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## REGULATORY OVERVIEW

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### FOOD SAFETY

The PRC has established a series of laws and regulations to strengthen the control on production, operation and sales of food.

#### The Food Safety Law

According to the Food Safety Law of the PRC (中華人民共和國食品安全法) (the “**Food Safety Law**”) adopted by the Standing Committee of the National People’s Congress (全國人民代表大會常務委員會) on February 28, 2009 and implemented on June 1, 2009, its implementation rules, food safety standards are mandatory. The Health Administrative Department of the State Council (國務院衛生行政部門) is responsible for formulating and announcing national food safety standards. Where there are no national food safety standards, the provincial health administrative authorities may formulate their own local food safety standards. If there are no national or local food safety standards, enterprises should formulate their own food production standards.

In addition, the Food Safety Law introduces a licensing system on food production and operation. Enterprises that are engaged in food production or food distribution are required to obtain relevant licenses in accordance with law.

Further, pursuant to the Implementation Regulations of the PRC Food Safety Law (中華人民共和國食品安全法實施條例) promulgated and implemented on July 20, 2009, manufacturers and traders who engage in the production of food, food additives and food related products must comply with applicable laws, regulations and food safety standards, establish and improve food safety management system, and take effective management measures to ensure food safety. In addition, the manufacturers and traders shall be responsible for the safety of food they produce and distribute.

#### Production License for Industrial Products

Pursuant to Regulations on the Administration of Production Licenses for Industrial Products of the PRC (中華人民共和國工業產品生產許可證管理條例), which was promulgated on July 9, 2005 and became effective from September 1, 2005, and the Measures for the Implementation of the Administration of Production Licenses for Industrial Products of the PRC (中華人民共和國工業產品生產許可證管理條例實施辦法), which was last amended on April 21, 2010 and became effective from June 1, 2010, a production licensing system is implemented by the state and only enterprises with production licenses are eligible to produce the important industrial products. Furthermore, the period of validity of a production license shall be five years, other than for production licenses for food processing enterprises, for which the period of validity shall be three years. Where, during the period of validity of a production license, there is any change in the relevant standards and requirements for the product, the competent authorities may organize a further examination and inspection in accordance with the provisions of relevant regulations. And where, during the period of validity of a production license, there is a change in the production conditions, inspection method, production technology or technique of the enterprise, the enterprise shall file an application with the relevant authorities, and the competent authorities shall organize a further examination and inspection in light of the provisions of the relevant regulations.

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### **Food Distribution Permits**

Pursuant to the Measures for the Administration of Food Distribution Permits (食品流通許可證管理辦法), promulgated by State Administration for Industry and Commerce (國家工商管理總局) and effective as of July 30, 2009, enterprises engaging in food distribution shall comply with certain standards and apply with competent administrative authorities of industry and commerce for food distribution permits, and those who fail to obtain such permits before their commencement of food distribution business will be subject to confiscation of illegal income, confiscation of operation instrument and products, fines or other administrative penalties.

### **Food Recall**

Pursuant to the Provisions on the Administration of Food Recall (食品召回管理規定) issued and implemented by the General Administration of Quality Supervision, Inspection and Quarantine (國家質量監督檢驗檢疫總局) on August 27, 2007, food recall is categorized into three grades, namely Grade One Recall, Grade Two Recall and Grade Three Recall, based on the severity level of food safety hazards. Food will be recalled on two bases: voluntary recall or recall by order. In addition, in accordance with the Food Safety Law, where a food producer finds that the food it produces does not comply with the applicable food safety standards, it is required to immediately stop production, recall the food on the market, notify the relevant producers, traders and consumers, and record the recall and notification. Where a food trader finds that the food it trades does not comply with the applicable food safety standards, it shall immediately stop trading, notify the relevant producers, traders and consumers, and record the cessation of trading and the notification. Where the food producers consider that the food should be recalled, the food is required to be recalled immediately. The food producers should take such measures as remedy, destruction and harmless disposal for the recalled food, and report the recalling and disposal of the recalled food to the quality supervision department at or above the county level. Where the food producers or traders fail to recall or stop trading of the food failing to comply with the food safety standards in accordance with the law, the quality supervision, administration for industry and commerce, food and drug supervision and administration departments at and above the county level must order them to recall or stop trading.

### **Food Hygiene Standards**

Pursuant to the Standardization Law of the PRC (中華人民共和國標準化法) promulgated by the Standing Committee of the National People's Congress on December 29, 1988 and its implemented regulations (中華人民共和國標準化法實施細則), the food hygiene standard is a compulsory standard imposed on food production enterprises. Food products that fall short of the compulsory standards shall not be distributed or imported.

### **Industrial Standards for Condiment Products**

There is no national standard governing the manufacturing process of cooking wine products in China. The Domestic Trade Industrial Standard for Seasoning Wine of the PRC (中華人民共和國國內貿易行業標準•調味料酒), or the SB/T 10416-2007 Standard, promulgated and adopted by MOFCOM in January and July 2007, respectively, and the Light Industry Standard for Culinary Chinese Rice Wine of PRC (中華人民共和國輕工業行業標準•烹飪黃酒) promulgated and adopted by the National Development and Reform Commission (中華人民共和國國家發展和改革委員會) in July 2005 and January 2006, respectively, or the QB/T 2745-2005 Standard, are the applicable industrial standards for

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cooking wine products in China. Pursuant to these standards, cooking wine products can be manufactured in one of the following three methods: (i) using naturally-brewed yellow rice wine as base; (ii) using alcohol as base; and (iii) using a mixture of alcohol and naturally-brewed rice wine as base.

PRC National Standard for Fermented Soy Sauce (中華人民共和國國家標準•釀造醬油) (GB18186-2000) and PRC National Standard for Fermented Vinegar (中華人民共和國國家標準•釀造食醋) (GB18187-2000) promulgated and adopted by the General Administration of Quality Supervision, Inspection and Quarantine in September 2000 and adopted in September 2001, are the applicable national standards for soy sauce and vinegar products in China. There is no national standard with respect to fermented bean curd products in China, and the Domestic Trade Industrial Standard for Fermented Bean Curd of the PRC (中華人民共和國國內貿易行業標準•腐乳) (SB/T 10170-2007), promulgated and adopted by the MOFCOM in May 2007 and November 2007, respectively, is the applicable industrial standard for fermented bean curd products in China.

### CONSUMER PROTECTION

The principal legal provisions for the protection of consumer interests are set out in the Consumer Protection Law of the PRC (中華人民共和國消費者權益保護法) (the “**Consumer Protection Law**”), which was promulgated on October 31, 1993, implemented on January 1, 1994 and amended in 2009.

According to the Consumer Protection Law, the rights and interests of the consumers who buy or use commodities for the purposes of daily consumption or those who receive services are protected and all manufacturers and distributors involved must ensure that the products and services will not cause damage to persons or properties.

Violations of the Consumer Protection Law may result in the imposition of fines. In addition, the business operator will be ordered to suspend its operations and its business license will be revoked. Criminal liability may be incurred in serious cases. According to the Consumer Protection Law, a consumer whose legal rights and interests are prejudiced during the purchase or use of goods may demand compensation from the seller. Where the responsibility lies with the manufacturer or another seller that provides the goods to the seller, the seller, after settling compensation, has the right to recover such compensation from that manufacturer or that other seller. Consumers or other injured parties who suffer injury or property losses due to product defects may demand compensation from the manufacturer as well as the seller. Where the responsibility lies with the manufacturer, the seller shall, after settling compensation, have the right to recover such compensation from the manufacturer, and vice versa.

### PRODUCT LIABILITY

Manufacturers and sellers of defective products in the PRC may incur liability for loss and injury caused by such products. Under the General Principles of the Civil Laws of the PRC (中華人民共和國民法通則), which became effective on January 1, 1987 and was amended on August 27, 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.

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Pursuant to the Product Quality Law of the PRC (中華人民共和國產品質量法) (as promulgated on February 22, 1993, implemented on September 1, 1993 and amended in 2000), the Law of the PRC on the Consumer Protection Law of the PRC (中華人民共和國消費者權益保護法) (as promulgated on 31 October 1993, implemented on January 1, 1994 and amended in 2009) and the Tort Law of the PRC (中華人民共和國侵權責任法) (as promulgated on December 26, 2009 and implemented on July 1, 2010), the manufacturer is responsible for the quality of the products it produces. Where any harm is caused by a defective product, the injured party may require compensation to be made by the manufacturer or the seller of the product. If the defect of the product is caused by the manufacturer and the seller has made the compensation, the seller is entitled to reimbursement by the manufacturer. If the defect of the product is caused by the seller and the manufacturer has made the compensation, the manufacturer is entitled to reimbursement by the seller.

### ENVIRONMENTAL PROTECTION

According to the Environmental Protection Law of the PRC (中華人民共和國環境保護法), which was promulgated and came into effect on December 26, 1989:

1. any entity that discharges pollutants must establish environmental protection rules and adopt effective measures to control or properly treat waste gas, waste water, waste residues, dust, malodorous gases, radioactive substances, noise, vibration and electromagnetic radiation and other hazards it produces;
2. any entity that discharges pollutants must report to and register with the relevant environmental protection authorities; and
3. any entity that discharges pollutants in excess of the prescribed national or local standards must pay a fee thereof.

The purposes of the Environmental Protection Law are to protect and enhance living environment, prevent and cure contamination and other public hazards, and safeguard human health. The State Administration for Environmental Protection (環境保護部) implements uniform supervision and administration of environmental protection nationwide and formulates the national waste discharge standards. Local environmental protection bureaus at the county level and above are responsible for the environmental protection in their jurisdictions. Government authorities should impose different penalties against persons or enterprises in violation of the Environmental Protection Law depending on the individual circumstances and the extent of contamination. Such penalties include warnings, fines, decisions to impose deadlines for rehabilitation, orders to stop production, orders to re-install contamination prevention and rehabilitation facilities which have been arbitrarily removed or left unused, imposition of administrative actions against relevant responsible persons, and orders to close down those enterprises or authorities.

In addition, the PRC government has promulgated a series of laws on discharge of atmospheric pollutants, waste water, solid wastes and noise to the environment, including Atmospheric Pollution and Prevention Law of the PRC (中華人民共和國大氣污染防治法) (as promulgated by the Standing Committee of the National People's Congress on September 5, 1987, amended on August 29, 1995 and April 29, 2000, and effective as from September 1, 2000), Water Pollution and Prevention Law of the PRC (中華人民共和國水污染防治法) (as promulgated by the Standing Committee of the National People's Congress on May 11, 1984, amended on May 15, 1996 and February 28, 2008, and effective as

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from June 1, 2008), Environmental Noise Pollution and Prevention Law of the PRC (中華人民共和國環境噪聲污染防治法) (as promulgated by the Standing Committee of the National People's Congress on October 29, 1996 and effective as from March 1, 1997) and Environmental Pollution Prevention and Control Law of Solid Wastes of the PRC (中華人民共和國固體廢物污染環境防治法) (as promulgated by the Standing Committee of the National People's Congress on October 30, 1995, amended on December 29, 2004 and effective as from April 1, 2005), which have respectively specified the prevention, control, supervision and administration of atmospheric pollution, water pollution and pollution from noise and solid wastes. Pursuant to these laws, in case of new construction, expansion and reconstruction of projects that discharge pollutants to the atmosphere or water body, and/or produce noise or solid wastes, the relevant enterprise is required to comply with the state regulations concerning administration of construction project environmental protection and make pollutant discharge declaration according to law and discharge pollutants in accordance with regulations.

With regard to enterprises violating these laws, the relevant competent authorities of environmental protection may impose administrative penalties. Any enterprises that have caused an environmental pollution hazard will be responsible for cleaning it up and compensating the entities or individuals directly damaged.

### PRODUCTION SAFETY

Pursuant to the Production Safety Law of the PRC (中華人民共和國安全生產法), effective as of November 1, 2002, production and operating enterprises should meet the safety conditions for production as set out in the Production Safety Law of the PRC and other relevant laws, administrative regulations, national standards and industrial standards. Any entity that does not comply with such safety conditions will not be allowed to engage in any production or operating activities. Production and operating enterprises should provide education and training programs to their employees regarding production safety. The design, manufacturing, installation, application, checking, maintenance, upgrade and abandonment of safety facilities should follow the relevant national standards or industrial standards. In addition, production and operating enterprises should provide employees with protective equipment that meets the relevant national standards or industrial standards, and educate and supervise them in strictly complying with the production rules and regulations and operating procedures of the relevant enterprises regarding safety.

### TAXATION

#### Income tax

According to the Enterprise Income Tax Law of the PRC (中華人民共和國企業所得稅法) (the “**EIT Law**”), which was promulgated on March 16, 2007 and became effective from January 1, 2008, the income tax for both domestic and foreign-invested enterprises is at a uniform rate of 25%. The Regulation on the Implementation of Enterprise Income Tax Law of the PRC (中華人民共和國企業所得稅法實施條例) (the “**EIT Rules**”) was promulgated on December 6, 2007 and became effective from January 1, 2008.

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Pursuant to the EIT Law and its EIT Rules, a resident enterprise is subject to enterprise income tax for the income derived from both inside and outside the PRC. An organization or establishment set up by a non-resident enterprise in the PRC is subject to enterprise income tax for the income derived in the PRC and the income derived from outside the PRC but with actual connection with such organization or establishment in the PRC. For a non-resident enterprise which has not set up an organization or establishment in the PRC, or has set up an organization or establishment in the PRC but the income it derives has no actual connection with such organization or establishment, only its income derived in the PRC will be subject to enterprise income tax.

The enterprise income tax is being levied at the rate of 25%. A non-resident enterprise without a permanent establishment in the PRC or a non-resident enterprise which has set up a permanent establishment in the PRC whose earning income is not connected with the abovementioned permanent establishment will only be subject to tax on its PRC-sourced income. The income for such enterprise will be taxed at the reduced rate of 10%.

Pursuant to the EIT Law and its EIT Rules income from equity investment between qualified resident enterprises such as dividends and bonuses, which refers to investment income derived by a resident enterprise from direct investment in another resident enterprise, is tax-exempt income.

Moreover, pursuant to the Arrangement between Mainland China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (內地和香港特別行政區關於對所得避免雙重徵稅和防止偷漏稅的安排), a PRC resident enterprise which distributes dividends to its Hong Kong shareholders should pay income tax according to PRC law, however, if the beneficiary of the dividends is a Hong Kong resident enterprise, which directly holds no less than 25% equity interests of the aforesaid enterprise (i.e. the dividend distributor), the tax levied shall be 5% of the distributed dividends. If the beneficiary is a Hong Kong resident enterprise, which directly holds less than 25% equity interests of the aforesaid enterprise, the tax levied shall be 10% of the distributed dividends. Meanwhile, Circular of the State Administration of Taxation on the Interpretation and the Determination of the “Beneficial Owners” in the Tax Treaties (國家稅務局關於如何理解和認定稅收協定中“受益所有人”的通知) has stipulated some factors that are unfavourable to the determination of “beneficial owner”.

In addition, pursuant to the Circular of the SAT on Relevant Issues Relating to the Implementation of Dividend Clauses in Tax Treaty (國家稅務總局關於執行稅收協議股息條款有關問題的通知) issued by the SAT on February 20, 2009, all of the following requirements should be satisfied where a tax resident of the counterparty to the tax treaty needs to be entitled to such tax treatment specified in the tax treaty for the dividends paid to it by a Chinese resident company: (1) such a tax resident who obtains dividends should be a company as provided in the tax treaty; (2) the equity interests and voting shares of the Chinese resident company directly owned by such a tax resident reach a specified percentage; (3) the capital ratio of the Chinese resident company directly owned by such a tax resident reaches the percentage specified in the tax treaty at any time within 12 months prior to acquiring the dividends.

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Pursuant to the Administrative Measures for Non-residents to Enjoy Treatment under Tax Treaties (Trial) (非居民享受稅收協議待遇管理辦法(試行)) which came into effect on October 1, 2009, where a non-resident enterprise (as defined under the PRC tax laws) wishes to enjoy the preferential tax treatment under the tax treaty, it is required to apply for approval to or file with the competent tax authority for record because the preferential tax treatment is not automatically applied. Without approval or record filing, the non-resident enterprise will not enjoy the preferential tax treatment as stipulated in the tax treaty.

### VAT

Pursuant to the Provisional Regulations on Value-added Tax of the PRC (中華人民共和國增值稅暫行條例) last amended on November 5, 2008 and became effective from January 1, 2009 and its EIT Rules, all entities or individuals in the PRC engaging in the sale of goods, the provision of processing services, repairs and replacement services, and the importation of goods are required to pay VAT. The amount of VAT payable is calculated as “output VAT” minus “input VAT”. With certain exceptions, the rate of VAT is 17% for those engaging in the sale or importation of goods and for those providing processing services, repairs and replacement services.

### Consumption Tax

In accordance with the Circular of the SAT Concerning the Levy of Consumption Tax on the Seasoning Cooking Wine (No. 742 [2008] of the SAT) (國家稅務總局《關於調味料酒徵收消費稅問題的通知》(國稅函[2008]742號)) promulgated by the SAT on August 21, 2008, cooking wine falls into the category of condiments rather than mixed wine and brewage, and therefore, no consumption tax is levied on it. Cooking wine refers to the liquid condiments which are mixed and made with spirits, yellow rice wine or drinkable alcohol as the main raw materials with the addition of salt and plant spices.

### Urban Maintenance and Construction Tax and Education Surtax

According to Circular of the State Council on Unifying the System of Urban Maintenance and Construction Tax and Education Surtax Paid by Domestic and Foreign-invested Enterprises and Individuals (國務院關於統一內外資企業和個人城市維護建設稅和教育費附加制度的通知), which was promulgated and became effective from October 18, 2010, the Tentative Regulations of the PRC on Urban Maintenance and Construction Tax (中華人民共和國城市維護建設稅暫行條例) promulgated in 1985 and the Tentative Provisions on the Collection of Educational Surtax (徵收教育費附加的暫行規定) promulgated in 1986 by the State Council are applicable to foreign-invested enterprises, foreign enterprises and individual foreigners from December 1, 2010.

Pursuant to Tentative Regulations of the PRC on Urban Maintenance and Construction Tax (中華人民共和國城市維護建設稅暫行條例), which was last amended on January 8, 2011, and Circular of the SAT on Issues Concerning the Collection of the Urban Maintenance and Construction Tax (國家稅務總局關於城市維護建設稅徵收問題的通知), which was promulgated on March 12, 1994 and became effective from January 1, 1994, any enterprise or individual liable to consumption tax, value-added tax and business tax shall also be required to pay urban maintenance and construction tax. Payment of urban maintenance and construction tax shall be based on the consumption tax, value-added tax and business tax which a taxpayer has already paid and will be made simultaneously when the latter are paid.

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Furthermore, the rates of urban maintenance and construction tax shall be 7%, 5% and 1% for a taxpayer in a city, in a county town or town and in a place other than a city, county town or town, respectively.

In accordance with Tentative Provisions on the Collection of Educational Surtax (徵收教育費附加的暫行規定), which was last amended on January 8, 2011, all enterprises and individuals who pay consumption tax, value-added tax and business tax shall also be required to pay educational surtax. The educational surtax rate is 3% of the amount of value-added tax, business tax and consumption tax actually paid by each enterprise or individual, and the educational surtax shall be paid simultaneously with value-added tax, business tax and consumption tax.

### LABOR LAW AND SOCIAL SECURITY

Enterprises are mainly subject to the following PRC labor laws and regulations: Law of the PRC (中華人民共和國勞動法), Labor Contract Law of the PRC (中華人民共和國勞動合同法), Social Insurance Law of the PRC (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 Labor Law of the PRC (中華人民共和國勞動法) and Labor Contract Law of the PRC (中華人民共和國勞動合同法), when an employer hires an employee, a written labor contract shall be entered into, and the employee salary shall not be lower than the local minimum wage. The employer must establish a system for labor safety and sanitation, strictly abide by the national 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 provide regular health examinations to employees engaging in hazardous occupations.

As required under Social Insurance Law of the PRC (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) and the Interim Regulations on the Collection of Social Insurance Premium (社會保險費徵繳暫行條例), PRC enterprises are obligated to provide employees in the PRC with social security insurance premiums 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 April 3, 1999 and amended on March 24, 2002, enterprises shall register with the relevant housing provident fund management center, open special housing provident fund accounts at a designated 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.



### OTHERS

#### Circular No. 75

According to SAFE's Notice on Relevant Issues concerning Foreign Exchange Administration for Domestic Resident to Engage in Financing and Round-trip Investment via Overseas Special Purpose Vehicles (國家外匯管理局關於境內居民通過境外特殊目的公司融資及返程投資外匯管理有關問題的通知) ("Circular No. 75") which became effective on November 1, 2005, a PRC domestic resident legal person or a PRC domestic resident natural person is required to effect foreign exchange registration with the local foreign exchange bureau, when such domestic residents use its/his/her enterprise assets or interests in the PRC to establish or take control of a special purpose vehicle abroad, and its/his/her domestic enterprises receive round trip investments from funds raised by an overseas special purpose vehicle controlled by domestic residents. "Control" as mentioned in the Circular No. 75 refers to the act of obtaining a special purpose vehicle or a domestic enterprise by a domestic resident through acquisition, trusteeship, holding shares on behalf of others, voting rights, repurchase, convertible bonds, etc.

#### M&A Rules

Under the Rules on the Merger and Acquisition of Domestic Enterprises in the PRC by Foreign Investors (關於外國投資者並購境內企業的規定) (the "**M&A Rules**"), which was issued by the MOFCOM, State-owned Assets Supervision and Administration Commission of the State Council (國務院國有資產監督管理委員會), the SAT, the SAIC, the CSRC and the SAFE on August 8, 2006, became effective on September 8, 2006 and was further amended on June 22, 2009 by the MOFCOM, a foreign investor is required to obtain necessary approvals when (i) it acquires equity in a domestic non-foreign invested enterprise (the "domestic enterprise") thereby converting it into a foreign-invested enterprise, or subscribes for new equity in a domestic enterprise via an increase of registered capital thereby converting it into a foreign-invested enterprise; or (ii) it establishes a foreign-invested enterprise which purchases and operates the assets of a domestic enterprise, or which purchases the assets of a domestic enterprise and injects those assets to establish a foreign-invested enterprise.