
CONTRACTUAL ARRANGEMENTS

BACKGROUND

We are a pioneer and a leading company in the premium smart electric vehicle market. We design, develop, jointly manufacture, and sell premium smart electric vehicles, driving innovations in autonomous driving, digital technologies, electric powertrains and batteries. See “Business.” We are considered to be engaged in the value-added telecommunications services (the “**Relevant Business**”) as a result of the operations of our business. We conduct the Relevant Business through Beijing NIO. Pursuant to applicable PRC laws and regulations, foreign investors are restricted to conduct internet information services value added telecommunications services (except for electronic commerce, domestic multi-party communication, store-and-forward, and call center). A summary of our business that is subject to foreign investment restriction in accordance with the 2021 Negative List is set out below:

Categories	Our Business
Restricted Value-added telecommunications services	The principal business of Beijing NIO involves internet information services, which falls within the scope of value-added telecommunications services. According to the 2021 Negative List, foreign investors are not allowed to hold more than 50% equity interests in any enterprise engaging in value-added telecommunications services.

For further details of the limitations on foreign ownership in PRC companies conducting business involving value-added telecommunications services under applicable PRC laws and regulations, see “Regulatory Overview — Regulations on Foreign Investment in China.”

Beijing NIO operates NIO app, through which the Company provides internet information services, such as certain commercial information, communication community, goods as well as real-time location information on the Company’s swapping and charging network, the network of public chargers with data synchronized to the Company’s cloud-based network (collectively, the “**Power Map**”). Accordingly, among other requirements, the operation of Power Map by Beijing NIO involves both (a) value-added telecommunication services and (b) internet mapping services and therefore requires both internet content provision (“**ICP**”) licence and the Surveying and Mapping Qualification Certificate. Furthermore, Beijing NIO conducts R&D for the development of the NIO app enabled by ICP services which is impossible to separate its R&D work from ICP related functions, all of which necessarily depend on the sharing of information, technologies, intellectual property rights, human resources and know-hows as one unit. It will not be operationally and commercially sensible to artificially separate these two services by creating two entities to hold each license.

As advised by our PRC Legal Adviser, the business of internet information services fall within the scope of “value-added telecommunication service” under the Telecommunications Regulations, where foreign investors are not allowed to hold more than 50% equity interests in any enterprise conducting such business.

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In addition, the Company and our PRC Legal Adviser conducted a verbal consultation with the relevant government authority, the MIIT, in January 2022. The officer of MIIT confirmed that, considering the case of the Company, we would not practically be granted an ICP license even if we meet the Qualification Requirements (as defined below).

As a result of the foregoing, a series of Contractual Arrangements have been entered into by Shanghai NIO, Beijing NIO and its shareholders, namely Mr. Bin Li and Mr. Lihong Qin (the “**Registered Shareholders**”), through which we have obtained control over the operations of, and enjoy all economic benefits of Beijing NIO since April 2018.

The Contractual Arrangements currently in effect for Beijing NIO were entered into on April 12, 2021, whereby Shanghai NIO has acquired effective control over Beijing NIO, and has become entitled to all the economic benefits derived from its respective operations.

For the year ended December 31, 2020 and the nine months ended September 30, 2021, the revenue generated from Beijing NIO accounted for less than 0.1% of the Group’s net revenue for the year.

QUALIFICATION REQUIREMENTS UNDER THE FITE REGULATIONS

On December 11, 2001, the State Council promulgated the Regulations for the Administration of Foreign-Invested Telecommunications Enterprises (《外商投資電信企業管理規定》) (the “FITE Regulations”), which were amended on September 10, 2008 and February 6, 2016. According to the FITE Regulations, foreign investors are not allowed to hold more than 50% of the equity interests in a company providing value-added telecommunications services, including Internet content provision services. In addition, the main foreign investor who invests in a value-added telecommunications business in the PRC must possess prior experience and a proven good track record in operating value-added telecommunications businesses (the “Qualification Requirements”). Currently none of the applicable PRC laws, regulations or rules provides clear guidance or interpretation on the Qualification Requirements. The MIIT issued a guidance memorandum on the application requirement for establishing foreign-invested value-added telecommunications enterprises in the PRC. According to this guidance memorandum, an applicant is required to provide, among other things, the applicant’s annual reports for the past three years, satisfactory proof of the Qualification Requirements and business development plan. The guidance memorandum does not provide any further guidance on the proof, record or document required to support the proof satisfying the Qualification Requirements. Further, this guidance memorandum does not purport to provide an exhaustive list on the application requirement.

As advised by our PRC Legal Adviser, (i) no applicable PRC laws, regulations or rules have provided clear guidance or interpretation on the Qualification Requirements; and (ii) foreign investor’s fulfillment of the Qualification Requirements remains ultimately subject to substantive examination of the MIIT.

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Despite the lack of clear guidance or interpretation on the Qualification Requirements, we have been gradually building up our track record of overseas telecommunications business operation for the purposes of being qualified, as early as possible, to acquire the entire equity interests in Beijing NIO when the relevant PRC laws and regulations allow foreign investors to invest and to directly hold equity interest in enterprises which engage in the value-added telecommunications business in China. We are in the process of expanding our overseas telecommunications business through our overseas subsidiaries. We have taken the following measures to meet the Qualification Requirements:

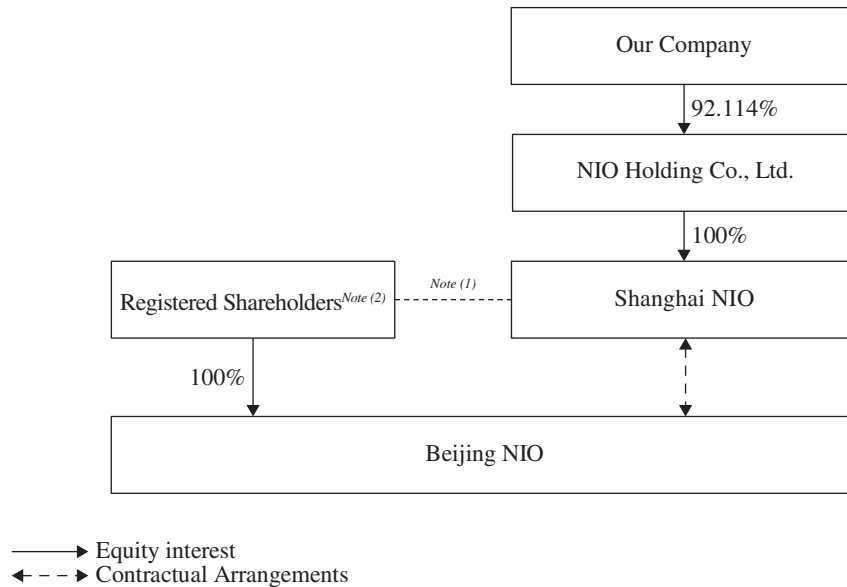
- (i) we have registered a number of global top-level domain names (including “www.nio.io”) outside of the PRC, and have constructed an English website that will help potential overseas users to better understand the Company’s services and businesses;
- (ii) we have registered trademarks and pending trademark applications in the United States, Europe and other overseas jurisdictions for the promotion of the Company’s businesses and products overseas;
- (iii) we have established subsidiaries in Hong Kong, Germany, the United States, the United Kingdom and other overseas jurisdictions for the purpose of, amongst others, promoting the Company’s services and businesses, entering into business contracts with offshore counterparties and registering and holding overseas intellectual properties; and
- (iv) through the aforementioned offshore subsidiaries, we have been exploring business opportunities in overseas markets.

According to a verbal consultation conducted by our PRC Legal Advisor with the officer who is a manager from the Information and Communication Development Department (“**ICDD**”) of MIIT, the MIIT officer confirmed that the steps undertaken by us as described above are helpful to fulfill the Qualification Requirements. Our PRC Legal Advisor confirms that, as the ICDD of the MIIT is responsible for approving applications from foreign investors for the permits in connection with the operation of internet information services, such department is a competent authority and the officer interviewed is of the appropriate ranking to provide the confirmation stated above. Hence, subject to the discretion of the competent authority, our PRC Legal Advisor takes the view that the above steps are reasonable and appropriate in relation to the Qualification Requirements as we will be able to gain experience in providing value-added telecommunication services in overseas markets.

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OUR CONTRACTUAL ARRANGEMENTS

The diagram below illustrates the relationships among the entities under the Contractual Arrangements:



Notes:

- (1) Each of Mr. Bin Li and Mr. Lihong Qin executed, respectively, an exclusive option agreement, equity pledge agreement and power of attorney in favor of Shanghai NIO. See the section headed “— Our Contractual Arrangements” for details.
- (2) Mr. Bin Li and Mr. Lihong Qin hold 80% and 20% equity interests in Beijing NIO, respectively. Mr. Bin Li is our controlling shareholder, our founder, the chairman of our board of directors and our chief executive officer. Mr. Lihong Qin is also a director and executive officer of our Company.

SUMMARY OF THE MATERIAL TERMS OF THE CONTRACTUAL ARRANGEMENTS

A description of each of the specific agreements that comprise the Contractual Arrangements is set out below.

Exclusive Business Cooperation Agreements

Under the exclusive business cooperation agreements dated April 19, 2018 and April 12, 2021, respectively, between the Shanghai NIO and Beijing NIO (the “**Exclusive Business Cooperation Agreements**”), pursuant to which, in exchange for a monthly service fee, Beijing NIO agreed to engage the Shanghai NIO as its exclusive provider of technical support, consultation and other services, including the following services:

- (i) the use of any relevant software legally owned by the Shanghai NIO;
- (ii) development, maintenance and updating of software in respect of the Beijing NIO’s business;

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- (iii) design, installation, daily management, maintenance and updating of network systems, hardware and database design;
- (iv) providing technical support and staff training services to relevant employees of Beijing NIO;
- (v) providing assistance in consultancy, collection and research of technology and market information (excluding market research business that wholly foreign owned enterprises are prohibited from conducting under the laws of mainland China);
- (vi) providing business management consultation;
- (vii) providing marketing and promotional services;
- (viii) developing and testing new products;
- (ix) leasing of equipment or properties; and
- (x) other relevant services requested by Beijing NIO from time to time to the extent permitted under the laws of mainland China.

Under the Exclusive Business Cooperation Agreements, the service fee shall consist of 100% of the total consolidated profit of the Beijing NIO, after the deduction of any accumulated deficit of the Consolidated Affiliated Entities in respect of the preceding financial year(s), operating costs, expenses, taxes and other statutory contributions. Notwithstanding the foregoing, Shanghai NIO may adjust the scope and amount of services fees according to mainland China tax law and tax practices, and Beijing NIO will accept such adjustments. Shanghai NIO shall calculate the service fee on a monthly basis and issue a corresponding invoice to Beijing NIO. Notwithstanding the payment arrangements in the Exclusive Business Cooperation Agreements, Shanghai NIO may adjust the payment time and payment method, and Beijing NIO will accept any such adjustment.

In addition, absent the prior written consent of Shanghai NIO, during the term of the Exclusive Business Cooperation Agreements, with respect to the services subject to the Exclusive Business Cooperation Agreements and other matters, Beijing NIO shall not directly or indirectly accept the same or any similar services provided by any third party and shall not establish cooperation relationships similar to that formed by the Exclusive Business Cooperation Agreements with any third party. Shanghai NIO may appoint other parties, who may enter into certain agreements with Beijing NIO, to provide Beijing NIO with the services under the Exclusive Business Cooperation Agreements.

The Exclusive Business Cooperation Agreements also provide that Shanghai NIO has the exclusive proprietary rights to and interests in any and all intellectual property rights developed or created by Beijing NIO during the performance of the Exclusive Business Cooperation Agreement.

The Exclusive Business Cooperation Agreements shall remain effective unless terminated (a) in accordance with the provisions of the Exclusive Business Cooperation Agreements; (b) in writing by the Shanghai NIO; or (c) renewal of the expired business period of either Shanghai NIO or Beijing NIO is denied by relevant government authorities, at which time the Exclusive Business Cooperation Agreements will terminate upon termination of that business period.

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Exclusive Option Agreements

Under the exclusive option agreements (the “**Exclusive Option Agreements**”) dated April 19, 2018 and April 12, 2021, among Shanghai NIO, Beijing NIO and the Registered Shareholders, respectively, Shanghai NIO has the rights to require the Registered Shareholders to transfer any or all their equity interests in Beijing NIO to Shanghai NIO and/or a third party designated by it, in whole or in part at any time and from time to time, for considerations equivalent to the respectively outstanding loans owed to the Registered Shareholders (or part of the loan amounts in proportion to the equity interests being transferred) or, if applicable, for a nominal price, unless the relevant government authorities or the mainland China laws request that another amount be used as the purchase price, in which case the purchase price shall be the lowest amount under such request.

Beijing NIO and the Registered Shareholders, among other things, have covenanted that:

- (i) without the prior written consent of Shanghai NIO, they shall not in any manner supplement, change or amend the constitutional documents of Beijing NIO, increase or decrease their registered capital, or change the structure of their registered capital in other manner;
- (ii) they shall maintain Beijing NIO’s corporate existence in accordance with good financial and business standards and practices, obtain and maintain all necessary government licenses and permits by prudently and effectively operating their business and handling their affairs;
- (iii) without the prior written consent of Shanghai NIO, they shall not at any time following the signing of the Exclusive Option Agreements sell, transfer, pledge or dispose of in any manner any material assets of the Beijing NIO or legal or beneficial interest in the material business or revenues of the Beijing NIO, or allow the encumbrance thereon of any security interest;
- (iv) without the prior written consent of Shanghai NIO, Beijing NIO shall not incur, inherit, guarantee or assume any debt, except for debts incurred in the ordinary course of business other than payables incurred by a loan;
- (v) Beijing NIO shall always operate all of their businesses during the ordinary course of business to maintain their asset value and refrain from any action/omission that may adversely affect the Beijing NIO’s operating status and asset value;
- (vi) without the prior written consent of Shanghai NIO, they shall not cause Beijing NIO to execute any material contract, except the contracts executed in the ordinary course of business;
- (vii) without the prior written consent of Shanghai NIO, they shall not cause Beijing NIO to provide any person with any loan or credit;
- (viii) they shall provide Shanghai NIO with information on Beijing NIO’s business operations and financial condition at the request of Shanghai NIO;
- (ix) if requested by Shanghai NIO, they shall procure and maintain insurance in respect of Beijing NIO’ assets and business from an insurance carrier acceptable to Shanghai NIO, at an amount and type of coverage typical for companies that operate similar businesses;

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- (x) without the prior written consent of Shanghai NIO, they shall not cause or permit Beijing NIO to merge, consolidate with, acquire or invest in any person;
- (xi) they shall immediately notify Shanghai NIO of the occurrence or possible occurrence of any litigation, arbitration or administrative proceedings relating to Beijing NIO' assets, business or revenue;
- (xii) to maintain the ownership by Beijing NIO of all of its assets, they shall execute all necessary or appropriate documents, take all necessary or appropriate actions and file all necessary or appropriate complaints or raise necessary and appropriate defenses against all claims;
- (xiii) without the prior written consent of Shanghai NIO, Beijing NIO shall not in any manner distribute dividends to its shareholders, provided that upon the written request of Shanghai NIO, Beijing NIO shall immediately distribute all distributable profits to its shareholders;
- (xiv) at the request of Shanghai NIO, they shall appoint any persons designated by Shanghai NIO as the directors and/or senior management of Beijing NIO; and
- (xv) unless otherwise mandatorily required by mainland China laws, Beijing NIO shall not be dissolved or liquidated without prior written consent by Shanghai NIO.

In addition, the Registered Shareholders, among other things, have covenanted that:

- (i) without the written consent of Shanghai NIO, they shall not sell, transfer, pledge or dispose of in any other manner the legal or beneficial interest in Beijing NIO, or allow the encumbrance thereon of any security interest, except for the Equity Pledge Agreements and the interests prescribed in the Powers of Attorney, and procure the shareholders' meeting and the board of directors of Beijing NIO not to approve such matters;
- (ii) for each exercise of the equity purchase option, to cause the shareholders' meeting of Beijing NIO to vote on the approval of the transfer of equity interests and any other action requested by Shanghai NIO;
- (iii) they shall relinquish the pre-emptive right (if any) he/she is entitled to in relation to the transfer of equity interest by any other shareholders to Beijing NIO and give consent to the execution by each other shareholder of Beijing NIO with Shanghai NIO and Beijing NIO exclusive option agreements, equity pledge agreements and powers of attorney similar to the Exclusive Option Agreements, the Equity Pledge Agreements and the Powers of Attorney, and accept not to take any action in conflict with such documents executed by the other shareholders (if any); and
- (iv) each of the Registered Shareholders will transfer to Shanghai NIO or its appointee(s) by way of gift any profit or dividend in accordance with the mainland China law.

The Registered Shareholders have also undertaken that, subject to the relevant laws and regulations, they will return to Shanghai NIO any consideration they receive in the event that Shanghai NIO exercise the options under the Exclusive Option Agreements to acquire the equity interests in Beijing NIO.

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The Exclusive Option Agreements shall remain effective unless terminated in the event that the entire equity interests held by the Registered Shareholders in Beijing NIO have been transferred to Shanghai NIO or its appointee(s).

Equity Pledge Agreements

Under the equity pledge agreements dated April 19, 2018 and April 12, 2021, respectively, entered into between Shanghai NIO, the Registered Shareholders and Beijing NIO (the “Equity Pledge Agreements”), the Registered Shareholders agreed to pledge all their respective equity interests in Beijing NIO that they own, including any interest or dividend paid for the shares, to Shanghai NIO as a security interest to guarantee the performance of contractual obligations and the payment of outstanding debts.

The pledge in respect of Beijing NIO takes effect upon the completion of registration with the relevant administration for industry and commerce and shall remain valid until after all the contractual obligations of the Registered Shareholders and Beijing NIO under the relevant Contractual Arrangements have been fully performed and all the outstanding debts of the Registered Shareholders and Beijing NIO under the relevant Contractual Arrangements have been fully paid.

Upon the occurrence and during the continuance of an event of default (as defined in the Equity Pledge Agreements), Shanghai NIO shall have the right to require Beijing NIO’s shareholders (i.e. the Registered Shareholders) to immediately pay any amount payable by Beijing NIO under the Exclusive Business Cooperation Agreement, repay any loans and pay any other due payments, and Shanghai NIO shall have the right to exercise all such rights as a secured party under any applicable mainland China law and the Equity Pledge Agreements, including without limitations, being paid in priority with the equity interests based on the monetary valuation that such equity interests are converted into or from the proceeds from auction or sale of the equity interest upon written notice to the Registered Shareholders.

The registration of the Equity Pledge Agreements as required by the relevant laws and regulations has been completed in accordance with the terms of the Equity Pledge Agreements and the PRC laws and regulations.

Powers of Attorney

The Registered Shareholders have executed powers of attorney dated April 19, 2018 and April 12, 2021, respectively, (the “**Powers of Attorney**”). Under the Powers of Attorney, the Registered Shareholders irrevocably appointed Shanghai NIO and their designated persons (including but not limited to Directors and their successors and liquidators replacing the Directors but excluding those non-independent or who may give rise to conflict of interests) as their attorneys-in-fact to exercise on their behalf, and agreed and undertook not to exercise without such attorneys-in-fact’s prior written consent, any and all right that they have in respect of their equity interests in Beijing NIO, including without limitation:

- (i) to convene and attend shareholders’ meetings of Beijing NIO;
- (ii) to file documents with the relevant companies registry;
- (iii) to exercise all shareholder’s rights and shareholder’s voting rights in accordance with law and the constitutional documents of Beijing NIO, including but not limited to the sale, transfer, pledge or disposal of any or all of the equity interests in Beijing NIO;

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- (iv) to execute any and all written resolutions and meeting minutes and to approve the amendments to the articles of associations in the name and on behalf of such shareholder; and
- (v) to nominate or appoint the legal representatives, directors, supervisors, general manager and other senior management of Beijing NIO.

Further, the Powers of Attorney shall remain effective for so long as each shareholder holds equity interest in Beijing NIO.

Loan Agreements

Shanghai NIO and the Registered Shareholders entered into loan agreements dated April 19, 2018 and April 12, 2021, respectively, (the “**Loan Agreements**”), pursuant to which Shanghai NIO agreed to provide loans to the Registered Shareholders, to be used exclusively as investment in Beijing NIO. The loans must not be used for any other purposes without the relevant lender’s prior written consent.

The term of each loan commences from the date of the agreement and ends on the date the lender exercises its exclusive call option under the relevant Exclusive Option Agreement, or when certain defined termination events occur, such as if the lender sends a written notice demanding repayment to the borrower, or upon the default of the borrower, whichever is earlier.

After the lender exercises his exclusive call option, the borrower may repay the loan by transferring all of its equity interest in Beijing NIO to the lender, or a person or entity nominated by the lender, and use the proceeds of such transfer as repayment of the loan. If the proceeds of such transfer is equal to or less than the principal of the loan under the relevant Loan Agreement, the loan is considered interest-free. If the proceeds of such transfer is higher than the principal of the loan under the relevant Loan Agreement, any surplus is considered interest for the loan under the relevant Loan Agreement.

Other Key Terms of the Contractual Arrangements

A description of other key terms that apply to the applicable agreements under the Contractual Arrangements is set out below:

Arrangements to Protect our Group’s Interests in the Event of Death, Bankruptcy or Divorce of the Registered Shareholders

Each of the Registered Shareholders has confirmed to the effect that (i) his/her spouse does not have the right to claim any interests in Beijing NIO (together with any other interests therein) or exert influence on the day-to-day management of the Principal VIE; and (ii) in the event of his/her death, incapacity, divorce or any other event which causes his/her inability to exercise his/her rights as a shareholder of Beijing NIO, he/her will take necessary actions to safeguard his/her interests in Beijing NIO (together with any other interests therein) and his/her successors (including his/her spouse) will not claim any interests in Beijing NIO (together with any other interests therein) to the effect that the Registered Shareholders’ interests in Beijing NIO shall not be affected.

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The spouse of each of the Registered Shareholders, where applicable, has signed an undertaking (the “**Spouse Undertakings**”) to the effect that (i) the respective Registered Shareholder’s interests in Beijing NIO (together with any other interests therein) do not fall within the scope of communal properties, and (ii) he/she has no right to or control over such interests of the respective Registered Shareholder and will not have any claim on such interests.

As advised by our PRC Legal Adviser, the Contractual Arrangements provide protection to the Group even in the event of loss of capacity, death, bankruptcy (if applicable), marriage or divorce of the Registered Shareholders; and the loss of capacity, death, bankruptcy (if applicable), marriage or divorce of the Registered Shareholders would not affect the validity of the Contractual Arrangements against the successors of such Registered Shareholders.

Dispute Resolution

Each of the agreements under the Contractual Arrangements contains a dispute resolution provision. Pursuant to such provision, in the event of any dispute arising from the performance of or relating to the Contractual Arrangements, any party has the right to submit the relevant dispute to the Shanghai International Economic and Trade Arbitration Commission for arbitration, in accordance with the then effective arbitration rules. The arbitration shall be confidential and the language used during arbitration shall be Chinese. The arbitration award shall be final and binding on all parties. The dispute resolution provisions also provide that the arbitral tribunal may award remedies over the shares or assets of Beijing NIO or injunctive relief (e.g. limiting the conduct of business, limiting or restricting transfer or sale of shares or assets) or order the winding up of Beijing NIO; any party may apply to the courts of Hong Kong, the Cayman Islands (being the place of incorporation of our Company), the mainland China and the places where the principal assets of Shanghai NIO and Beijing NIO are located for interim remedies or injunctive relief.

In connection with the dispute resolution method as set out in the Contractual Arrangements and the practical consequences, we are advised by our PRC Legal Adviser that:

- (a) a tribunal has no power to grant such injunctive relief, nor will it be able to order the winding up of Beijing NIO pursuant to current PRC laws and regulations; and
- (b) interim remedies or enforcement orders granted by overseas courts such as Hong Kong and the Cayman Islands may not be recognizable or enforceable in the PRC; therefore, in the event we are unable to enforce the Contractual Arrangements, we may not to exert effective control over the Beijing NIO.

As a result of the above, in the event that Beijing NIO or the Registered Shareholders breach any of the Contractual Arrangements, we may not be able to obtain sufficient remedies in a timely manner, and our ability to exert effective control over Beijing NIO and conduct our business could be materially and adversely affected. See “Risk Factors — Risks Related to Our Corporate Structure — The shareholders of our variable interest entity may have potential conflicts of interest with us, which may materially and adversely affect our business and financial condition” for details.

Conflict of Interest

Each of the Registered Shareholders has given his or her irrevocable undertakings in the Powers of Attorney, which address potential conflicts of interests that may arise in connection with the Contractual Arrangements. See “— Powers of Attorney.”

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Loss Sharing

Under the relevant mainland China laws and regulations, neither our Company nor Shanghai NIO is legally required to share the losses of, or provide financial support to Beijing NIO. Further, Beijing NIO is a limited liability company and shall be solely liable for its own debts and losses with assets and properties owned by it. Shanghai NIO intends to continuously provide to or assist Beijing NIO in obtaining financial support when deemed necessary. In addition, given that our Group conducts certain portion of its business operations in mainland China through Beijing NIO, which hold the requisite mainland China operational licenses and approvals, and that its financial position and results of operations are consolidated into our Group's financial statements under the applicable accounting principles, our Company's business, financial position and results of operations would be adversely affected if Beijing NIO suffers losses.

However, as provided in the Exclusive Option Agreements, without the prior written consent of Shanghai NIO, Beijing NIO shall not, among others, (i) sell, transfer, pledge or dispose of in any manner any of its material assets; (ii) execute any material contract, except those entered into in the ordinary course of business; (iii) provide any loan, credit or guarantees in any form to any third party, or allow any third party create any other security interest on its assets or equity; (iv) incur, inherit, guarantee or allow any debt that is not incurred in the ordinary course of business; (v) enter into any consolidation or merger with any third party, or being acquired by or invest in any third party; and (vi) increase or reduce its registered capital, or alter the structure of the registered capital in any other way. Therefore, due to the relevant restrictive provisions in the agreements, the potential adverse effect on Shanghai NIO and our Company in the event of any loss suffered from Beijing NIO can be limited to a certain extent.

Liquidation

Pursuant to the Exclusive Option Agreements, in the event of a mandatory liquidation required by the mainland China laws, the Registered Shareholders shall give the proceeds they received from liquidation as a gift to Shanghai NIO or its respective designee(s) to the extent permitted by the mainland China laws.

Insurance

Our Company does not maintain an insurance policy to cover the risks relating to the Contractual Arrangements.

Our Confirmation

As of the Latest Practicable Date, we had not encountered any interference or encumbrance from any PRC governing bodies in operating its business through our consolidated affiliated entities under the Contractual Arrangements.

LEGALITY OF THE CONTRACTUAL ARRANGEMENTS

We believe that the Contractual Arrangements are narrowly tailored and such arrangements are only used to enable our Group to combine the financial results of our consolidated affiliated entities which engage or will engage in the operation of the Relevant Business, which are subject to foreign investment restriction in accordance with applicable PRC laws and regulations.

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Our PRC Legal Adviser is of the opinion that:

- (i) each of the agreements comprising the Contractual Arrangements is legal, valid and binding on the parties thereto, enforceable under applicable PRC laws and regulations, except that (a) the Contractual Arrangements provide that the arbitral body may award remedies over the shares and/or assets or award injunctive relief and/or order the winding up of Beijing NIO, and that courts of competent jurisdictions are empowered to grant interim remedies in support of the arbitration pending the formation of an arbitral tribunal or in appropriate cases, while under PRC laws and regulations, an arbitral body has no power to grant injunctive relief or to order an entity to wind up, and the aforesaid interim remedies granted by competent courts may not be recognizable or enforceable in the PRC; and (b) the Contractual Arrangements provide that the Registered Shareholders undertake to appoint committees designated by Shanghai NIO as the liquidation committee upon the winding up of Beijing NIO to manage its assets; however, in the event of a mandatory liquidation required by PRC laws and regulations, these provisions may not be enforceable;
- (ii) each of the agreements comprising the Contractual Arrangements does not violate the provisions of the articles of associations of Shanghai NIO and Beijing NIO, respectively; and
- (iii) no approval or authorization from the PRC governmental authorities are required for entering into and the performance of the Contractual Arrangements except that (a) the pledge of any equity interest in Beijing NIO for the benefit of Shanghai NIO is subject to registration requirements with the relevant governmental authority which has been duly completed; and (b) the exercise of any exclusive option rights by Shanghai NIO under the exclusive option agreements may subject to the approval, filing or registration requirements with the relevant authorities under the then prevailing PRC laws and regulations.

Based on the advice from our PRC Legal Adviser, our directors are of the view that the adoption of the Contractual Arrangements is unlikely to be deemed ineffective or invalid under the applicable PRC laws and regulations, and except for the relevant clauses as described in the paragraph headed “Dispute Resolution” and “Liquidation” in this section, each of the agreements under the Contractual Arrangements is enforceable under the PRC laws and regulations.

We are aware of a Supreme People’s Court ruling (the “**Supreme People’s Court Ruling**”) made in October 2012 and two arbitral decisions from the Shanghai International Economic and Trade Arbitration Commission made in 2010 and 2012 which invalidated certain contractual arrangements for the reason that the entry into of such agreements with the intention of circumventing foreign investment restrictions in the PRC contravene the prohibition against “concealing an illegitimate purpose under the guise of legitimate acts” set out in Article 52 of the PRC Contract Law (《中華人民共和國合同法》) and the General Principles of the PRC Civil Law (《中華人民共和國民法通則》). It has been further reported that these court rulings and arbitral decisions may increase (i) the possibility of the PRC courts and/or arbitration panels taking similar actions against contractual arrangements commonly adopted by foreign investors to engage in restricted or prohibited businesses in the PRC; and (ii) the incentive for the registered shareholders under such contractual arrangements to renege on their contractual obligations.

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Pursuant to Article 52 of the PRC Contract Law, a contract is void, among other circumstances, where an illegitimate purpose is concealed under the guise of legitimate acts; our PRC Legal Adviser is of the view that the agreements under the Contractual Arrangements would not be deemed as “concealing illegal intentions with a lawful form” under Article 52 of the PRC Contract Law for the following reasons: (a) the parties to the Contractual Arrangements have the right to enter into contracts in accordance with their own wishes and no person may illegally interfere with such right; and (b) the purpose of the Contractual Arrangements is not to conceal illegal intentions, but to pass the economic interests received by our Consolidated Affiliated Entities to our Company.

Furthermore, the PRC Civil Code (《中華人民共和國民法典》) came into effect on January 1, 2021 and the PRC Contract Law and the General Principles of the PRC Civil Law were repealed simultaneously. The PRC Civil Code no longer specifies the “concealing illegal intentions with a lawful form” as the statutory circumstances of a void contract but stipulates certain circumstances which will lead to the invalidation of civil juristic acts, including but not limited to a civil juristic act performed by a person having no capacity for civil conducts, a civil juristic act performed by the actor and the counterparty based on false expression of intention, a civil juristic act violates the mandatory provisions of laws and administrative regulations, a civil juristic act violates of public order and morals, etc. The provisions on the validity of civil juristic acts also apply to the validity of contracts. Our PRC Legal Adviser is of the view that the Contractual Arrangements would not fall within the above circumstances which will lead such arrangements as invalid civil juristic act under the PRC Civil Code. However, our PRC Legal Adviser also advised that as there are substantial uncertainties regarding the interpretation and application of the PRC laws, rules and regulations, there can be no assurance that the relevant PRC government would ultimately take a view that is consistent with the above opinion of our PRC Legal Adviser.

ACCOUNTING ASPECTS OF THE CONTRACTUAL ARRANGEMENTS

Consolidation of Financial Results of Our Consolidated Affiliated Entities

Under the exclusive business cooperation agreements, it was agreed that, in consideration of the services provided by Shanghai NIO, Beijing NIO will pay services fees to Shanghai NIO. The services fees, subject to Shanghai NIO’s adjustment, are equal to the entirety of the respective total consolidated profit of Beijing NIO (net of accumulated deficit of the consolidated affiliated entities in the previous financial years (if any), costs, expenses, taxes and payments required by the relevant laws and regulations to be reserved or withheld). Shanghai NIO may adjust the services scopes and fees at its discretion in accordance with PRC tax law and practice as well as the needs of the working capital of our consolidated affiliated entities. Shanghai NIO also has the right to periodically receive or inspect the accounts of our consolidated affiliated entities. Accordingly, Shanghai NIO has the ability, at its sole discretion, to extract all of the economic benefit of Beijing NIO through the exclusive business cooperation agreements.

In addition, under the exclusive business cooperation agreements and the exclusive option agreements, Shanghai NIO has absolute contractual control over the distribution of dividends or any other amounts to the equity holders of our consolidated affiliated entities as Shanghai NIO’s prior written consent is required before any distribution can be made. In the event that the Registered Shareholders receive any profit distribution or dividend from our consolidated affiliated entities, the Registered Shareholders must immediately pay or transfer such amount (subject to the relevant tax payment being made under the relevant laws and regulations) to our Company.

CONTRACTUAL ARRANGEMENTS

As a result of these Contractual Arrangements, our Company has obtained control of our consolidated affiliated entities through Shanghai NIO and, at our Company's sole discretion, can receive all of the economic interest returns generated by our consolidated affiliated entities. Accordingly, the results of operations, assets and liabilities, and cash flows of our consolidated affiliated entities are consolidated into our Company's financial statements.

Our directors consider that our Company can consolidate the financial results of our consolidated affiliated entities into our Group's financial information as if they were our Company's subsidiaries. Our Reporting Accountant, has issued an unqualified opinion on our Group's consolidated financial information as of and for the years ended December 31, 2018, 2019 and 2020 and the nine months ended September 30, 2021 as included in the Accountant's Report set out in Appendix I to this document.

FOREIGN INVESTMENT LAW

Background

On March 15, 2019, the Foreign Investment Law was formally passed by the thirteenth NPC and took effect on January 1, 2020. The Foreign Investment Law stipulates forms of foreign investment as below:

- foreign investors set up foreign invested enterprises in China severally or jointly with other investors;
- foreign investors acquire shares, equity, properties or other similar interests in any domestic enterprise;
- foreign investors invest in new projects in China severally or jointly with other investors; and
- foreign investors invest through any other methods under laws, administrative regulations, or provisions prescribed by the State Council.

The Foreign Investment Law stipulates that the negative list is applied in certain industry sectors. The negative list set out in the Foreign Investment Law classified the relevant prohibited and restricted industries into the catalog of prohibitions and the catalog of restrictions, respectively, according to which, the foreign investors are not allowed to invest in the areas in which the foreign investment is prohibited. Foreign investors are allowed to invest in sectors set out in the catalog of restrictions, subject to the satisfaction of certain conditions. Foreign investors are allowed to invest in any sector beyond the negative list and shall be managed on the same basis as domestic investments.

Where a foreign investor invests in the sectors specified in the catalog of prohibitions, the relevant competent departments shall order it to stop the investment activities, and dispose of the shares, properties or other necessary measures within a time limit to restore the state before the investment is implemented and the illegal income shall be confiscated (if any). Where the investment activities of a foreign investor violate the restrictive special management measures stipulated in the sectors specified in the catalog of restrictions, the relevant competent departments shall order it to make corrections and take necessary measures to meet the requirements for access to special management measures; where the offender refuses to make corrections, punishments are implemented according to the aforementioned provisions.

CONTRACTUAL ARRANGEMENTS

Impact and potential consequences of the Foreign Investment Law on the Contractual Arrangements

Our PRC Legal Adviser has advised that, since contractual arrangements are not specified as foreign investments under the Foreign Investment Law, and no relevant laws, administrative regulations or provisions of the State Council have incorporated contractual arrangements as a form of foreign investment, the Foreign Investment Law does not apply to our Contractual Arrangements, and it does not substantially change the identification of foreign investors in the field of foreign investment and the principle of recognition and treatment of our Contractual Arrangements. Therefore, each of the agreements comprising the Contractual Arrangements will not be materially affected and will continue to be legal, valid and binding on the parties if there are no changes to relevant laws and regulations in this respect. Notwithstanding the above, the Foreign Investment Law stipulates that foreign investors investing through any other methods stipulated under laws, administrative regulations or provisions of the State Council may be considered as a form of foreign investment. It is therefore possible that future laws, administrative regulations or provisions of the State Council may stipulate contractual arrangements as a way of foreign investment. However, as of the Latest Practicable Date, it was uncertain as to how our Contractual Arrangements will be handled.

If the Relevant Business is no longer falling within the catalog of restrictions or certain conditions and permission of foreign investment access required under the 2021 Negative List and we can legally operate our business under PRC laws and regulations, Shanghai NIO will exercise the option under the exclusive option agreements to acquire the equity interest/assets of Beijing NIO and unwind the Contractual Arrangements subject to any applicable approvals from the relevant governmental authorities, and subject to any application or approval procedures by the relevant governmental authorities.

COMPLIANCE WITH THE CONTRACTUAL ARRANGEMENTS

Our Group has adopted the following measures to ensure the effective operation of our Group with the implementation of the Contractual Arrangements and our compliance with the Contractual Arrangements:

- (1) major issues arising from the implementation and compliance with the Contractual Arrangements or any regulatory enquiries from government authorities will be submitted to our Board, if necessary, for review and discussion on an occurrence basis;
- (2) our Board will review the overall performance of and compliance with the Contractual Arrangements at least once a year;
- (3) our Company will disclose the overall performance of and compliance with the Contractual Arrangements in our annual reports; and
- (4) our Company will engage external legal advisors or other professional advisers, if necessary, to assist the Board to review the implementation of the Contractual Arrangements, review the legal compliance of Shanghai NIO and our consolidated affiliated entities to deal with specific issues or matters arising from the Contractual Arrangements.