

# REGULATIONS

## INTRODUCTION

This section sets forth a summary of the most significant laws and regulations that affect our business in the PRC. Information contained in this section should not be construed as a comprehensive summary of laws and regulations applicable to us.

## PRINCIPAL REGULATORY AUTHORITIES

In the PRC, NDRC, MOFCOM and the branches of the aforesaid authorities are the competent administrative departments in charge of the apparel and footwear industry. They are responsible for, among other things, making industrial policies, supervising and inspecting the implementation of industrial policies, guiding adjustment of industrial structure, implementation of industry management, reforming industry structure, improving technology, and quality management.

## LAWS AND REGULATIONS IN RELATION TO FOREIGN INVESTMENT IN THE PRC

Pursuant to Provisions on Guiding the Orientation of Foreign Investment (指導外商投資方向規定) promulgated by the State Council on 11 February 2002, the Foreign Investment Industrial Guidance Catalogue (外商投資產業指導目錄) is the basis of the application of relevant policies in examining and approving foreign investment projects and foreign-invested enterprises. The Foreign Investment Industrial Guidance Catalogue sets out “encouraged”, “restricted” and “prohibited” categories for all foreign investment projects in the PRC. For the projects which do not fall into the categories of encouraged, restricted or prohibited projects shall be deemed as permitted foreign investment projects. Pursuant to the Foreign Investment Industrial Guidance Catalogue (外商投資產業指導目錄) (2011 Revision) issued on 24 December 2011 by NDRC and MOFCOM, and became effective as at 30 January 2012, the business engaged by our group does not fall into the “restricted” or “prohibited” categories.

## LAWS AND REGULATIONS IN RELATION TO ENVIRONMENTAL PROTECTION

The PRC government has implemented various environmental protection laws and regulations, including the PRC Environmental Protection Law (中華人民共和國環境保護法), the Law of the PRC on Environmental Impact Assessment (中華人民共和國環境影響評價法), the Law of the PRC on Prevention and Control of Water Pollution (中華人民共和國水污染防治法), the Law of the PRC on Prevention and Control of Air Pollution (中華人民共和國大氣污染防治法), the Law of the PRC on Prevention and Control of Environment Pollution by Solid Wastes (中華人民共和國固體廢物污染環境防治法), the Law of the PRC on Prevention and Control of Environmental Noise Pollution (中華人民共和國環境噪聲污染防治法) and Regulations on the Administration of Environmental Protection of Project Construction (建設項目環境保護管理條例), etc.

Pursuant to PRC environmental laws and regulations, the PRC has established an environmental impact assessment system for project construction, and the construction, expansion and operation of bedding products manufacturing facilities are subject to the advance approval and acceptance of the completed environmental protection facility from the competent PRC environmental authorities. For failure to obtain the advance approval and acceptance of the completed environmental protection facility, the enterprise may be ordered to cease the construction or operation of facilities, or make repairs within the time limit or be fined by the competent PRC environmental authorities.

The relevant PRC environmental protection laws also impose fees for discharge of waste substances, and impose fines and indemnity for the improper discharge of waste substances and serious environmental pollution. The PRC environmental authority may, at its discretion, shut down any facility that fails to comply with the environmental protection laws and regulations.

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### LAWS AND REGULATIONS IN RELATION TO LABOUR AND SOCIAL SECURITY

Enterprises are mainly subject to the following PRC labour laws and regulations: the PRC Labour Law (中華人民共和國勞動法), the PRC Labour Contract Law (中華人民共和國勞動合同法), the PRC Social Insurance Law (中華人民共和國社會保險法), the Regulations of Insurance for Employment Injury (工傷保險條例), the Regulations on Unemployment Insurance (失業保險條例), the Provisional Measures on Insurance for Maternity of Employees (企業職工生育保險試行辦法), the Interim Provisions on Registration of Social Insurance (社會保險登記管理暫行辦法), the Interim Regulations on the Collection of Social Insurance Premium (社會保險費徵繳暫行條例), Regulations on Management of Housing Provident Fund (住房公積金管理條例) and other relevant regulations, rules and circulars issued by the competent governmental authorities.

Pursuant to the PRC Labour Law (中華人民共和國勞動法) and the PRC Labour Contract Law (中華人民共和國勞動合同法), when an employer hires an employee, they shall sign a written labour contract, and the employees' salary shall not be lower than the local minimum wage. The company must establish a system for labour safety and sanitation, strictly abide by the state standards, and provide relevant education and training to its employees. Employees are also entitled to work in safe and sanitary conditions conforming to the relevant rules and standards. Employers shall offer regular health examinations for employees engaging in hazardous occupations.

As required under the PRC Social Insurance Law (中華人民共和國社會保險法), the Regulations of Insurance for Employment Injury (工傷保險條例), the Regulations on Unemployment Insurance (失業保險條例), the Provisional Measures on Insurance for Maternity of Employees (企業職工生育保險試行辦法), the Interim Provisions on Registration of Social Insurance (社會保險登記管理暫行辦法), the Interim Regulations on the Collection of Social Insurance Premium (社會保險費徵繳暫行條例), the PRC enterprise is obligated to provide employees in the PRC with social security covering pension insurance, unemployment insurance, maternity insurance, employment injury insurance and medical insurance.

In accordance with the Regulations on Management of Housing Provident Fund (住房公積金管理條例) promulgated on 3 April 1999 and amended on 24 March 2002, enterprises must register with the relevant Housing Provident Fund Management Center, open a special housing provident fund account at a commissioned bank and pay housing provident fund contributions for their employees. In addition, for both employees and employers, the payment rate for housing provident fund shall not be less than 5% of the average monthly salary of the employees in the previous year. The payment rate may be raised if the employer desires.

Pursuant to the PRC Social Insurance Law (中華人民共和國社會保險法), the government will establish and improve the new type of rural social pension insurance system. The new type of rural social pension insurance combines individual contribution, collective subsidy and governmental subsidy, and its benefits include basic pensions and pensions deposited in individual accounts. Rural residents, who have participated in the new type of rural social pension insurance, may receive the new rural social pension insurance benefits on a monthly basis, if the requirements from the government are met. Based on actual conditions in different places, the people's government at the provincial, autonomous region and municipal level may implement the social pension insurance for urban residents and the new type of rural social pension insurance jointly. In addition, the government will establish and improve the new rural cooperative health care system, and the administrative measures thereof will be formulated by the State Council.

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### **LAWS AND REGULATIONS IN RELATION TO PRODUCTION SAFETY**

Pursuant to the PRC Production Safety Law (中華人民共和國安全生產法) which was promulgated on 29 June 2002 and amended on 27 August 2009, the State Administration of Work Safety is in charge of the overall administration of production safety. The PRC Production Safety Law provides that any entity engaging in manufacturing must meet national or industry standards regarding safety production and provide qualified working conditions required by laws, administrative rules and national or industry standards. The entity engaging in manufacturing must install prominent warning signs at or on the relevant dangerous operation site, facility and equipment. The design, production, installation, use, testing, maintenance, upgrade and disposal of safety equipment must comply with national and industry standards.

### **LAWS AND REGULATIONS IN RELATION TO PRODUCT LIABILITY**

Pursuant to the General Principles of the Civil Law of the PRC (中華人民共和國民法通則), promulgated on 12 April 1986 and amended on 27 August 2009, a defective product which causes property damage or physical injury to any person could subject the manufacturer or seller of such product to civil liability for such damage or injury. In the event that the carrier or warehouseman is responsible for the damage or injury, the manufacturer or seller is entitled to demand compensation for its losses.

Furthermore, the General Principles of the Civil Laws of the PRC was supplemented by the Product Quality Law of the PRC (中華人民共和國產品質量法) promulgated on 22 February 1993 and amended on 8 July 2000 and 27 August 2009 respectively, and the Law of the PRC on the Protection of Consumer Rights and Interests (中華人民共和國消費者權益保護法) promulgated on 31 October 1993 and amended on 27 August 2009 to protect the legitimate rights and interests of end-users and strengthen the supervision and control of the quality of products. If the product sold is sub-standard but not defective, the retailer will be responsible for the repair, exchange, or refund of the sub-standard product and for the compensation to the consumer for its losses (if any). In addition, the manufacturer is liable for the sub-standard product. The retailer is entitled to claim reimbursement from the manufacturer for the compensation paid by the retailer to the consumer. If the product is defective and has caused personal injury or damage to assets, the consumer has the option to claim compensation from either the manufacturer, or the distributor or the retailer. A retailer or distributor who has already compensated the consumer is entitled to claim reimbursement from the liable manufacturer.

Moreover, the Tort Law of the PRC (中華人民共和國侵權責任法) promulgated on 26 December 2009 and effective on 1 July 2010, further provides that where a defective product causes damage or physical injury to any person, the victim may claim compensation from either the manufacturer or the seller. If the defect of the product is caused by the manufacturer and the seller has made the compensation for the defect, the retailer shall be entitled to claim reimbursement from the manufacturer. If the product defect is caused by the fault of the seller and the manufacturer has made the compensation for the defect, the manufacturer shall be entitled to claim reimbursement from the seller.

In accordance with the Insurance Law of the People's Republic of China, Insurance refers to a commercial insurance transaction whereby an insurance applicant, as contracted, pays insurance premiums to the insurer, and the insurer bears an obligation to indemnify him for property loss or damage caused by the happening of a contingent event that is agreed upon in the contract, or to pay the insurance benefits when the insured person dies, is injured or disabled, suffers illness or reaches the age or time-limit agreed upon in the contract.

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Insurance companies and other entities shall not constrain others to enter into insurance contracts, except for such insurances as have been made compulsory by laws and administrative rules and regulations.

### **LAWS AND REGULATIONS IN RELATION TO INTELLECTUAL PROPERTY**

#### **Trademark Law**

Pursuant to the Trademark Law of the PRC (中華人民共和國商標法) promulgated on 23 August 1982 and amended on 27 October 2001, the right to exclusive use of a registered trademark shall be limited to the trademark which has been registered and to commodities on which the use of a trademark has been approved. The period of validity of a registered trademark shall be ten years commencing from the day the registration is approved. If a registrant needs to continue to use the registered trademark after the period of validity, an application for renewal of registration shall be made within six months before the expiration.

The period of validity for each renewal of registration shall be ten years. Any of the following acts shall be an infringement upon the right to exclusive use of a registered trademark: (a) using a trademark which is identical or similar to the registered trademark on the same kind of commodities or similar commodities without a license from the registrant of the registered trademark; (b) selling commodities that infringe upon the right to exclusive use of a registered trademark; (c) forging, manufacturing without authorisation, or selling a registered trademark forged or manufactured without authorisation; (d) changing a registered trademark and putting the commodities with the changed trademark into the market without the consent of the registrant of the registered trademark; and (e) causing other damage to the right to exclusive use of a holder of a registered trademark.

Where a dispute arises from infringing upon the exclusive rights of the registrant of a registered trademark, the parties involved shall settle the dispute through negotiation. If any party refuses to negotiate or the negotiation has failed, the registrant of the registered trademark or the interested parties may bring a suit before a people's court or request the Administration for Industry and Commerce to handle the issue.

The registrant of a registered trademark may license others to use its registered trademark through the trademark license agreement. The licensor shall supervise the quality of the goods in respect of which the licensee uses his registered trademark, and the licensee shall assure the quality of the goods in respect of which he uses the registered trademark. Where the registered trademark is licensed, the name of the licensee and manufacturing location shall be indicated on the product with the licensed registered trademark. The trademark license agreement shall be filed with the State Trademark Office for record.

#### **Patent Law**

Pursuant to the Patent Law of the PRC (中華人民共和國專利法) promulgated on 12 March 1984 and amended on 27 December 2008, patent protection is divided into three categories: invention patent, utility model patent and design patent. Specifically, "invention patent" refers to new technical solutions for a product, method or its improvement; "utility model patent" refers to new technical solutions for a product's shape, structure or the combination of both shape and structure, which are applicable for practical use; "design patent" refers to new designs of the shape, pattern or the combination of shape and pattern, or the combination of the colour, the shape and pattern of a product with aesthetic feeling and industrial application value.

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### ***Invention patent***

Products seeking invention patent protection must possess novel and innovative characteristics, and the grant of an invention patent is subject to disclosure and publication.

After receiving an application for invention patent, if the SIPO finds, upon preliminary examination, that the application is in conformity with the requirements of Patent Law of the PRC, it will publish the application after 18 months from the date of application. Upon the request of the applicant, SIPO may publish the application earlier. Upon the request of the invention patent applicant made at any time within three years from the date of application, the patent administrative department under the State Council may make a substantive examination of the application. If, after the substantive examination, no reason is found to reject the patent invention application, the patent administrative department under the State Council shall grant a patent for the invention, issue an invention patent certificate, register and announce it. The protection period on the invention patent shall be 20 years from the date of application.

Once an invention patent is granted, unless otherwise described by laws, no individuals or entities are permitted to engage in the manufacture, use or import of the products protected by such patent or otherwise engage in the manufacture, use, sale or import of the products directly derived from applying the production skills or methods protected by such patent without consent of the patent holder.

### ***Utility model patent***

Products seeking utility model patent protection must possess both novel and innovative characteristics. Utility model patents will be granted and registered upon application unless there are reasons for SIPO to reject the application after preliminary review. Utility model patents are also subject to disclosure and publication upon application. The protection period for a utility model patent is ten years from the date of application.

Once a utility model patent is granted, unless otherwise described by laws, no individuals or entities are permitted to engage in the manufacture, use or import of the products protected by such patent or otherwise engage in the manufacture, use, sale or import of the products directly derived from applying the production skills or methods protected by such patent without consent of the patent holder.

### ***Design patent***

The products seeking design patent protection must not (i) be the same as or similar to those previously known domestically or abroad, or (ii) infringe upon a third party's legal rights. The application procedure and protection period are the same as utility model patents. The protection period for a design patent is ten years from the date of application.

Once a design patent is granted, without the consent of the patent holder, no individuals or entities are permitted to engage in the manufacture, use or import of the products protected by such patent for the purposes of production and business.

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### LAW AND REGULATIONS IN RELATION TO ANTI-UNFAIR COMPETITION

Pursuant to the Anti-Unfair Competition Law of the PRC (中華人民共和國反不正當競爭法) promulgated on 2 September 1993, when trading on the market, operators shall abide by the principles of voluntariness, equality, fairness, honesty and good faith, and observe generally recognised business ethics. Acts of operators which contravene the provisions of the Anti-Unfair Competition Law of the PRC, which damage the legitimate rights and interests of other operators, and disrupt the socio-economic order, shall constitute unfair competition.

In accordance with the Anti-Unfair Competition Law of the PRC, operators shall not use the following unfair methods in their business transactions which can damage other competitors: (a) to counterfeit the registered trademark of others; (b) to use the specific name, package, decoration of the well-known commodities, or use a similar name, package, decoration of the well-known commodities, which may confuse consumers distinguishing the commodities to the well-known commodities; (c) to use the name of other enterprises or person and make people confuse its commodities to the other's commodities; (d) to counterfeit or falsely use authentication marks, famous-and-excellent-product mark or other product marks, to use the name and address of a factory of another producer, to provide misleading information on the quality of products.

Where an operator commits unfair competition in contravention of the provisions of the Anti-Unfair Competition Law of the PRC and causes damage to another operator, it or he/she shall bear the responsibility for compensation. Where the losses suffered by the injured operator are difficult to calculate, the amount of damages shall be the profit gained by the infringer during the period of infringement by virtue of the infringing act. The infringer shall also bear all reasonable costs paid by the injured operator in investigating the acts of unfair competition committed by the operator suspected of infringing its or his legitimate rights and interests. Where the legitimate rights and interests of an operator are damaged by the acts of unfair competition, the injured operator may institute proceeding in a people's court.

Where an operator uses the same or similar name, package or decoration as those of well-known commodities, which may confuse consumers in distinguishing the operator's commodities from such well-known commodities, the supervision and inspection department shall order the infringer to stop the illegal activities, confiscate the illegal earnings and may, in light of the circumstances, impose a fine ranging from one to three times the illegal earnings.

If the circumstances are serious, the infringer's business license may be revoked, and if the commodities sold are fake and inferior, and such case constitutes a crime, the infringer shall be investigated for criminal responsibility according to law.