.
- “Class B Ordinary Share” means a Class B Ordinary Share in the capital of the Company.

“Company”	means Baidu, Inc. <u>百度集團股份有限公司</u> .
“debenture”	means debenture stock, mortgages, bonds and any other such securities of the Company whether constituting a charge on the assets of the Company or not.
“Directors” and “Board of Directors”	means the current directors of the board of the Company.
“dividend”	includes bonus.
<u>“Listing Rules”</u>	<u>means the Rules Governing the Listing of Securities on the The Stock Exchange of Hong Kong Limited as amended from time to time.</u>
“Member”	has the meaning as ascribed to it in the Statute.
“month”	means calendar month.
“Ordinary Shares”	means collectively the Class A Ordinary Shares and the Class B Ordinary Shares.
“paid up”	means paid up and/or credited as paid up.
“registered office”	means the current registered office of the Company in the Cayman Islands.
“Seal”	means the common seal of the Company and includes every duplicate seal.
“Secretary”	includes an Assistant Secretary and any person appointed to perform the duties of Secretary of the Company.
“share”	includes a fraction of a share.
“Special Resolution”	has the same meaning as in the Statute and includes a resolution approved in writing as described therein.
“Statute”	means the <u>Companies Law Act</u> of the Cayman Islands (2007 <u>Revision As Revised</u> ) and every statutory modification or re-enactment thereof currently in force.
“written” and “in writing”	include all modes of representing or reproducing words in visible form.

2. In these Articles, save where the context requires otherwise:
  - (a) words importing the singular number shall include the plural number and vice versa;
  - (b) words importing the masculine gender only shall include the feminine gender;
  - (c) words importing persons only shall include companies or associations or bodies of persons, whether corporate or not;
  - (d) “**may**” shall be construed as permissive and “**shall**” shall be construed as imperative;
  - (e) a reference to a dollar or dollars (or \$) is a reference to dollars of the United States;
  - (f) references to a statutory enactment shall include reference to any amendment or re-enactment thereof for the time being in force; and
  - (g) any phrase introduced by the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
3. Subject to the last two preceding Articles, any words defined in the Companies ~~Law~~Act shall, if not inconsistent with the subject or context, bear the same meaning in these Articles.

## **CERTIFICATES FOR SHARES**

4. Certificates representing shares of the Company shall be in such form as shall be determined by the Directors. Such certificates may be under Seal. All certificates for shares shall be consecutively numbered or otherwise identified and shall specify the shares to which they relate. The name and address of the person to whom the shares represented thereby are issued, with the number of shares and date of issue, shall be entered in the register of Members of the Company. All certificates surrendered to the Company for transfer shall be cancelled and no new certificate shall be issued until the former certificate for a like number of shares shall have been surrendered and cancelled. The Directors may authorize certificates to be issued with the Seal and authorized signature(s) affixed by some method or system of mechanical process.
5. Notwithstanding Article 4 of these Articles, if a share certificate be defaced, lost or destroyed, it may be renewed on payment of a fee of one dollar (US\$1.00) or such less sum and on such terms (if any) as to evidence and indemnity and the payment of the expenses incurred by the Company in investigating evidence, as the Directors may prescribe.

## SHARE CAPITAL

6. The authorized share capital of the Company is US\$43,520 divided into ~~825,000,000~~66,000,000,000 Class A ordinary shares of a nominal or par value of ~~US\$0.000050.000000625~~ each, ~~35,400,000~~2,832,000,000 Class B ordinary shares of a nominal or par value of ~~US\$0.00005~~ each, and ~~10,000,000~~0.000000625 each and 800,000,000 preferred shares of a nominal or par value of ~~US\$0.000050.000000625~~ each, with the power for the Company, insofar as is permitted by law, to redeem or purchase any of its shares and to increase or reduce the said capital subject to the provisions of the Companies Law (2007 Revision) Act (As Revised) and the Articles of Association and to issue any part of its capital, whether original, redeemed or increased with or without any preference, priority or special privilege or subject to any postponement of rights or to any conditions or restrictions and so that unless the conditions of issue shall otherwise expressly declare every issue of shares whether declared to be preference or otherwise shall be subject to the powers hereinbefore contained.
7. The Directors from time to time may, in their absolute discretion and without approval of Members, cause the Company to issue such amounts of preferred shares or other similar securities in one or more series as they deem necessary and appropriate and determine designations, powers, preferences, privileges and other rights, including dividend rights, conversion rights, terms of redemption and liquidation preferences, any or all of which may be greater than the powers and rights associated with the Ordinary Shares.

## RIGHTS AND RESTRICTIONS ATTACHING TO ORDINARY SHARES

8. The rights and restrictions attaching to the Ordinary Shares are as follows:

(a) Income

Holders of Ordinary Shares shall be entitled to such dividends as the Directors may in their absolute discretion lawfully declare from time to time.

(b) Capital

Holders of Ordinary Shares shall be entitled to a return of capital on liquidation, dissolution or winding-up of the Company (other than on a conversion, redemption or purchase of shares, or an equity financing or series of financings that do not constitute the sale of all or substantially all of the shares of the Company).

(c) Attendance at General Meetings and Voting

Holders of Ordinary Shares have the right to receive notice of, attend, speak and vote at general meetings of the Company. Holders of shares of Class A Ordinary Shares and Class B Ordinary Shares shall at all time vote together as one class on all matters submitted to a vote for Members' consent. Each share of Class A Ordinary Share shall be entitled to one vote on all matters subject to the vote at general meetings of the Company, and each share of Class B Ordinary Share shall be entitled to ten (10) votes on all matters subject to the vote at general meetings of the Company.

(d) Conversion

- (i) Each share of Class B Ordinary Share is convertible into one (1) share of Class A Ordinary Share at any time by the holder thereof. In no event shall Class A Ordinary Shares be convertible into Class B Ordinary Shares.
- (ii) If at any time Yanhong (Robin) Li and his Affiliates collectively own less than 5% of the total number of the issued and outstanding Class B Ordinary Shares of the Company, each issued and outstanding share of Class B Ordinary Share shall be automatically and immediately converted into one share of Class A Ordinary Share, and no Class B Ordinary Shares shall be issued by the Company thereafter.
- (iii) Upon any sale, pledge, transfer, assignment or disposition of Class B Ordinary Shares by a holder thereof to any person or entity which is not an Affiliate of such holder, such Class B Ordinary Shares shall be automatically and immediately converted into an equal number of Class A Ordinary Shares; provided that, except as set forth in Article 8(d)(iv) below, a change in the beneficial ownership of Class B Ordinary Shares shall not cause a conversion under this Article 8(d)(iii).
- (iv) Within six months after a transfer by a holder of Class B Ordinary Shares to an Affiliate of such holder, if there is a change of the beneficial ownership of the Class B Ordinary Shares held by the Affiliate, such Class B Ordinary Shares shall be automatically and immediately converted into an equal number of Class A Ordinary Shares. For purposes of this Article 8(d)(iv), a transfer shall be deemed to be effective upon the Company's registration of such transfer in its register of Members. For purposes of Article 8(d)(iii) and Article 8(d)(iv), "beneficial ownership" shall have the meaning defined in Rule 13d-3 under the U.S. Securities Exchange Act of 1934, as amended.

9. The Company shall maintain a register of its Members and every person whose name is entered as a Member in the register of Members shall be entitled, without payment, to receive within two months after allotment or lodgment of transfer (or within such other period as the conditions of issue shall provide) one certificate for all his shares, provided that, in respect of a share or shares held jointly by several persons, the Company shall not be bound to issue more than one certificate and delivery of a certificate for a share to one of the several joint holders shall be sufficient delivery to all such holders.

## **TRANSFER OF SHARES**

10. The instrument of transfer of any share shall be in writing and shall be executed by or on behalf of the transferor and the transferor shall be deemed to remain the holder of a share until the name of the transferee is entered in the register in respect thereof.

11. The Directors may, in their absolute discretion (except with respect to a transfer from a Member to its Affiliate(s)), decline to register any transfer of shares without assigning any reason therefor. If the Directors refuse to register a transfer they shall notify the transferee within two months of such refusal. Notwithstanding the foregoing, if a transfer complies with the holder's transfer obligations and restrictions set forth under applicable law (including but not limited to U.S. securities law provisions related to insider trading) and these Articles, Directors shall promptly register such transfer. Further, any Director is authorized to confirm in writing addressed to the registered office to authorize a share transfer and to instruct that the register of members be updated accordingly, provided that the transfer complies with the holder's transfer obligations and restrictions set forth under applicable law and these Articles and such holder is not the Director who authorizes the transfer or an entity affiliated with such Director. Any Director is authorized to execute a share certificate in respect of such shares for and on behalf of the Company.
12. The registration of transfers may be suspended at such time and for such periods as the Directors may from time to time determine, provided always that such registration shall not be suspended for more than forty-five days in any year.

## **REDEMPTION AND PURCHASE OF OWN SHARES**

- 13A. Subject to the provisions of the Statute and these Articles, the Company may:
  - (a) issue shares on terms that they are to be redeemed or are liable to be redeemed at the option of the Member or the Company on such terms and in such manner as the Directors may, before the issue of the shares, determine;
  - (b) purchase its own shares (including any redeemable shares) provided that the Members shall have approved the manner of purchase by ordinary resolution or the manner of purchase shall be in accordance with the following Articles (this authorisation is in accordance with section 37(2) of the Statute or any modification or re-enactment thereof for the time being in force); and
  - (c) make a payment in respect of the redemption or purchase of its own shares in any manner permitted by the Statute, including out of capital.
- 13B. Purchase of shares listed on an internationally recognized stock exchange where the Company's securities are traded (a "**Designated Stock Exchange**"): the Company is authorised to purchase any share listed on a Designated Stock Exchange in accordance with the following manner of purchase:
  - (a) the maximum number of shares that may be repurchased shall be equal to the number of issued and outstanding shares less one share; and

- (b) the repurchase shall be at such time, at such price and on such other terms as determined and agreed by the Directors in their sole discretion provided however that:
- (i) such repurchase transactions shall be in accordance with the relevant code, rules and regulations applicable to the listing of the shares on the Designated Stock Exchange; and
  - (ii) at the time of the repurchase, the Company is able to pay its debts as they fall due in the ordinary course of its business.

13C. The purchase of any share shall not oblige the Company to purchase any other share other than as may be required pursuant to applicable law and any other contractual obligations of the Company.

13D. The holder of the shares being purchased shall be bound to deliver to the Company at its registered office or such other place as the Directors shall specify, the certificate(s) (if any) thereof for cancellation and thereupon the Company shall pay to him the purchase or redemption monies or consideration in respect thereof.

## **VARIATION OF RIGHTS OF SHARES**

14. Except as otherwise provided in these Articles, if at any time the share capital of the Company is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class and as set forth in the Articles) may, whether or not the Company is being wound up, liquidated or dissolved, be varied with the consent in writing of the holders of at least a majority of the issued shares of that class, or with the sanction of a Special Resolution passed at a general meeting of the holders of the shares of that class.

The provisions of these Articles relating to general meetings shall apply to every such general meeting of the holders of one class of shares except that the necessary quorum shall be one person holding or representing by proxy at least one third of the issued shares of the class and that any holder of shares of the class present in person or by proxy may demand a poll.

The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall not, subject to any rights or restrictions for the time being attached to the shares of that class, be deemed to be materially adversely varied by, inter alia, the creation, allotment or issue of further shares ranking pari passu with or subsequent to them or the redemption or purchase of any shares of any class by the Company. The rights of the holders of shares shall not be deemed to be materially adversely varied by the creation or issue of shares with preferred or other rights including, without limitation, the creation of shares with enhanced or weighted voting rights.

## **COMMISSION ON SALE OF SHARES**

15. The Company may, in so far as the Statute from time to time permits, pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the Company. Such commissions may be satisfied by the payment of cash or the lodgment of fully or partly paid-up shares or partly in one way and partly in the other. The Company may also on any issue of shares pay such brokerage as may be lawful.

## **NON-RECOGNITION OF TRUSTS**

16. No person shall be recognized by the Company as holding any share upon any trust and the Company shall not be bound by or be compelled in any way to recognize (even when having notice thereof) any equitable, contingent, future, or partial interest in any share, or any interest in any fractional part of a share, or (except only as is otherwise provided by these Articles or the Statute) any other rights in respect of any share except an absolute right to the entirety thereof in the registered holder.

## **CALL ON SHARES**

17. (a) The Directors may from time to time make calls upon the Members in respect of any monies unpaid on their shares (whether on account of the nominal value of the shares or by way of premium or otherwise) and not by the conditions of allotment thereof made payable at fixed terms, provided that no call shall be payable at less than one month from the date fixed for the payment of the last preceding call, and each Member shall (subject to receiving at least fourteen days notice specifying the time or times of payment) pay to the Company, at the time or times so specified, the amount called on the shares. A call may be revoked or postponed as the Directors may determine. A call may be made payable by installments.
  - (b) A call shall be deemed to have been made at the time when the resolution of the Directors authorizing such call was passed.
  - (c) The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.
18. If a sum called in respect of a share is not paid before or on a day appointed for payment thereof, the persons from whom the sum is due shall pay interest on the sum from the day appointed for payment thereof to the time of actual payment at such rate not exceeding, ten percent (10%) per annum as the Directors may determine, but the Directors shall be at liberty to waive payment of such interest either wholly or in part.

19. Any sum which by the terms of issue of a share becomes payable on allotment or at any fixed date, whether on account of the nominal value of the share or by way of premium or otherwise, shall, for the purposes of these Articles, be deemed to be a call duly made, notified and payable on the date on which by the terms of issue the same becomes payable, and in the case of non-payment all the relevant provisions of these Articles as to payment of interest, forfeiture or otherwise shall apply as if such sum had become payable by virtue of a call duly made and notified.
20. The Directors may, on the issue of shares, differentiate between the holders as to the amount of calls or interest to be paid and the times of payment.
21. (a) The Directors may, if they think fit, receive from any Member willing to advance the same, all or any part of the monies uncalled and unpaid upon any shares held by him, and upon all or any of the monies so advanced may (until the same would but for such advances, become payable) pay interest at such rate not exceeding (unless the Company in general meeting shall otherwise direct) seven percent (7%) per annum, as may be agreed upon between the Directors and the Member paying such sum in advance.  
  
(b) No such sum paid in advance of calls shall entitle the Member paying such sum to any portion of a dividend declared in respect of any period prior to the date upon which such sum would, but for such payment, become presently payable.

## **FORFEITURE OF SHARES**

22. (a) If a Member fails to pay any call or installment of a call or to make any payment required by the terms of issue on the day appointed for payment thereof, the Directors may, at any time thereafter during such time as any part of the call, installment or payment remains unpaid, give notice requiring payment of so much of the call, installment or payment as is unpaid, together with any interest which may have accrued and all expenses that have been incurred by the Company by reason of such non-payment. Such notice shall name a day (not earlier than the expiration of fourteen days from the date of giving of the notice) on or before which the payment required by the notice is to be made, and shall state that, in the event of non-payment at or before the time appointed, the shares in respect of which such notice was given will be liable to be forfeited.  
  
(b) If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the Directors to that effect. Such forfeiture shall include all dividends declared in respect of the forfeited share and not actually paid before the forfeiture.  
  
(c) A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the Directors think fit and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the Directors think fit.

23. A person whose shares have been forfeited shall cease to be a Member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the Company all monies which, at the date of forfeiture were payable by him to the Company in respect of the shares together with interest thereon, but his liability shall cease if and when the Company shall have received payment in full of all monies whenever payable in respect of the shares.
24. A certificate in writing under the hand of one Director or the Secretary of the Company that a share in the Company has been duly forfeited on a date stated in the declaration shall be conclusive evidence of the fact therein stated as against all persons claiming to be entitled to the share. The Company may receive the consideration given for the share on any sale or disposition thereof and may execute a transfer of the share in favor of the person to whom the share is sold or disposed of and he shall thereupon be registered as the holder of the share and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.
25. The provisions of these Articles as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the nominal value of the share or by way of premium as if the same had been payable by virtue of a call duly made and notified.

## **REGISTRATION OF EMPOWERING INSTRUMENTS**

26. The Company shall be entitled to charge a fee not exceeding one dollar (US\$1.00) on the registration of every probate, letters of administration certificate of death or marriage, power of attorney, notice in lieu of distringas, or other instrument.

## **TRANSMISSION OF SHARES**

27. In case of the death of a Member, the survivor or survivors where the deceased was a joint holder, and the legal personal representatives of the deceased where he was a sole holder, shall be the only persons recognized by the Company as having any title to his interest in the shares, but nothing herein contained shall release the estate of any such deceased holder from any liability in respect of any shares which had been held by him solely or jointly with other persons.
28. (a) Any person becoming entitled to a share in consequence of the death or bankruptcy or liquidation or dissolution of a Member (or in any other way than by transfer) may, upon such evidence being produced as may from time to time be required by the Directors and subject as hereinafter provided, elect either to be registered himself as holder of the share or to make such transfer of the share to such other person nominated by him as the deceased or bankrupt person could have made and to have such person registered as the transferee thereof, but the Directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by that Member before his death or bankruptcy as the case may be.

- (b) If the person so becoming entitled shall elect to be registered himself as holder, he shall deliver or send to the Company a notice in writing signed by him stating that he so elects.
29. A person becoming entitled to a share by reason of the death or bankruptcy or liquidation or dissolution of the holder (or in any other case than by transfer) shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a Member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the Company PROVIDED HOWEVER that the Directors may at any time give notice requiring any such person to elect either to be registered himself or to transfer the share and, if the notice is not complied with within ninety days, the Directors may thereafter withhold payment of all dividends, bonuses or other monies payable in respect of the share until the requirements of the notice have been complied with.

**AMENDMENT OF MEMORANDUM OF  
ASSOCIATION, CHANGE OF  
LOCATION OF REGISTERED OFFICE &  
ALTERATION OF CAPITAL**

30. (a) Subject to and in so far as permitted by the provisions of the Statute, the Company may from time to time by special resolution alter or amend its Memorandum of Association otherwise than with respect to its name and objects and may by ordinary resolution, without restricting the generality of the foregoing:
- (i) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
  - (ii) by subdivision of its existing shares or any of them divide the whole or any part of its share capital into shares of smaller amount than is fixed by the Memorandum of Association or into shares without nominal or par value;
  - (iii) cancel any shares which at the date of the passing of the resolution have not been taken or agreed to be taken by any person.
- (b) All new shares created hereunder shall be subject to the same provisions with reference to the payment of calls, liens, transfer, transmission, forfeiture and otherwise as the shares in the original share capital.
- (c) Subject to the provisions of the Statute, the Company may by resolution of the Directors change the location of its registered office.

## CLOSING REGISTER OF MEMBERS OR FIXING RECORD DATE

31. For the purpose of determining Members entitled to notice of or to vote at any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any dividend, or in order to make a determination of Members for any other proper purpose, the Directors of the Company may provide that the register of Members shall be closed for transfers for a stated period but not to exceed in any case forty days. If the register of Members shall be so closed for the purpose of determining Members entitled to notice of or to vote at a meeting of Members such register shall be so closed for at least ten days immediately preceding such meeting and the record date for such determination shall be the date of the closure of the register of Members.
32. In lieu of or apart from closing the register of Members, the Directors may fix in advance a date as the record date for any such determination of Members entitled to notice of or to vote at a meeting of the Members and for the purpose of determining the Members entitled to receive payment of any dividend the Directors may, at or within 90 days prior to the date of declaration of such dividend, fix a subsequent date as the record date for such determination.
33. If the register of Members is not so closed and no record date is fixed for the determination of Members entitled to notice of or to vote at a meeting of Members or Members entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the Directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this section, such determination shall apply to any adjournment thereof.

## GENERAL MEETINGS

34. All general meetings of Members other than annual general meetings shall be called extraordinary general meetings.
35. The Company shall, ~~if required by the Companies Law,~~ in each year hold a general meeting of Members as its annual general meeting and shall specify the meeting as such in the notices calling it. The annual general meeting shall be held at such time and place as may be determined by the Directors. At these meetings the report of the Directors (if any) shall be presented.
36. (a) The Directors may call extraordinary general meetings, and they shall on a Members requisition forthwith proceed to convene an extraordinary general meeting of the Company.  
  
(b) A Members requisition to convene an extraordinary general meeting and add resolutions to a meeting agenda is a requisition of Members of the Company holding at the date of deposit of the requisition not less than ~~a majority of ten percent (10%)~~ the voting power represented by the issued shares of the Company as at that date carries the right of voting at general meetings of the Company, on a one vote per share basis.

- (c) The requisition must state the objects of the meeting and must be signed by the requisitionists and deposited at the Registered Office, and may consist of several documents in like form each signed by one or more requisitionists.
- (d) If the Directors do not within 21 days from the date of the deposit of the requisition duly proceed to convene a general meeting to be held within the next 60 days, the requisitionists may themselves convene a general meeting, but any meeting so convened shall not be held after the expiration of 120 days after the deposit of the requisition.
- (e) A general meeting convened as aforesaid by requisitionists shall be convened in the same manner as nearly as possible as that in which general meetings are to be convened by Directors.

## **NOTICE OF GENERAL MEETINGS**

- 37. At least ~~five~~<sup>14</sup> calendar days' notice shall be given for any general meeting of Members. Every notice shall be inclusive of the day on which it is given or deemed to be given and of the day for which it is given and shall specify the place, the day and the hour of the meeting and the general nature of the business and shall be given in manner hereinafter mentioned or in such other manner if any as may be prescribed by the Company PROVIDED that a general meeting of the Company shall be deemed to have been duly convened if it is called as an annual general meeting by all the Members entitled to attend and vote thereat or their proxies.
- 38. The accidental omission to give notice of a general meeting to, or the non-receipt of notice of a meeting by any person entitled to receive notice shall not invalidate the proceedings of that meeting.
- 39. Notices shall be in writing and may be given by the Company to any Member either personally or by sending it by post, cable, telex, telecopy or e-mail to him or to his address as shown in the register of Members or e-mail address last known to the Company, such notice, if mailed, to be forwarded airmail if the address be outside the Cayman Islands.
- 40. (a) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, pre-paying and posting a letter containing the notice, and to have been effected at the expiration of sixty hours after the letter containing the same is posted as aforesaid.  
  
(b) Where a notice is sent by cable, telex, telecopy or e-mail, service of the notice shall be deemed to be effected by properly addressing, and sending such notice through a transmitting organization and to have been effected on the day the same is sent as aforesaid.
- 41. A notice may be given by the Company to the joint holders of record of a share by giving the notice to the joint holder first named on the register of Members in respect of the share.

42. A notice may be given by the Company to the person or persons which the Company has been advised are entitled to a share or shares in consequence of the death or bankruptcy of a Member by sending it through the post as aforesaid in a pre-paid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description at the address supplied for that purpose by the persons claiming to be so entitled, or at the option of the Company by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.
43. Notice of every general meeting shall be given in any manner hereinbefore authorized to:
- (a) every person shown as a Member in the register of Members as of the record date for such meeting except that in the case of joint holders the notice shall be sufficient if given to the joint holder first named in the register of Members.
  - (b) every person upon whom the ownership of a share devolves by reason of his being a legal personal representative or a trustee in bankruptcy of a Member of record where the Member of record but for his death or bankruptcy would be entitled to receive notice of the meeting; and

No other person shall be entitled to receive notices of general meetings.

## **PROCEEDINGS AT GENERAL MEETINGS**

44. No business shall be transacted at any general meeting unless a quorum of Members is present at the time when the meeting proceeds to business. Save as otherwise provided by these Articles, one or more Members holding at least one third of the paid up voting share capital of the Company present in person, by proxy, via telephone conference or other communications equipment by means of which all the persons participating in the meeting can communicate with each other, shall be a quorum.
45. A resolution (including a Special Resolution) in writing (in one or more counterparts) signed by all Members for the time being entitled to receive notice of and to attend and vote at general meetings (or being corporations by their duly authorized representatives) shall be as valid and effective as if the same had been passed at a general meeting of the Company duly convened and held.
46. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of Members, shall be dissolved and in any other case it shall stand adjourned to the same day in the next week at the same time and place or to such other time or such other place as the Directors may determine and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the Members present shall be a quorum.
47. The Chairman of the Board of Directors shall preside as Chairman at every general meeting of the Company, or if there is no such Chairman, or if he shall not be present within fifteen minutes after the time appointed for the holding of the meeting, or is unwilling to act, the Directors present shall elect one of their number to be Chairman of the meeting.

48. If at any general meeting no Director is willing to act as Chairman or if no Director is present within fifteen minutes after the time appointed for holding the meeting, the Members present shall choose one of their members to be Chairman of the meeting.
49. The Chairman may, with the consent of any general meeting duly constituted hereunder, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a general meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting; save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned general meeting.
50. At any general meeting, a resolution put to the vote of the meeting shall be decided on a poll conducted by the Chairman.
51. A person may participate at a general meeting by telephone conference or other communications equipment by means of which all the persons participating in the meeting can communicate with each other. Participating by a person in a general meeting in this manner is treated as presence in person at that meeting.
52. A poll demanded on the election of a Chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the Chairman of the general meeting directs and any business other than that upon which a poll has been demanded or is contingent thereon may be proceeded with pending the taking of the poll.

## **VOTES OF MEMBERS**

53. A Member's right to vote is subject to the requirements under the Listing Rules regarding circumstances requiring a member to abstain from voting to approve a matter under consideration, and any votes in contravention of such abstention shall not be counted.
- ~~54.~~ 53: In the case of joint holders of record, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders, and for this purpose seniority shall be determined by the order in which the names stand in the register of Members.
- ~~55.~~ 54: A Member of unsound mind, or in respect of whom an order has been made by any court, having jurisdiction in lunacy, may vote, on a poll, by his committee, receiver, curator bonis, or other person in the nature of a committee, receiver or curator bonis appointed by that court, and any such committee, receiver, curator bonis or other persons may vote by proxy.
- ~~56.~~ 55: No Member shall be entitled to vote at any general meeting unless he is registered as a shareholder of the Company on the record date for such meeting nor unless all calls or other sums presently payable by him in respect of shares in the Company have been paid.

57. ~~56:~~ No objection shall be raised to the qualification of any voter except at the general meeting or adjourned general meeting at which the vote objected to is given or tendered and every vote not disallowed at such general meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the Chairman of the general meeting whose decision shall be final and conclusive.

58. ~~57:~~ On a poll votes may be given either personally or by proxy.

## **PROXIES**

59. ~~58:~~ The instrument appointing a proxy shall be in writing and shall be executed under the hand of the appointor or of his attorney duly authorized in writing, or, if the appointor is a corporation under the hand of an officer or attorney duly authorized in that behalf. A proxy need not be a Member of the Company.

60. ~~59:~~ The instrument appointing a proxy shall be deposited at the registered office of the Company or at such other place as is specified for that purpose in the notice convening the meeting no later than the time for holding the meeting, or adjourned meeting provided that the Chairman of the Meeting may at his discretion direct that an instrument of proxy shall be deemed to have been duly deposited upon receipt of telex, cable or telecopy confirmation from the appointor that the instrument of proxy duly signed is in the course of transmission to the Company.

61. ~~60:~~ The instrument appointing a proxy may be in any usual or common form and may be expressed to be for a particular meeting or any adjournment thereof or generally until revoked. An instrument appointing a proxy shall be deemed to include the power to demand or join or concur in demanding a poll.

62. ~~61:~~ A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal 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 intimation in writing of such death, insanity, revocation or transfer as aforesaid shall have been received by the Company at the registered office before the commencement of the general meeting, or adjourned meeting at which it is sought to use the proxy.

63. ~~62:~~ Any corporation which is a Member of record of the Company may in accordance with its Articles or in the absence of such provision by resolution of its Directors or other governing body authorize such person as it thinks fit to act as its representative at any meeting of the Company or of any class of Members of the Company, and the person so authorized shall be entitled to exercise the same powers on behalf of the corporation which he represents as the corporation could exercise if it were an individual Member of record of the Company.

64. ~~63:~~ Shares of its own capital belonging to the Company or held by it in a fiduciary capacity shall not be voted, directly or indirectly, at any meeting and shall not be counted in determining the total number of outstanding shares at any given time.

## DIRECTORS

65. ~~64.~~ There shall be a Board of Directors consisting of no more than nine persons (exclusive of alternate Directors) PROVIDED HOWEVER that the Company may from time to time by ordinary resolution increase or reduce the limits in the number of Directors. The Directors shall be elected or appointed in the first place by subscribers to the Memorandum of Association or by a majority of them and thereafter by the Members at the general meeting.
66. ~~65.~~ Each Director shall hold office until the expiration of his term and until his successor shall have been elected and qualified.
67. ~~66.~~ The remuneration to be paid to the Directors shall be such remuneration as the Directors shall determine. Such remuneration shall be deemed to accrue from day to day. The Directors shall also be entitled to be paid their reasonable traveling, hotel and other expenses properly incurred by them in going to, attending and returning from meetings of the Directors, or any committee of the Directors, or general meetings of the Company, or otherwise in connection with the business of the Company, or to receive a fixed allowance in respect thereof as may be determined by the Directors from time to time, or a combination partly of one such method and partly the other.
68. ~~67.~~ The Directors may by resolution award special remuneration to any Director of the Company undertaking any special work or services for, or undertaking any special mission on behalf of, the Company other than his ordinary routine work as a Director. Any fees paid to a Director who is also counsel or solicitor to the Company, or otherwise serves it in a professional capacity shall be in addition to his remuneration as a Director.
69. ~~68.~~ A Director or alternate Director may hold any other office or place of profit under the Company (other than the office of Auditor) in conjunction with his office of Director for such period and on such terms as to remuneration and otherwise as the Directors may determine.
70. ~~69.~~ A Director or alternate Director may act by himself or his firm in a professional capacity for the Company and he or his firm shall be entitled to remuneration for professional services as if he were not a Director or alternate Director.
71. ~~70.~~ A shareholding qualification for Directors may be fixed by the Company in general meeting, but unless and until so fixed no qualification shall be required.
72. ~~71.~~ A Director or alternate Director of the Company may be or become a director or other officer of or otherwise interested in any company promoted by the Company or in which the Company may be interested as shareholder or otherwise and no such Director or alternate Director shall be accountable to the Company for any remuneration or other benefits received by him as a director or officer of, or from his interest in, such other company.

73. ~~72.~~ No person shall be disqualified from the office of Director or alternate Director or prevented by such office from contracting with the Company, either as vendor, purchaser or otherwise, nor shall any such contract or any contract or transaction entered into by or on behalf of the Company in which any Director or alternate Director shall be in any way interested be or be liable to be avoided, nor shall any Director or alternate Director so contracting or being so interested be liable to account to the Company for any profit realized by any such contract or transaction by reason of such Director holding office or of the fiduciary relation thereby established. A Director (or his alternate Director in his absence) shall be at liberty to vote in respect of any contract or transaction in which he is so interested as aforesaid PROVIDED HOWEVER that the nature of the interest of any Director or alternate Director in any such contract or transaction shall be disclosed by him or the alternate Director appointed by him at or prior to its consideration and any vote thereon.
74. ~~73.~~ A general notice that a Director or alternate Director is a shareholder of any specified firm or company and is to be regarded as interested in any transaction with such firm or company shall be sufficient disclosure under Article ~~70~~73 and after such general notice it shall not be necessary to give special notice relating to any particular transaction.

## **APPOINTMENT AND REMOVAL OF DIRECTORS**

75. ~~74.~~ The Company may by ordinary resolution appoint any person to be a Director and may in like manner remove any Director and may in like manner appoint another person in his stead notwithstanding anything in these Articles or in any agreement between the Company and such Director. A vacancy on the Board created by the removal of a Director under this Article may be filled by the election or appointment by ordinary resolution at the meeting at which such Director is removed or pursuant to Article ~~75~~76 below.
76. ~~75.~~ The Directors, by the affirmative vote of a simple majority of the remaining Directors present and voting at a Board meeting, shall have power at any time and from time to time to appoint any person to be a Director, either to fill a casual vacancy or as an addition to the existing Directors but so that the total amount of Directors (exclusive of alternate Directors) shall not at any time exceed the number fixed in accordance with these Articles.

## **VACATION OF OFFICE OF DIRECTOR**

77. ~~76.~~ The office of a Director shall be vacated:
- (a) if he gives notice in writing to the Company that he resigns the office of Director;
  - (b) if he dies, becomes bankrupt or makes any arrangement or composition with his creditors generally;
  - (c) if he is found a lunatic or becomes of unsound mind.

## ALTERNATE DIRECTORS AND VISITATION RIGHTS

~~78. 77. Subject to the exception contained in Article 80, a~~ Director who expects to be unable to attend Directors' Meetings because of absence, illness or otherwise may appoint any person to be an alternate Director to act in his stead and such appointee whilst he holds office as an alternate Director shall, in the event of absence therefrom of his appointor, be entitled to attend meetings of the Directors and to vote thereat and to do, in the place and stead of his appointor, any other act or thing which his appointor is permitted or required to do by virtue of his being a Director as if the alternate Director were the appointor, other than appointment of an alternate to himself, and he shall ipso facto vacate office if and when his appointor ceases to be a Director or removes the appointee from office- Any appointment or removal under this Article shall be effected by notice in writing under the hand of the Director making the same. ~~Yong (Eric) Xu shall have the right to receive notice of, attend and speak at Directors' Meetings. Draper Fisher Jurvetson ePlanet Ventures L.P. shall have the right to invite one observer to attend Directors' Meetings, provided that such observer is a representative of its other partners.~~

## POWERS AND DUTIES OF DIRECTORS

~~79. 78.~~ The business of the Company shall be managed by the Directors (or a sole Director if only one is appointed) who may pay all expenses incurred in promoting, registering and setting up the Company, and may exercise all such powers of the Company as are not, from time to time by the Statute, or by these Articles, or such regulations, being not inconsistent with the aforesaid, as may be prescribed by the Company in general meeting required to be exercised by the Company in general meeting PROVIDED HOWEVER that no regulations made by the Company in general meeting shall invalidate any prior act of the Directors which would have been valid if that regulation had not been made.

~~80. 79.~~ The Directors may from time to time and at any time by powers of attorney appoint any company, firm, person or body of persons, whether nominated directly or indirectly by the Directors, to be the attorney or attorneys of the Company for such purpose and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under these Articles) and for such period and subject to such conditions as they may think fit, and any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorneys as the Directors may think fit and may also authorize any such attorney to delegate all or any of the powers, authorities and discretions vested in him.

~~81. 80.~~ All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for monies paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed as the case may be in such manner as the Directors shall from time to time by resolution determine.

~~82. 81.~~ The Directors shall cause minutes to be made in books provided for the purpose:

- (a) of all appointments of officers made by the Directors;

- (b) of the names of the Directors (including those represented thereat by an alternate or by proxy) present at each meeting of the Directors and of any committee of the Directors;
  - (c) of all resolutions and proceedings at all meetings of the Company and of the Directors and of committees of Directors.
83. 82: The Directors on behalf of the Company may pay a gratuity or pension or allowance on retirement to any Director who has held any other salaried office or place of profit with the Company or to his widow or dependants and may make contributions to any fund and pay premiums for the purchase or provision of any such gratuity, pension or allowance.
84. 83: The Directors may exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking, property and uncalled capital or any part thereof and to issue debentures, debenture stock and other securities whether outright or as security for any debt, liability or obligation of the Company or of any third party.
85. 84: The Directors may, from time to time, and except as required by applicable law or the listing rules of the recognized stock exchange or automated quotation system where the Company's securities are traded, adopt, institute, amend, modify or revoke the corporate governance policies or initiatives, which shall be intended to set forth the policies of the Company and the Board of Directors on various corporate governance related matters as the Directors shall determine by resolution from time to time.

## **PROCEEDINGS OF DIRECTORS**

86. 85: Except as otherwise provided by these Articles, the Directors shall meet together for the dispatch of business, convening, adjourning and otherwise regulating their meetings as they think fit. Questions arising at any meeting shall be decided by a majority of votes of the Directors and alternate Directors present at a meeting at which there is a quorum, the vote of an alternate Director not being counted if his appointor be present at such meeting. In case of an equality of votes, the Chairman of the Board of Directors shall have a second or casting vote.
87. 86: A Director or alternate Director may, and the Secretary on the requisition of a Director or alternate Director shall, at any time summon a meeting of the Directors by at least three days' notice in writing to every Director and alternate Director which notice shall set forth the general nature of the business to be considered unless notice is waived by all the Directors (or their alternates) either at, before or after the meeting is held and PROVIDED FURTHER if notice is given in person, by cable, telex, telecopy or email the same shall be deemed to have been given on the day it is delivered to the Directors or transmitting organization as the case may be.

88. 87: The quorum necessary for the transaction of the business of the Directors may be fixed by the Directors and unless so fixed shall be a majority of the then existing Directors and shall include Robin Yanhong Li, provided that a Director and his appointed alternate Director shall be considered only one person for this purpose. If at any time there is only a sole Director the quorum shall be one. For the purposes of this Article, an alternate Director or proxy appointed by a Director shall be counted in a quorum at a meeting at which the Director appointing him is not present. A meeting of the Directors at which a quorum is present when the meeting proceeds to business shall be competent to exercise all powers and discretions for the time being exercisable by the Directors. A meeting of the Directors may be held by means of telephone or teleconferencing or any other telecommunications facility provided that all participants are thereby able to communicate immediately by voice with all other participants.
89. 88: The continuing Directors may act notwithstanding any vacancy in their body, but if and so long as their number is reduced below the number fixed by or pursuant to these Articles as the necessary quorum of Directors the continuing Directors or Director may act for the purpose of increasing the number of Directors to that number, or of summoning a general meeting of the Company, but for no other purpose.
90. 89: The Directors may elect a Chairman of the Board and determine the period for which he is to hold office; but if no such Chairman is elected, or if at any meeting the Chairman is not present within fifteen minutes after the time appointed for holding the same, the Directors present may choose one of their numbers to be Chairman of the meeting.
91. 90: The Directors may delegate any of their powers to committees consisting of such member or members of the Board of Directors (including Alternate Directors in the absence of their appointors) as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the Directors.
92. 91: A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the case of an equality of votes the Chairman shall have a second or casting vote.
93. 92: All acts done by any meeting of the Directors or of a committee of Directors (including any person acting as an alternate Director) shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any Director or alternate Director, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and qualified to be a Director or alternate Director as the case may be.
94. 93: Members of the Board of Directors or of any committee thereof may participate in a meeting of the Board or of such committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other and participation in a meeting pursuant to this provision shall constitute presence in person at such meeting. A resolution in writing (in one or more counterparts), signed by all the Directors for the time being or all the members of a committee of Directors (an alternate Director being entitled to sign such resolution on behalf of his appointor) shall be as valid and effectual as if it had been passed at a meeting of the Directors or committee as the case may be duly convened and held.

95. ~~94.~~ A Director may be represented at any meetings of the Board of Directors by a proxy appointed by him in which event the presence or vote of the proxy shall for all purposes be deemed to be that of the Director.

## **PRESUMPTION OF ASSENT**

96. ~~95.~~ A Director of the Company who is present at a meeting of the Board of Directors at which action on any Company matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the Minutes of the meeting or unless he shall file his written dissent from such action with the person acting as the Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to such person immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of such action.

## **MANAGEMENT OF THE COMPANY**

97. ~~96.~~ (a) The Directors may from time to time provide for the management of the affairs of the Company in such manner as they shall think fit and the provisions contained in the three next following paragraphs shall be without prejudice to the general powers conferred by this paragraph.
- (b) The Directors from time to time and at any time may establish any committees, local boards or agencies for managing any of the affairs of the Company and may appoint any persons to be members of such committees or local boards or any managers or agents and may fix their remuneration.
- (c) The Directors from time to time and at any time may delegate to any such committee, local board, manager or agent any of the powers, authorities and discretions for the time being vested in the Directors and may authorize the members for the time being of any such local board, or any of them to fill up any vacancies therein and to act notwithstanding vacancies and any such appointment or delegation may be made on such terms and subject to such conditions as the Directors may think fit and the Directors may at any time remove any person so appointed and may annul or vary any such delegation, but no person dealing in good faith and without notice of any such annulment or variation shall be affected thereby.
- (d) Any such delegates as aforesaid may be authorized by the Directors to sub-delegate all or any of the powers, authorities, and discretions for the time being vested in them.

## OFFICERS

98. ~~97.~~ Subject to these Articles, the Directors may from time to time appoint any person, whether or not a director of the Company to hold such office in the Company as the Directors may think necessary for the administration of the Company, including without prejudice to the foregoing generality, the office of the Chief Executive Officer, Chief Financial Officer, Chief Operating Officer and/or one or more Vice Presidents, and for such term and at such remuneration (whether by way of salary or commission or participation in profits or partly in one way and partly in another), and with such powers and duties as the Directors may think fit.

## SEAL

99. ~~98.~~ (a) The Company may, if the Directors so determine, have a Seal which shall, subject to paragraph (c) hereof, only be used by the authority of the Directors or of a committee of the Directors authorized by the Directors in that behalf and every instrument to which the Seal has been affixed shall be signed by one person who shall be either a Director or the Secretary or Secretary- Treasurer or some person appointed by the Directors for the purpose.
- (b) The Company may have for use in any place or places outside the Cayman Islands a duplicate Seal or Seals each of which shall be a facsimile of the Common Seal of the Company and, if the Directors so determine, with the addition on its face of the name of every place where it is to be used.
- (c) A Director, Secretary or other officer or representative or attorney may without further authority of the Directors affix the Seal of the Company over his signature alone to any document of the Company required to be authenticated by him under Seal or to be filed with the Registrar of Companies in the Cayman Islands or elsewhere.

## DIVIDENDS, DISTRIBUTIONS AND RESERVE

100. ~~99.~~ Subject to the Statute, the Directors may from time to time declare dividends (including interim dividends) and distributions on shares of the Company outstanding and authorize payment of the same out of the funds of the Company lawfully available therefore.
101. ~~100.~~ The Directors may, before declaring any dividends or distributions, set aside such sums as they think proper as a reserve or reserves which shall at the discretion of the Directors, be applicable for any purpose of the Company and pending such application may, at the like discretion, be employed in the business of the Company.
102. ~~101.~~ No dividend or distribution shall be payable except out of the profits of the Company, realized or unrealized, or out of the share premium account or as otherwise permitted by the Statute.

103. ~~102.~~ Subject to the rights of persons, if any, entitled to shares with special rights as to dividends or distributions, if dividends or distributions are to be declared on a class of shares they shall be declared and paid according to the amounts paid or credited as paid on the shares of such class outstanding on the record date for such dividend or distribution as determined in accordance with these Articles but no amount paid or credited as paid on a share in advance of calls shall be treated for the purpose of this Article as paid on the share.
104. ~~103.~~ The Directors may deduct from any dividend or distribution payable to any Member all sums of money (if any) presently payable by him to the Company on account of calls or otherwise.
105. ~~104.~~ The Directors may declare that any dividend or distribution be paid wholly or partly by the distribution of specific assets and in particular of paid up shares, debentures, or debenture stock of any other company or in any one or more of such ways and where any difficulty arises in regard to such distribution, the Directors may settle the same as they think expedient and in particular may issue fractional certificates and fix the value for distribution of such specific assets or any part thereof and may determine that cash payments shall be made to any Members upon the footing of the value so fixed in order to adjust the rights of all Members and may vest any such specific assets in trustees as may seem expedient to the Directors.
106. ~~105.~~ Any dividend, distribution, interest or other monies payable in cash in respect of shares may be Paid by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the holder who is first named on the register of Members or to such person and to such address as such holder or joint holders may in writing direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent. Any one of two or more joint holders may give effectual receipts for any dividends, bonuses, or other monies payable in respect of the share held by them as joint holders.
107. ~~106.~~ No dividend or distribution shall bear interest against the Company.

## CAPITALIZATION

108. ~~107.~~ The Company may upon the recommendation of the Directors by ordinary resolution authorize the Directors to capitalize any sum standing to the credit of any of the Company's reserve accounts (including share premium account and capital redemption reserve fund) or any sum standing to the credit of profit and loss account or otherwise available for distribution and to appropriate such sum to Members in the proportions in, which such sum would have been divisible amongst them had the same been a distribution of profits by way of dividend and to apply such sum on their behalf in paying up in full unissued shares for allotment and distribution credited as fully paid up to and amongst them in the proportion aforesaid. In such event the Directors shall do all acts and things required to give effect to such capitalization, with full power to the Directors to make such provisions as they think fit for the case of shares becoming distributable in fractions (including provisions whereby the benefit of fractional entitlements accrue to the Company rather than to the Members concerned). The Directors may authorize any person to enter on behalf of all of the Members interested into an agreement with the Company providing for such capitalization and matters incidental thereto and any agreement made under such authority shall be effective and binding on all concerned.

## **BOOKS OF ACCOUNT**

109. ~~108.~~ The Directors shall cause proper books of account to be kept with respect to:

- (a) all sums of money received and expended by the Company and the matters in respect of which the receipt or expenditure takes place;
- (b) all sales and purchases of goods by the Company;
- (c) the assets and liabilities of the Company.

Proper books shall not be deemed to be kept if there are not kept such books of account as are necessary to give a true and fair view of the state of the Company's affairs and to explain its transactions.

110. ~~109.~~ The Directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Company or any of them shall be open to the inspection of Members not being Directors and no Member (not being a Director) shall have any right of inspecting any account or book or document of the Company except as conferred by Statute or authorized by the Directors or by the Company in general meeting.

111. ~~110.~~ The Directors may from time to time cause to be prepared and to be laid before the Company in general meeting profit and loss accounts, balance sheets, group accounts (if any) and such other reports and accounts as may be required by law.

## **AUDIT**

112. ~~111.~~ The Company may at any annual general meeting appoint an Auditor or Auditors of the Company who shall hold office until the next annual general meeting and may fix his or their remuneration.

113. ~~112.~~ The Directors may before the first annual general meeting appoint an Auditor or Auditors of the Company who shall hold office until the first annual general meeting unless previously removed by an ordinary resolution of the Members in general meeting in which case the Members at that meeting may appoint Auditors. The Directors may fill any casual vacancy in the office of Auditor but while any such vacancy continues the surviving or continuing Auditor or Auditors, if any, may act. The remuneration of any Auditor appointed by the Directors under this Article may be fixed by the Directors.

114. ~~113.~~ Every Auditor of the Company shall have a right of access at all times to the books and accounts and vouchers of the Company and shall be entitled to require from the Directors and Officers of the Company such information and explanation as may be necessary for the performance of the duties of the auditors.

115. ~~114.~~ Auditors shall at the next annual general meeting following their appointment and at any other time during their term of office, upon request of the Directors or any general meeting of the Members, make a report on the accounts of the Company in general meeting during their tenure of office.

## **INFORMATION**

116. ~~115.~~ No Member shall be entitled to require discovery of any information in respect of any detail of the Company's trading or any information which is or may be in the nature of a trade secret or secret process which may relate to the conduct of the business of the Company and which in the opinion of the Directors would not be in the interests of the members of the Company to communicate to the public.

117. ~~116.~~ The Directors shall be entitled to release or disclose any information in its possession, custody or control regarding the Company or its affairs to any of its Members including, without limitation, information contained in the Register of Members and transfer books of the Company.

## **WINDING UP**

118. ~~117.~~ If the Company shall be wound up the liquidator may, with the sanction of a Special Resolution of the Company and any other sanction required by the Statute, divide amongst the Members in specie or kind the whole or any part of the assets of the Company (whether they shall consist of property of the same kind or not) and may for such purpose set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the Members or different classes of Members. The liquidator may with the like sanction, vest the whole or any part of such assets in trustees upon such trusts for the benefit of the contributories as the liquidator, with the like sanction, shall think fit, but so that no Member shall be compelled to accept any shares or other securities whereon there is any liability.

119. ~~118.~~ If the Company shall be wound up, and the assets available for distribution amongst the Members as such shall be insufficient to repay the whole of the paid-up capital, such assets shall be distributed so that, as nearly as may be, the losses shall be borne by the Members in proportion to the capital paid up, or which ought to have been paid up, at the commencement of the winding up on the shares held by them respectively. And if in a winding up the assets available for distribution amongst the Members shall be more than sufficient to repay the whole of the capital paid up at the commencement of the winding up, the excess shall be distributed amongst the Members in proportion to the capital paid up at the commencement of the winding up on the shares held by them respectively. This Article is to be without prejudice to the rights of the holders of shares issued upon special terms and conditions.

## **INDEMNITY**

120. ~~119.~~ The Directors and officers for the time being of the Company and any trustee for the time being acting in relation to any of the affairs of the Company and their heirs, executors, administrators and personal representatives respectively shall be indemnified out of the assets of the Company from and against all actions, proceedings, costs, charges, losses, damages and expenses which they or any of them shall or may incur or sustain by reason of any act done or omitted in or about the execution of their duty in their respective offices or trusts, except such (if any) as they shall incur or sustain by or through their own willful neglect or default respectively and no such Director, officer or trustee shall be answerable for the acts, receipts, neglects or defaults of any other Director, officer or trustee or for joining in any receipt for the sake of conformity or for the solvency or honesty of any banker or other persons with whom any monies or effects belonging to the Company may be lodged or deposited for safe custody or for any insufficiency of any security upon which any monies of the Company may be invested or for any other loss or damage due to any such cause as aforesaid or which may happen in or about the execution of his office or trust unless the same shall happen through the willful neglect or default of such Director, Officer or trustee. Each Member agrees to waive any claim or right of action he might have, whether individually or by or in the right of the Company, against any Director or officer on account of any action taken by such Director, or the failure of such Director to take any action in the performance of his duties with or for the Company; PROVIDED THAT such waiver shall not extend to any matter in respect of any fraud or dishonesty which may attach to such Director.

## **FINANCIAL YEAR**

121. ~~120.~~ Unless the Directors otherwise prescribe, the financial year of the Company shall end on 31st December in each year and, following the year of incorporation, shall begin on 1st January in each year.

## **AMENDMENTS OF ARTICLES**

122. ~~121.~~ Subject to the Statute, the Company may at any time and from time to time by Special Resolution alter or amend these Articles in whole or in part.

## **REGISTRATION BY WAY OF CONTINUATION**

123. ~~122.~~ If the Company is exempted as defined in the Statute, it shall, subject to the provisions of the Statute and with the approval of a Special Resolution, have the power to register by way of continuation as a body corporate under the laws of any jurisdiction outside the Cayman Islands and to be deregistered in the Cayman Islands.

# SECTION D1

## DEPOSIT AGREEMENT

### Exhibit A

No. \_\_\_\_\_

#### AMERICAN DEPOSITARY SHARES

(Each American Depositary Share represents eight deposited \_\_\_\_\_ Shares)

**THE BANK OF NEW YORK MELLON**

**AMERICAN DEPOSITARY RECEIPT**

**FOR CLASS A ORDINARY SHARES**

**OF**

**BAIDU, INC.**

**(INCORPORATED UNDER THE LAWS OF THE CAYMAN ISLANDS)**

The Bank of New York Mellon, as depositary (hereinafter called the Depositary), hereby certifies that \_\_\_\_\_, or registered assigns, IS THE OWNER OF \_\_\_\_\_

#### **AMERICAN DEPOSITARY SHARES**

representing deposited Class A Ordinary Shares (herein called Shares) of Baidu, Inc., incorporated under the laws of the Cayman Islands (herein called the Company). At the date hereof, each American Depositary Share represents eight Shares, which are either deposited or subject to deposit under the Deposit Agreement referred to below at the principal Hong Kong office of The Hongkong and Shanghai Banking Corporation Limited (herein called the Custodian). The Depositary's Corporate Trust Office and its principal executive office are located at 240 Greenwich Street, New York, N.Y. 10286.

**THE DEPOSITARY'S CORPORATE TRUST OFFICE ADDRESS IS**

**240 GREENWICH STREET, NEW YORK, N.Y. 10286**

## **1. THE DEPOSIT AGREEMENT.**

This American Depositary Receipt is one of an issue (herein called Receipts), all issued and to be issued upon the terms and conditions set forth in the deposit agreement, dated as of August 10, 2005 (the “**Deposit Agreement**”), by and among the Company, the Depositary, and all Owners and Beneficial Owners from time to time of Receipts issued thereunder, each of whom by accepting a Receipt agrees to become a party thereto and become bound by all the terms and conditions thereof. The Deposit Agreement sets forth the rights of Owners and Beneficial Owners of the Receipts and the rights and duties of the Depositary in respect of the Shares deposited thereunder and any and all other securities, property and cash from time to time received in respect of such Shares and held thereunder (such Shares, securities, property, and cash are herein called Deposited Securities). Copies of the Deposit Agreement are on file at the Depositary’s Corporate Trust Office in New York City and at the office of the Custodian.

The statements made on the face and reverse of this Receipt are summaries of certain provisions of the Deposit Agreement and are qualified by and subject to the detailed provisions of the Deposit Agreement, to which reference is hereby made. Capitalized terms not defined herein shall have the meanings set forth in the Deposit Agreement.

## **2. SURRENDER OF RECEIPTS AND WITHDRAWAL OF SHARES.**

Upon surrender at the Corporate Trust Office of the Depositary of this Receipt, and upon payment of the fee of the Depositary provided in this Receipt, and subject to the terms and conditions of the Deposit Agreement, the Owner hereof is entitled to delivery, to him or upon his order, of the amount of Deposited Securities at the time represented by the American Depositary Shares for which this Receipt is issued. Delivery of such Deposited Securities may be made by the delivery of (a) certificates for Shares in the name of the Owner hereof or as ordered by him or by certificates properly endorsed or accompanied by proper instruments of transfer to such Owner or as ordered by him and (b) any other securities, property and cash to which such Owner is then entitled in respect of this Receipt to such Owner or as ordered by him. Such delivery will be made at the option of the Owner hereof, either at the office of the Custodian or at the Corporate Trust Office of the Depositary, provided that the forwarding of certificates for Shares or other Deposited Securities for such delivery at the Corporate Trust Office of the Depositary shall be at the risk and expense of the Owner hereof. Notwithstanding any other provision of the Deposit Agreement or this Receipt, the surrender of outstanding Receipts and withdrawal of Deposited Securities may be suspended only for (i) temporary delays caused by closing the transfer books of the Depositary or the Company or the deposit of Shares in connection with voting at a shareholders’ meeting, or the payment of dividends, (ii) the payment of fees, taxes and similar charges, and (iii) compliance with any U.S. or foreign laws or governmental regulations relating to the Receipts or to the withdrawal of the Deposited Securities.

### **3. TRANSFERS, SPLIT-UPS, AND COMBINATIONS OF RECEIPTS.**

The transfer of this Receipt is registrable on the books of the Depositary at its Corporate Trust Office by the Owner hereof in person or by a duly authorized attorney, upon surrender of this Receipt properly endorsed for transfer or accompanied by proper instruments of transfer and funds sufficient to pay any applicable transfer taxes and the expenses of the Depositary and upon compliance with such regulations, if any, as the Depositary may establish for such purpose. This Receipt may be split into other such Receipts, or may be combined with other such Receipts into one Receipt, evidencing the same aggregate number of American Depositary Shares as the Receipt or Receipts surrendered. As a condition precedent to the execution and delivery, registration of transfer, split-up, combination, or surrender of any Receipt or withdrawal of any Deposited Securities, the Depositary, the Custodian, or Registrar may require payment from the depositor of Shares or the presenter of the Receipt of a sum sufficient to reimburse it for any tax, stamp duty or other governmental charge and any stock transfer or registration fee with respect thereto (including any such tax or charge and fee with respect to Shares being deposited or withdrawn) and payment of any applicable fees as provided in this Receipt, may require the production of proof satisfactory to it as to the identity and genuineness of any signature and may also require compliance with any regulations the Depositary may establish consistent with the provisions of the Deposit Agreement or this Receipt.

The delivery of Receipts against deposits of Shares generally or against deposits of particular Shares may be suspended, or the transfer of Receipts in particular instances may be refused, or the registration of transfer of outstanding Receipts generally may be suspended, during any period when the transfer books of the Depositary are closed as provided in Section 5.1 of the Deposit Agreement, or if any such action is deemed necessary or advisable by the Depositary or the Company at any time or from time to time because of any requirement of law or of any government or governmental body or commission, or under any provision of the Deposit Agreement or this Receipt, or for any other reason. Without limitation of the foregoing, the Depositary shall not knowingly accept for deposit under the Deposit Agreement any Shares required to be registered under the provisions of the Securities Act for public sale in the United States, unless a registration statement is in effect as to such Shares.

### **4. LIABILITY OF OWNER FOR TAXES.**

If any tax or other governmental charge shall become payable with respect to any Receipt or any Deposited Securities represented hereby, such tax or other governmental charge shall be payable by the Owner hereof to the Depositary. The Depositary may refuse to effect any transfer of this Receipt or any withdrawal of Deposited Securities represented by American Depositary Shares evidenced by such Receipt until such payment is made, and may withhold any dividends or other distributions, or may sell for the account of the Owner hereof any part or all of the Deposited Securities represented by the American Depositary Shares evidenced by this Receipt, and may apply such dividends or other distributions or the proceeds of any such sale in payment of such tax or other governmental charge and the Owner hereof shall remain liable for any deficiency.

## **5. WARRANTIES OF DEPOSITORS.**

Every person depositing Shares under the Deposit Agreement shall be deemed thereby to represent and warrant that such Shares and each certificate therefor, if applicable, are validly issued, fully paid, nonassessable and were not issued in violation of any pre-emptive rights of the holders of outstanding Shares and that the person making such deposit is duly authorized so to do. Every such person shall also be deemed to represent that the Shares are eligible for deposit in accordance with the Deposit Agreement and the General Instructions to Form F-6 under the Securities Act, and Receipts evidencing American Depositary Shares representing the Shares would not be, Restricted Securities. All representations and warranties deemed made under Section 3.3 of the Deposit Agreement shall survive the deposit of Shares and delivery or surrender of Receipts.

## **6. FILING PROOFS, CERTIFICATES, AND OTHER INFORMATION.**

Any person presenting Shares for deposit or any Owner or Beneficial Owner of a Receipt may be required from time to time to file with the Depositary or the Custodian such proof of citizenship or residence, exchange control approval, or such information relating to the registration on the books of the Company or the Foreign Registrar, if applicable, to execute such certificates and to make such representations and warranties, as the Depositary may deem necessary or proper. The Depositary may withhold the delivery or registration of transfer of any Receipt or the distribution of any dividend or sale or distribution of rights or of the proceeds thereof or the delivery of any Deposited Securities until such proof or other information is filed or such certificates are executed or such representations and warranties made. If requested in writing, the Depositary shall, as promptly as practicable, provide the Company, at the expense of the Company, with copies of any such proofs, certificates or other information it receives pursuant to this Article, unless prohibited by applicable law. No Share shall be accepted for deposit unless accompanied by evidence satisfactory to the Depositary that any necessary approval has been granted by any governmental body the Cayman Islands or in the People's Republic of China which is then performing the function of the regulation of currency exchange.

## **7. CHARGES OF DEPOSITARY.**

The Company agrees to pay the fees, reasonable expenses and out-of-pocket charges of the Depositary and those of any Registrar only in accordance with agreements in writing entered into between the Depositary and the Company from time to time. The Depositary shall present its statement for such charges and expenses to the Company once every three months. The charges and expenses of the Custodian are for the sole account of the Depositary.

The following charges shall be incurred by any party depositing or withdrawing Shares or by any party surrendering Receipts or to whom Receipts are issued (including, without limitation, issuance pursuant to a stock dividend or stock split declared by the Company or an exchange of stock regarding the Receipts or Deposited Securities or a distribution of Receipts pursuant to Section 4.3 of the Deposit Agreement), or by Owners, as applicable: (1) taxes, stamp duty and other governmental charges, (2) such registration fees as may from time to time be in effect for the registration of transfers of Shares generally on the Share register of the Company or

Foreign Registrar and applicable to transfers of Shares to or from the name of the Depositary or its nominee or the Custodian or its nominee on the making of deposits or withdrawals under the Deposit Agreement, (3) such cable, telex and facsimile transmission expenses as are expressly provided in the Deposit Agreement, (4) such expenses as are incurred by the Depositary in the conversion of foreign currency pursuant to Section 4.5 of the Deposit Agreement, (5) a fee of \$5.00 or less per 100 American Depositary Shares (or portion thereof) for the execution and delivery of Receipts pursuant to Section 2.3, 4.3 or 4.4 of the Deposit Agreement and the surrender of Receipts pursuant to Section 2.5 or 6.2 of the Deposit Agreement, (6) a fee of \$.02 or less per American Depositary Share (or portion thereof) for any cash distribution made pursuant to the Deposit Agreement, including, but not limited to Sections 4.1 through 4.4 of the Deposit Agreement, (7) a fee for the distribution of securities pursuant to Section 4.2 of the Deposit Agreement, such fee being in an amount equal to the fee for the execution and delivery of American Depositary Shares referred to above which would have been charged as a result of the deposit of such securities (for purposes of this clause 7 treating all such securities as if they were Shares) but which securities are instead distributed by the Depositary to Owners, (8) a fee of \$.02 or less per American Depositary Share (or portion thereof) for depositary services, which will accrue on the last day of each calendar year and which will be payable as provided in clause (9) below; provided, however, that no fee will be assessed under this clause (8) to the extent a fee of \$.02 was charged pursuant to clause (6) above during that calendar year and (9) any other charge payable by the Depositary, any of the Depositary's agents, including the Custodian, or the agents of the Depositary's agents in connection with the servicing of Shares or other Deposited Securities (which charge shall be assessed against Owners as of the date or dates set by the Depositary in accordance with Section 4.6 of the Deposit Agreement and shall be payable at the sole discretion of the Depositary by billing such Owners for such charge or by deducting such charge from one or more cash dividends or other cash distributions).

The Depositary, subject to Section 2.9 of the Deposit Agreement, may own and deal in any class of securities of the Company and its affiliates and in Receipts.

## **8. PRE-RELEASE OF RECEIPTS.**

The Depositary may, notwithstanding Section 2.3 of the Deposit Agreement, execute and deliver Receipts prior to the receipt of Shares pursuant to Section 2.2 of the Deposit Agreement (“**Pre-Release**”). The Depositary may, pursuant to Section 2.5 of the Deposit Agreement, deliver Shares upon the receipt and cancellation of Receipts which have been Pre-Released, whether or not such cancellation is prior to the termination of such Pre-Release or the Depositary knows that such Receipt has been Pre-Released. The Depositary may receive Receipts in lieu of Shares in satisfaction of a Pre-Release. Each Pre-Release will be (a) preceded or accompanied by a written representation and agreement from the person to whom Receipts are to be delivered (the “**Pre-Releasee**”) that the Pre-Releasee, or its customer, (i) owns the shares or Receipts to be remitted, as the case may be, (ii) assigns all beneficial rights, title and interest in such Shares or Receipts, as the case may be, to the Depositary in its capacity as such and for the benefit of the Owners, and (iii) will not take any action with respect to such Shares or Receipts, as the case may be, that is inconsistent with the transfer of beneficial ownership (including, without the consent of the Depositary, disposing of such Shares or Receipts, as the case may be), other than in satisfaction of such Pre-Release, (b) at all times fully collateralized with cash, U.S. government securities or such other collateral as the

Depository determines, in good faith, will provide substantially similar liquidity and security, (c) terminable by the Depository on not more than five (5) business days notice, and (d) subject to such further indemnities and credit regulations as the Depository deems appropriate. The number of Shares not deposited but represented by American Depositary Shares outstanding at any time as a result of Pre-Releases will not normally exceed thirty percent (30%) of the Shares deposited hereunder; provided, however, that the Depository reserves the right to disregard such limit from time to time as it deems reasonably appropriate, and may, with the prior written consent of the Company, change such limit for purposes of general application. The Depository will also set Dollar limits with respect to Pre-Release transactions to be entered into hereunder with any particular Pre-Releasee on a case-by-case basis as the Depository deems appropriate. For purposes of enabling the Depository to fulfill its obligations to the Owners under the Deposit Agreement, the collateral referred to in clause (b) above shall be held by the Depository as security for the performance of the Pre-Releasee's obligations to the Depository in connection with a Pre-Release transaction, including the Pre-Releasee's obligation to deliver Shares or Receipts upon termination of a Pre-Release transaction (and shall not, for the avoidance of doubt, constitute Deposited Securities hereunder).

The Depository may retain for its own account any compensation received by it in connection with the foregoing.

## **9. TITLE TO RECEIPTS.**

It is a condition of this Receipt and every successive Owner and Beneficial Owner of this Receipt by accepting or holding the same consents and agrees, that title to this Receipt when properly endorsed or accompanied by proper instruments of transfer, is transferable by delivery with the same effect as in the case of a negotiable instrument; under the laws of New York; provided, however, that the Depository, notwithstanding any notice to the contrary, may treat the person in whose name this Receipt is registered on the books of the Depository as the absolute owner hereof for the purpose of determining the person entitled to distribution of dividends or other distributions or to any notice provided for in the Deposit Agreement and for all other purposes.

## **10. VALIDITY OF RECEIPT.**

This Receipt shall not be entitled to any benefits under the Deposit Agreement or be valid or obligatory for any purpose, unless this Receipt shall have been executed by the Depository by the manual signature of a duly authorized signatory of the Depository; provided, however, that such signature may be a facsimile if a Registrar for the Receipts shall have been appointed, and such Receipts are countersigned by the manual or facsimile signature of a duly authorized officer of the Registrar.

## **11. REPORTS; INSPECTION OF TRANSFER BOOKS.**

The Company is subject to the periodic reporting requirements of the Securities Exchange Act of 1934 and, accordingly, files certain reports with the Securities and Exchange Commission (hereinafter called the "**Commission**").

Such reports and communications will be available for inspection and copying at the public reference facilities maintained by the Commission located at 450 Fifth Street, N.W., Washington, D.C. 20549.

The Depositary will make available for inspection by Owners of Receipts at its Corporate Trust Office, as promptly as practicable after receipt, any reports and communications, including any proxy soliciting material, received from the Company which are both (a) received by the Depositary as the holder of the Deposited Securities and (b) made generally available to the holders of such Deposited Securities by the Company. The Depositary shall also send to the Owners of Receipts copies of such reports when furnished by the Company pursuant to the Deposit Agreement. Any such reports and communications, including any such proxy soliciting material, furnished to the Depositary by the Company shall be furnished in English.

The Depositary shall keep books at its Corporate Trust Office for the registration of Receipts and transfers of Receipts which at all reasonable times shall be open for inspection by the Owners and the Company, provided that such inspection shall not be for the purpose of communicating with Owners of Receipts in the interest of a business or object other than the business of the Company or a matter related to the Deposit Agreement or the Receipts.

## **12. DIVIDENDS AND DISTRIBUTIONS.**

Whenever the Depositary shall receive any cash dividend or other cash distribution on any Deposited Securities, the Depositary shall, if at the time of receipt thereof any amounts received in a foreign currency can in the judgment of the Depositary be converted on a reasonable basis into United States dollars transferable to the United States, and subject to the Deposit Agreement, convert such dividend or distribution into Dollars and shall distribute the amount thus received (net of the fees and expenses of the Depositary as provided in the Deposit Agreement, if applicable) to the Owners of Receipts entitled thereto, provided, however, that in the event that the Company or the Depositary shall be required to withhold and does withhold from such cash dividend or such other cash distribution in respect of any Deposited Securities an amount on account of taxes, the amount distributed to the Owners of the Receipts evidencing American Depositary Shares representing such Deposited Securities shall be reduced accordingly.

Subject to the provisions of Sections 4.11 and 5.9 of the Deposit Agreement, whenever the Depositary shall receive any distribution other than a distribution described in Sections 4.1, 4.3 or 4.4 of the Deposit Agreement, the Depositary shall, subject to all applicable laws, cause the securities or property received by it to be distributed to the Owners of Receipts entitled thereto, after deduction or upon payment of any fees and expenses of the Depositary or any taxes or other governmental charges, in any manner that the Depositary may deem equitable and practicable for accomplishing such distribution; provided, however, that if in the opinion of the Depositary such distribution cannot be made proportionately among the Owners of Receipts entitled thereto, or if for any other reason the Depositary deems such distribution not to be feasible, the Depositary may adopt such method as it may deem equitable and practicable for the purpose of effecting such distribution, including, but not limited to, the public or private sale of the securities or property thus received, or any part thereof, and the net proceeds of any such sale (net of the fees of the Depositary as provided in Section 5.9 of the Deposit

Agreement) shall be distributed by the Depositary to the Owners of Receipts entitled thereto as in the case of a distribution received in cash. The Depositary may refuse to effect any distribution of securities under Section 4.2 of the Deposit Agreement unless it has received an opinion of United States counsel for the Company that is satisfactory to the Depositary that the distribution does not require registration under the Securities Act.

If any distribution upon any Deposited Securities consists of a dividend in, or free distribution of, Shares, the Depositary may distribute to the Owners of outstanding Receipts entitled thereto, additional Receipts evidencing an aggregate number of American Depositary Shares representing the amount of Shares received as such dividend or free distribution, subject to the terms and conditions of the Deposit Agreement with respect to the deposit of Shares and the issuance of American Depositary Shares evidenced by Receipts, including the withholding of any tax or other governmental charge as provided in Section 4.11 of the Deposit Agreement and the payment of the fees and expenses of the Depositary as provided in Section 5.9 of the Deposit Agreement. In lieu of delivering Receipts for fractional American Depositary Shares in any such case, the Depositary shall use reasonable efforts to sell the amount of Shares represented by the aggregate of such fractions and distribute any net proceeds to the Owners entitled to them, all in the manner and subject to the conditions set forth in the Deposit Agreement. If additional Receipts are not so distributed, each American Depositary Share shall thenceforth also represent the additional Shares distributed upon the Deposited Securities represented thereby.

The Company or its agent will remit to the appropriate governmental agencies in the Cayman Islands and the People's Republic of China all amounts withheld and owing to such agencies. The Depositary will forward to the Company or its agent such information from its records as the Company may reasonably request to enable the Company or its agent to file necessary reports with governmental agencies, and the Depositary or the Company or its agent may file any such reports necessary to obtain benefits under the applicable tax treaties for the Owners of Receipts. In the event that the Depositary determines that any distribution in property (including Shares and rights to subscribe therefor) is subject to any tax or other governmental charge which the Depositary is obligated to withhold, the Depositary may by public or private sale dispose of all or a portion of such property (including Shares and rights to subscribe therefor) in such amounts and in such manner as the Depositary deems necessary and practicable to pay any such taxes or charges and the Depositary shall distribute the net proceeds of any such sale after deduction of such taxes or charges to the Owners of Receipts entitled thereto.

### **13. CONVERSION OF FOREIGN CURRENCY.**

Whenever the Depositary or the Custodian shall receive foreign currency, by way of dividends or other distributions or the net proceeds from the sale of securities, property or rights, and if at the time of the receipt thereof the foreign currency so received can in the judgment of the Depositary be converted on a reasonable basis into Dollars and the resulting Dollars transferred to the United States, the Depositary shall convert or cause to be converted, by sale or in any other manner that it may determine, such foreign currency into Dollars, and such Dollars shall be distributed to the Owners entitled thereto or, if the Depositary shall have distributed any warrants or other instruments which entitle the holders thereof to such Dollars, then to the holders of such warrants and/or instruments upon surrender thereof for cancellation. Such

distribution may be made upon an averaged or other practicable basis without regard to any distinctions among Owners on account of exchange restrictions, the date of delivery of any Receipt or otherwise and shall be net of any expenses of conversion into Dollars incurred by the Depositary as provided in Section 5.9 of the Deposit Agreement.

If such conversion or distribution can be effected only with the approval or license of any government or agency thereof, the Depositary shall file such application for approval or license, if any, as it may deem desirable.

If at any time the Depositary shall determine that in its judgment any foreign currency received by the Depositary or the Custodian is not convertible on a reasonable basis into Dollars transferable to the United States, or if any approval or license of any government or agency thereof which is required for such conversion is denied or in the opinion of the Depositary is not obtainable without excessively burdensome or otherwise unreasonable efforts, or if any such approval or license is not obtained within a reasonable period as determined by the Depositary, or if there are foreign exchange controls in place that prohibit such conversion, the Depositary may distribute the foreign currency (or an appropriate document evidencing the right to receive such foreign currency) received by the Depositary to, or in its discretion may hold such foreign currency uninvested and without liability for interest thereon for the respective accounts of, the Owners entitled to receive the same.

If any such conversion of foreign currency, in whole or in part, cannot be effected for distribution to some of the Owners entitled thereto, the Depositary may in its discretion make such conversion and distribution in Dollars to the extent permissible to the Owners entitled thereto and may distribute the balance of the foreign currency received by the Depositary to, or hold such balance uninvested and without liability for interest thereon for the respective accounts of, the Owners entitled thereto.

## **14. RIGHTS.**

In the event that the Company shall offer or cause to be offered to the holders of any Deposited Securities any rights to subscribe for additional Shares or any rights of any other nature, the Depositary shall have discretion as to the procedure to be followed in making such rights available to any Owners to them or in disposing of such rights on behalf of any Owners otherwise entitled to them and making the net proceeds available to such Owners or, if by the terms of such rights offering or for any other reason, the Depositary may not either make such rights available to any Owners or dispose of such rights and make the net proceeds available to such Owners, then the Depositary shall allow the rights to lapse. If at the time of the offering of any rights the Depositary determines in its reasonable discretion that it is lawful and feasible to make such rights available to all Owners or to certain Owners but not to other Owners, the Depositary may distribute, to any Owner to whom it determines the distribution to be lawful and feasible, in proportion to the number of American Depositary Shares held by such Owner, warrants or other instruments therefor in such form as it deems appropriate.

In circumstances in which rights would otherwise not be distributed, if an Owner of Receipts requests the distribution of warrants or other instruments in order to exercise the rights allocable to the American Depositary Shares of such Owner under the Deposit Agreement, the Depositary will make such rights available to such Owner upon written notice from the Company to the Depositary that (a) the Company has elected in its sole discretion to permit such rights to be exercised and (b) such Owner has executed such documents as the Company has determined in its sole discretion are reasonably required under applicable law.

If the Depositary has distributed warrants or other instruments for rights to all or certain Owners, then upon instruction from such an Owner pursuant to such warrants or other instruments to the Depositary from such Owner to exercise such rights, upon payment by such Owner to the Depositary for the account of such Owner of an amount equal to the purchase price of the Shares to be received upon the exercise of the rights, and upon payment of the fees and expenses of the Depositary and any other charges as set forth in such warrants or other instruments, the Depositary shall, on behalf of such Owner, exercise the rights and purchase the Shares, and the Company shall cause the Shares so purchased to be delivered to the Depositary on behalf of such Owner. As agent for such Owner, the Depositary will cause the Shares so purchased to be deposited pursuant to Section 2.2 of the Deposit Agreement, and shall, pursuant to Section 2.3 of the Deposit Agreement, execute and deliver Receipts to such Owner. In the case of a distribution pursuant to the second paragraph of this Article, such Receipts shall be legended in accordance with applicable U.S. laws, and shall be subject to the appropriate restrictions on sale, deposit, cancellation and transfer under such laws.

If the Depositary determines in its reasonable discretion that it is not lawful and feasible to make such rights available to all or certain Owners, it may sell the rights, warrants or other instruments in proportion to the number of American Depositary Shares held by the Owners to whom it has determined it may not lawfully or feasibly make such rights available, and allocate the net proceeds of such sales (net of the fees and expenses of the Depositary as provided in Section 5.9 of the Deposit Agreement and all taxes and governmental charges payable in connection with such rights and subject to the terms and conditions of the Deposit Agreement) for the account of such Owners otherwise entitled to such rights, warrants or other instruments, upon an averaged or other practical basis without regard to any distinctions among such Owners because of exchange restrictions or the date of delivery of any Receipt or otherwise.

The Depositary will not offer rights to Owners unless both the rights and the securities to which such rights relate are either exempt from registration under the Securities Act with respect to a distribution to Owners or are registered under the provisions of the Securities Act; provided, however, that nothing in the Deposit Agreement shall create any obligation on the part of the Company to file a registration statement with respect to such rights or underlying securities or to endeavor to have such a registration statement declared effective. If an Owner of Receipts requests distribution of warrants or other instruments, notwithstanding that there has been no such registration under the Securities Act, the Depositary shall not effect such distribution unless it has received an opinion from recognized counsel in the United States for the Company upon which the Depositary may rely that such distribution to such Owner is exempt from such registration; provided, however, that the Company shall have no obligation to cause its counsel to issue such opinion at the request of such Owner.

The Depositary shall not be responsible for any reasonable failure to determine that it may be lawful or feasible to make such rights available to Owners in general or any Owner in particular.

## **15. RECORD DATES.**

Whenever any cash dividend or other cash distribution shall become payable or any distribution other than cash shall be made, or whenever rights shall be issued with respect to the Deposited Securities, or whenever for any reason the Depositary causes a change in the number of Shares that are represented by each American Depositary Share, or whenever the Depositary shall receive notice of any meeting of holders of Shares or other Deposited Securities, or whenever the Depositary shall find it necessary or convenient, the Depositary shall fix a record date, which date shall be the same date, to the extent practicable, as the record date for the Deposited Securities or if different, as close thereto as practicable (a) for the determination of the Owners of Receipts who shall be (i) entitled to receive such dividend, distribution or rights or the net proceeds of the sale thereof or (ii) entitled to give instructions for the exercise of voting rights at any such meeting, (b) on or after which each American Depositary Share will represent the changed number of Shares or (c) for any other matter, subject to the provisions of the Deposit Agreement.

## **16. VOTING OF DEPOSITED SECURITIES.**

Upon receipt of notice of any meeting of holders of Shares or other Deposited Securities, if requested in writing by the Company the Depositary shall, as soon as practicable thereafter, mail to the Owners a notice, the form of which notice shall be in the discretion of the Depositary and shall contain (a) such information as is contained in such notice of meeting, and (b) a statement that the Owners as of the close of business on a specified record date will be entitled, subject to any applicable provision of the People's Republic of China and Cayman Islands law and of the Memorandum and Articles of Association of the Company, to instruct the Depositary as to the exercise of the voting rights, if any, pertaining to the amount of Shares or other Deposited Securities represented by their respective American Depositary Shares and (c) a statement as to the manner in which such instructions may be given, including an express indication that such instructions may be given or deemed given in accordance with the last sentence of this paragraph if no instruction is received, to the Depositary to give a discretionary proxy to a person designated by the Company. Upon the written request of an Owner of a Receipt on such record date, received on or before the date established by the Depositary for such purpose (the "**Instruction Date**"), the Depositary shall endeavor, in so far as practicable, to vote or cause to be voted the amount of Shares or other Deposited Securities represented by the American Depositary Shares evidenced by such Receipt in accordance with the instructions set forth in such request. The Depositary shall not vote or attempt to exercise the right to vote that attaches to such Shares or other Deposited Securities other than in accordance with such instructions or deemed instructions. If no instructions are received by the Depositary from any Owner with respect to any of the Deposited Securities represented by the American Depositary Shares evidenced by such Owner's Receipts on or before the date established by the Depositary for such purpose, the Depositary shall deem such Owner to have instructed the Depositary to give a discretionary proxy to a person designated by the Company with respect to such Deposited Securities and the Depositary shall give a discretionary proxy to a person designated

by the Company to vote such Deposited Securities; provided, that no such instruction shall be deemed given and no such discretionary proxy shall be given with respect to any matter as to which the Company informs the Depository (and the Company agrees to provide such information as promptly as practicable in writing) that (x) the Company does not wish such proxy given, (y) substantial opposition exists or (z) such matter materially and adversely affects the rights of holders of Shares.

There can be no assurance that Owners generally or any Owner in particular will receive the notice described in the first paragraph of Section 4.7 of the Deposit Agreement sufficiently prior to the Instruction Date to ensure that the Depository will vote the Shares or Deposited Securities in accordance with the provisions of that paragraph.

## **17. CHANGES AFFECTING DEPOSITED SECURITIES.**

In circumstances where the provisions of Section 4.3 of the Deposit Agreement do not apply, upon any change in nominal value, change in par value, split-up, consolidation or any other reclassification of Deposited Securities, or upon any recapitalization, reorganization, merger or consolidation, or sale of assets affecting the Company or to which it is a party, any securities which shall be received by the Depository or a Custodian in exchange for or in conversion of or in respect of Deposited Securities shall be treated as new Deposited Securities under the Deposit Agreement, and American Depositary Shares shall thenceforth represent, in addition to the existing Deposited Securities, if any, the new Deposited Securities so received in exchange or conversion, unless additional Receipts are delivered pursuant to the following sentence. In any such case the Depository may execute and deliver additional Receipts as in the case of a dividend in Shares, or call for the surrender of outstanding Receipts to be exchanged for new Receipts specifically describing such new Deposited Securities.

## **18. LIABILITY OF THE COMPANY AND DEPOSITARY.**

Neither the Depository nor the Company nor any of their respective directors, officers, employees, agents or affiliates shall incur any liability to any Owner or Beneficial Owner of any Receipt, if by reason of any provision of any present or future law or regulation of the United States, the People's Republic of China or any other country, or of any governmental or regulatory authority or stock exchange, or by reason of any provision, present or future, of the Memorandum and Articles of Association of the Company, or by reason of any provision of any securities issued or distributed by the Company, or any Offering or distribution thereof or by reason of any act of God or war or terrorism or other circumstances beyond its control, the Depository or the Company shall be prevented, delayed or forbidden from, or be subject to any civil or criminal penalty on account of, doing or performing any act or thing which by the terms of the Deposit Agreement or Deposited Securities it is provided shall be done or performed; nor shall the Depository or the Company or any of their respective directors, officers, employees, agents or affiliates incur any liability to any Owner or Beneficial Owner of a Receipt by reason of any non-performance or delay, caused as aforesaid, in the performance of any act or thing which by the terms of the Deposit Agreement it is provided shall or may be done or performed, or by reason of any exercise of, or failure to exercise, any discretion provided for in the Deposit Agreement. Where, by the terms of a distribution pursuant to Sections 4.1, 4.2 or 4.3 of the Deposit Agreement, or an offering or distribution pursuant to Section 4.4 of the Deposit

Agreement, or for any other reason, such distribution or offering may not be made available to Owners of Receipts, and the Depositary may not dispose of such distribution or offering on behalf of such Owners and make the net proceeds available to such Owners, then the Depositary shall not make such distribution or offering, and shall allow any rights, if applicable, to lapse in each such case without liability to the Company or the Depositary.

Neither the Company nor the Depositary nor any of their directors, officers, employees, agents or affiliates assumes any obligation or shall be subject to any liability under the Deposit Agreement to Owners or Beneficial Owners of Receipts, except that the Company and the Depositary agree to perform their obligations specifically set forth in the Deposit Agreement without negligence or bad faith. The Depositary shall not be subject to any liability with respect to the validity or worth of the Deposited Securities. Neither the Depositary nor the Company shall be under any obligation to appear in, prosecute or defend any action, suit or other proceeding in respect of any Deposited Securities or in respect of the Receipts that in its opinion may involve it in expense or liability, unless indemnity satisfactory to it against all expenses and liability shall be furnished as often as may be required, and the Custodian shall not be under any obligation whatsoever with respect to such proceedings, the responsibility of the Custodian being solely to the Depositary. Neither the Depositary nor the Company shall be liable for any action or nonaction by it in reliance upon the advice of or information from legal counsel, accountants, any person presenting Shares for deposit, any Owner or Beneficial Owner of a Receipt, or any other person believed by it in good faith to be competent to give such advice or information. The Depositary shall not be liable for any acts or omissions made by a successor depositary whether in connection with a previous act or omission of the Depositary or in connection with any matter arising wholly after the removal or resignation of the Depositary, provided that in connection with the issue out of which such potential liability arises the Depositary performed its obligations without negligence or bad faith while it acted as Depositary. The Depositary shall not be responsible for any failure to carry out any instructions to vote any of the Deposited Securities, or for the manner in which any such vote is cast or the effect of any such vote, provided that any such action or nonaction is in good faith. No disclaimer of liability under the Securities Act is intended by any provision of the Deposit Agreement.

## **19. RESIGNATION AND REMOVAL OF THE DEPOSITARY.**

The Depositary may at any time resign as Depositary under the Deposit Agreement by written notice of its election so to do delivered to the Company, such resignation to take effect upon the appointment of a successor depositary and its acceptance of such appointment as provided in the Deposit Agreement. The Depositary may at any time be removed by the Company by 120 days prior written notice of such removal, which shall become effective upon the later to occur of the (i) 120<sup>th</sup> day after delivery of the notice to the Depositary or (ii) the appointment of a successor depositary and its acceptance of such appointment as provided in the Deposit Agreement. Whenever the Depositary in its discretion determines that it is in the best interest of the Owners of Receipts to do so, it may appoint a substitute or additional custodian or custodians.

## **20. AMENDMENT.**

The form of the Receipts and any provisions of the Deposit Agreement may at any time and from time to time be amended by agreement between the Company and the Depositary without the consent of Owners and Beneficial Owners in any respect which they may deem necessary or desirable. Any amendment which shall impose or increase any fees or charges (other than taxes and other governmental charges, registration fees, cable, telex or facsimile transmission costs, delivery costs or other such expenses), or which shall otherwise prejudice any substantial existing right of Owners of Receipts, shall, however, not become effective as to outstanding Receipts until the expiration of 30 days after notice of such amendment shall have been given to the Owners of outstanding Receipts. Every Owner of a Receipt at the time any amendment so becomes effective shall be deemed, by continuing to hold such Receipt, to consent and agree to such amendment and to be bound by the Deposit Agreement as amended thereby. In no event shall any amendment impair the right of the Owner of any Receipt to surrender such Receipt and receive therefor the Deposited Securities represented thereby, except in order to comply with mandatory provisions of applicable law.

## **21. TERMINATION OF DEPOSIT AGREEMENT.**

The Depositary shall at any time at the direction of the Company terminate the Deposit Agreement by mailing notice of such termination to the Owners of all Receipts then outstanding at least 30 days prior to the date fixed in such notice for such termination. The Depositary may likewise terminate the Deposit Agreement by mailing notice of such termination to the Company and the Owners of all Receipts then outstanding if at any time 60 days shall have expired after the Depositary shall have delivered to the Company a written notice of its election to resign and a successor depositary shall not have been appointed and accepted its appointment as provided in the Deposit Agreement. On and after the date of termination, the Owner of a Receipt will, upon (a) surrender of such Receipt at the Corporate Trust Office of the Depositary, (b) payment of the fee of the Depositary for the surrender of Receipts referred to in Section 2.5 of the Deposit Agreement and (c) payment of any applicable taxes or governmental charges, be entitled to delivery, to him or upon his order, of the amount of Deposited Securities represented by the American Depositary Shares evidenced by such Receipt. If any Receipts shall remain outstanding after the date of termination, the Depositary thereafter shall discontinue the registration of transfers of Receipts, shall suspend the distribution of dividends to the Owners thereof, and shall not give any further notices or perform any further acts under the Deposit Agreement, except that the Depositary shall continue to collect dividends and other distributions pertaining to Deposited Securities, shall sell rights and other property as provided in the Deposit Agreement, and shall continue to deliver Deposited Securities, together with any dividends or other distributions received with respect thereto and the net proceeds of the sale of any rights or other property, in exchange for Receipts surrendered to the Depositary (after deducting, in each case, the fee of the Depositary for the surrender of a Receipt, any expenses for the account of the Owner of such Receipt in accordance with the terms and conditions of the Deposit Agreement and any applicable taxes or governmental charges). At any time after the expiration of six months from the date of termination, the Depositary may sell the Deposited Securities then held under the Deposit Agreement and may thereafter hold uninvested the net proceeds of any such sale, together with any other cash then held by it thereunder, unsegregated and without liability for interest, for the pro rata benefit of the Owners of Receipts which have

not theretofore been surrendered, such Owners thereupon becoming general creditors of the Depositary with respect to such net proceeds. After making such sale, the Depositary shall be discharged from all obligations under the Deposit Agreement, except for its obligations to the Company under Section 5.8 of the Deposit Agreement and to account for such net proceeds and other cash (after deducting, in each case, the fee of the Depositary for the surrender of a Receipt, any expenses for the account of the Owner of such Receipt in accordance with the terms and conditions of the Deposit Agreement, and any applicable taxes or governmental charges). Upon the termination of the Deposit Agreement, the Company shall be discharged from all obligations under the Deposit Agreement except for its obligations to the Depositary under Sections 5.8 and 5.9 of the Deposit Agreement.

## **22. SUBMISSION TO JURISDICTION; APPOINTMENT OF AGENT FOR SERVICE OF PROCESS.**

The Company has (i) irrevocably designated and appointed CT Corporation System, 111 Eighth Avenue, New York, New York, as the Company's authorized agent upon which process may be served in any suit or proceeding arising out of or relating to the Shares or Deposited Securities, the American Depositary Shares, the Receipts or this Agreement, (ii) consents and submits to the jurisdiction of any state or federal court in the State of New York in which any such suit or proceeding may be instituted, and (iii) agrees that service of process upon said authorized agent shall be deemed in every respect effective service of process upon the Company in any such suit or proceeding. The Company agrees to deliver, upon the execution and delivery of the Deposit Agreement, a written acceptance by such agent of its appointment as such agent. The Company further agrees to take any and all action, including the filing of any and all such documents and instruments, as may be necessary to continue such designation and appointment in full force and effect for so long as any American Depositary Shares or Receipts remain outstanding or the Deposit Agreement remains in force. In the event the Company fails to continue such designation and appointment in full force and effect, the Company hereby waives personal service of process upon it and consents that any such service of process may be made by certified or registered mail, return receipt requested, directed to the Company at its address last specified for notices hereunder, and service so made shall be deemed completed five (5) days after the same shall have been so mailed.

## **23. ARBITRATION.**

In the event the Depositary is advised that a judgment of a court in the United States court may not be recognized, the following provisions shall apply:

- (i) Any controversy, claim or cause of action brought by any party or parties hereto against any other party or parties hereto arising out of or relating to the Deposit Agreement shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.
- (ii) The place of the arbitration shall be the City of New York, State of New York, United States of America, and the language of the arbitration shall be English.

- (iii) The number of arbitrators shall be three, each of whom shall be disinterested in the dispute or controversy, shall have no connection with any party thereto, and shall be an attorney experienced in international securities transactions. Each party shall appoint one arbitrator and the two arbitrators shall select a third arbitrator who shall serve as chairperson of the tribunal. If a dispute, controversy or cause of action shall involve more than two parties, the parties shall attempt to align themselves in two sides (i.e., claimant and respondent), each of which shall appoint one arbitrator as if there were only two parties to such dispute, controversy or cause of action. If either or both parties fail to select an arbitrator, or if such alignment (in the event there is more than two parties) shall not have occurred, within sixty (60) calendar days after the initiating party serves the arbitration demand or the two arbitrators fail to select a third arbitrator within sixty (60) calendar days of the selection of the second arbitrator, the American Arbitration Association shall appoint the arbitrator or arbitrators in accordance with its rules. The parties and the American Arbitration Association may appoint the arbitrators from among the nationals of any country, whether or not a party is a national of that country.
- (iv) The arbitrators shall have no authority to award damages not measured by the prevailing party's actual damages and shall have no authority to award any consequential, special or punitive damages, and may not, in any event, make any ruling, finding or award that does not conform to the terms and conditions of the Deposit Agreement.

In the event any third-party action or proceeding is instituted against the Depository relating to or arising from any act or failure to act by the Company, the Company hereby submits to the personal jurisdiction of the court or administrative agency in which such action or proceeding is brought.

## **24. COMPLIANCE WITH U.S. SECURITIES LAWS.**

Notwithstanding anything in the Deposit Agreement to the contrary, the Company and the Depository each agrees that it will not exercise any rights it has under the Deposit Agreement to permit the withdrawal or delivery of Deposited Securities in a manner which would violate the U.S. securities laws, including, but not limited to, Section I.A.(1) of the General Instructions to the Form F-6 Registration Statement, as amended from time to time, under the Securities Act.