
APPLICABLE LAWS AND REGULATIONS IN CHINA

As our business is principally conducted in China, the following sets forth a summary of all the laws and regulations applicable to our business. Our PRC Legal Advisers confirm that all the major applicable laws and regulations, including those laws and regulations applicable to our business during the Track Record Period, are set forth below.

ESTABLISHMENT, OPERATION AND MANAGEMENT OF A WHOLLY FOREIGN-OWNED ENTERPRISE

The establishment, operation and management of corporate entities in China are governed by the Company Law of the PRC (中華人民共和國公司法) (the “**Company Law**”), which was promulgated by the Standing Committee of the National People’s Congress (全國人民代表大會常務委員會) (the “**Standing Committee of the NPC**”) on 29 December 1993 and became effective on 1 July 1994. It was subsequently amended on 25 December 1999, 28 August 2004 and 27 October 2005. Pursuant to the Company Law, companies are classified into categories, namely limited liability companies and limited companies by shares. The Company Law shall also apply to foreign-invested limited liability companies and companies limited by shares. According to the Company Law, where laws on foreign investment have other stipulations, such other stipulations shall apply.

The establishment procedures, approval procedures, registered capital requirement, foreign exchange, accounting practices, taxation and labor matters of a wholly foreign-owned enterprise are regulated by the Wholly Foreign-owned Enterprise Law of the PRC (中華人民共和國外資企業法) (the “**Wholly Foreign-owned Enterprise Law**”), which was promulgated on 12 April 1986 and amended on 31 October 2000, and the Implementation Regulations of the Wholly Foreign-owned Enterprise Law of the PRC (中華人民共和國外資企業法實施細則) (the “**Implementation Regulations**”), which was promulgated on 12 December 1990 and amended on 12 April 2001.

WHOLESALE OR RETAIL BUSINESS

Investment in the PRC conducted by foreign investors and foreign-owned enterprises is regulated by the Guidance Catalogue of Industries for Foreign Investment (外商投資產業指導目錄) (the “**Guidance Catalogue**”). The Guidance Catalogue was amended and promulgated by the Ministry of Commerce of the PRC (中華人民共和國商務部) and the National Development and Reform Commission of the PRC (中華人民共和國國家發展和改革委員會) on 31 October 2007 and became effective on 1 December 2007. The Guidance Catalogue specifically divides foreign investment industries into three basic categories: encouraged, restricted and prohibited. Industries not listed in the Guidance Catalogue are generally open to foreign investment unless specifically barred in other PRC regulations. Xinwei (China) and Flyke (China) are both wholly foreign-owned enterprises incorporated in the PRC, and the incorporation, operation and management should comply with the Company Law, the Wholly Foreign-owned Enterprise Law and the Implementation Regulations. The industry in which Xinwei (China) and Flyke (China) are engaged is not listed in the Guidance Catalogue (2007). Our PRC Legal Advisers confirm that the business activities engaged by us are not listed in the Guidance Catalogue and are therefore open to foreign investors.

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The Administrative Measures for Foreign Investment in the Commercial Sector (外商投資商業領域管理辦法) (the “**Administrative Measures**”) was promulgated by the Ministry of Commerce on 16 April 2004 to regulate the operating activities of foreign-invested enterprises engaging in wholesale, retail, commission agent and franchised operations. Pursuant to the Administrative Measures, which took effect from 1 June 2004, foreign investors are permitted to engage in distribution services on a wholly-owned basis from 11 December 2004. Foreign investors can apply to set up both commercial enterprises and stores at the same time in accordance with the procedures and guidelines under the Administrative Measures. A foreign-invested enterprise other than a foreign-invested commercial enterprise that engages in the business activities listed in Administrative Measures shall comply with the provisions of the Administrative Measures and make a corresponding amendment to its business scope in accordance with the law. According to our PRC Legal Advisers, foreign-invested commercial enterprises are those foreign-invested enterprises engaging in wholesale, retail, commission agent and franchised operations and “foreign-invested enterprises” is a generic description of sino-foreign joint equity enterprises, sino-foreign cooperative enterprises and wholly foreign-owned enterprises.

The notice of the Ministry of Commerce on Expanding the Business Scope of Non-commercial Foreign Invested Enterprises to Include Commodities Distribution (商務部關於外商投資非商業企業增加分銷經營範圍有關問題的通知) (the “**Business Scope Notice**”) was promulgated by the Ministry of Commerce on 2 April 2005, according to which, expanding the business scope of non-commercial foreign invested enterprises to include commodities distribution shall apply according to the relevant statutory procedures for expanding the business scope and change the approval certificate of foreign-invested enterprises. The applications of non-commercial foreign invested enterprises which expand the scope of their business scope to establish retail shops and newly established foreign-invested enterprises whose business scope includes the distribution of non-self-produced products will be reviewed and approved according to the Administrative Measures.

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To further simplify the approval procedures for foreign investment in commercial sectors, the Ministry of Commerce issued the Notice of the Ministry of Commerce on Entrusting Local Departments to Examine and Approve Foreign Invested Commercial Enterprises (商務部關於委託地方部門審核外商投資商業企業的通知) (the “**Approval Notice**”) on 9 December 2005 which became effective on 1 March 2006 which entrusts the administrative departments of commerce at the provincial level and the administrative committees of national economic and technological development zones to examine and approve matters relating to the foreign invested commercial enterprises. In accordance with the Approval Notice, the provincial commercial department is entitled to examine and approve matters which shall be reported to the Ministry of Commerce for filing if a foreign invested commercial enterprise engages in the distribution business activities listed in Administrative Measures except specific products and fields. The Approval Notice further provides that the provincial commercial department is entitled to examine and approve an application by a foreign-invested enterprise to open stores within its provincial administrative region or national economic and technological development zones which shall be reported to the Ministry of Commerce for filing if any one of the following conditions is satisfied:—

- (a) the area of a single store to be opened does not exceed 5,000 square metres and the total number of stores does not exceed three within that region or national economic and development zone; and the total number of the same type of stores to be opened throughout China by the applicant does not exceed thirty; or
- (b) the area of a single store does not exceed 3,000 square metres and the total number of stores does not exceed five within that region or national economic and development zone; and the total number of the same type of stores to be opened throughout China does not exceed fifty; or
- (c) the area of each single store does not exceed 300 square meters.

Non-commercial foreign invested enterprises wanting to expand the business scope to include commodities distribution shall comply with the Business Scope Notice. Flyke (China) included “wholesale and retail (no stores)” into its business scope on 30 January 2008 and deleted the limitation “no stores” on 20 August 2008. Flyke (China) set up branch companies in 2008. Flyke (Shuitou) Branch Company is engaging in the sales of the *Flyke* products from the date of its establishment. The above process of expanding the scope of business and the establishment of our branch companies have obtained all the relevant approvals and are in compliance with the relevant requirements under the Administrative Measures and the Business Scope Notice.

TAXATION

Income tax

Prior to 1 January 2008, income tax payable by foreign-invested enterprises in the PRC was governed by the Foreign-invested Enterprise and Foreign Enterprise Income Tax Law of the PRC (中華人民共和國外商投資企業和外國企業所得稅法) (the “**FIE Income Tax Law**”) promulgated on 9 April 1991 and effective on 1 July 1991 and the related implementation rules. Pursuant to the FIE Income Tax Law, a foreign-invested enterprise was subject to a

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national income tax at the rate of 30% and a local tax at the rate of 3% unless a lower rate was provided by laws or administrative regulations. The income tax on foreign-invested enterprises established in special economic zones, foreign enterprises which have establishments or places in special economic zones engaged in production or business operations, and on foreign-invested enterprises of a production nature in economic and technological development zones, was levied at the reduced rate of 15%. The income tax on foreign-invested enterprises of a production nature established in coastal economic open zones or in the old urban districts of cities where the special economic zones or the economic and technological development zones are located, was levied at the reduced rate of 24%. Any foreign-invested enterprise of a production nature scheduled to operate for a period of not less than ten years was exempted from income tax for two years commencing from the first profit-making year (after offsetting all tax losses carried forward from previous years) and allowed a fifty percent reduction in the following three consecutive years. For the foreign-invested enterprises which export products, after the expiry for exempting from taxation or reducing income tax in accordance with the provisions of the tax law, those enterprises with export sales value in a year of more than 70% of its total sales will enjoy a 50% deduction of the enterprise income tax.

According to the newly promulgated Enterprise Income Tax Law of the PRC (中華人民共和國企業所得稅法) (the “**New Tax Law**”) promulgated on 16 March 2007 and effective on 1 January 2008 and the Implementation Rules 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 “**Implementation Rules**”) effective on 1 January 2008, the income tax for both domestic and foreign-invested enterprises will be at the same rate of 25% effective from 1 January 2008. The New Tax Law and the Implementation Rules provides that enterprises that were established prior to 16 March 2007 (i) if foreign-invested enterprises enjoy reduced tax rates under the laws and regulations, the tax rate will be gradually increased to coincide with the new tax rate within five years starting from 2008; and (ii) if foreign-invested enterprises enjoy tax holidays for a fixed period under laws and regulations, such foreign-invested enterprises can continue the holiday until its expiry. However, if an enterprise has not started to enjoy the tax holiday due to a lack of profit, 2008 will be regarded as the first profit-making year and the enterprise starts to enjoy the tax holiday. Xinwei (China) and Flyke (China) are located in the coastal economic open zone which enjoyed the tax preferential rate of 24% before the implementation of New Tax Law in 2008. Flyke (China) was confirmed by the competent tax authority to enjoy exempting from corporate income tax in the first two profitable years from 2008 and being levied at 50% reduction of the tax rate of 25% in the subsequent three years. Xinwei (China) was confirmed by the competent tax authority to be an export-oriented enterprise in 2006 and 2007 and enjoyed 50% deduction of the tax payment based on the prevailing tax rate.

Value-added tax

All entities and individuals engaged in the sales of goods, provision of processing, repairs and replacement services, and the importation of goods within the territory of the PRC shall pay value-added tax (VAT) in accordance with the Provisional Regulations on Value-added Tax of the PRC (中華人民共和國增值稅暫行條例) (the “**Provisional Regulations on VAT**”) and its implementation rules. The Provisional Regulations on VAT was promulgated by the State Council of the PRC (國務院) which became effective on 1 January 1994 and amended on

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5 November 2008. Pursuant to the Provisional Regulations on VAT and its implementation rules, VAT payable is calculated as “output VAT” minus “input VAT”. The rate of VAT is 17% or 13% in certain limited circumstances depending on the product type.

FOREIGN CURRENCY EXCHANGE AND DIVIDEND DISTRIBUTION

Foreign currency exchange

The principal regulation governing foreign currency exchange in the PRC is the Foreign Exchange Administration Rules of the PRC (中華人民共和國外匯管理條例) (the “**Foreign Exchange Administration Rules**”). It was promulgated by the State Council of the PRC on 29 January 1996, became effective on 1 April 1996 and was amended on 14 January 1997 and 1 August 2008. Pursuant to the Foreign Exchange Administration Rules, the payment in and transfer of foreign exchange for current international transactions shall not be subject to the government control or restriction. Renminbi is generally freely convertible for payments of current account items, such as trade and service-related foreign exchange transactions and dividend payments. Under the Foreign Exchange Administration Rules, foreign-invested enterprises in the PRC may purchase foreign exchange without the approval of State Administration of Foreign Exchange (國家外匯管理局, SAFE) for paying dividends by providing certain evidencing documents (board resolutions, tax certificates, etc.), or for trade and services-related foreign exchange transactions by providing commercial documents evidencing such transactions.

While convertible for capital account items, such as capital transfer, direct investment, investment in securities, derivative products or loan are subject to registration with SAFE and approval or file with the relevant governmental authorities (if necessary).

Dividend distribution

Before the promulgation of the New Tax Law, the principal regulations governing distribution of dividends paid by wholly foreign-owned enterprises include the Wholly Foreign-Owned Enterprise Law, the Implementation Regulation and the FIE Income Tax Law. Under Wholly Foreign-Owned Enterprise Law and the Implementation Regulation, wholly foreign-owned enterprises in the PRC may only pay dividends from accumulated after-tax profit, if any, determined in accordance with the PRC accounting standards and regulations. In addition, reserve funds and bonus and welfare funds for workers and staff members shall be withdrawn in accordance with the provisions of the Chinese tax law. The proportion of reverse funds to be withdrawn shall not be lower than 10% of the total amount of profits after payment of tax; the withdrawal of reserve funds may be stopped when the total cumulative reserve has reached 50% of the registered capital. The proportion of bonus and welfare funds for workers and staff members to be withdrawn shall be determined by wholly foreign-owned enterprises of its own accord. These reserves are not distributable as cash dividends. Pursuant to FIE Income Tax Law, dividends paid to its foreign investors are exempt from income tax. Dividend that shareholders obtained from Xinwei (China) and Flyke (China) was exempted from income tax before the implementation of New Tax Law on 1 January 2008.

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After the New Tax Law was promulgated, non-resident enterprises, which have not set up institutions or establishments in the PRC or institutions or establishments are set up but there is no actual relationship with the income obtained by the institutions or establishments, shall pay enterprise income tax in relation to the income originating from China at the tax rate of 20%. However, the Implementation Rules reduced the rate from 20% to 10%. Pursuant to Notice on some Preferential Policies on Enterprise Income Tax (No. 1 2008 of the Ministry of Finance) (關於企業所得稅若干優惠政策的通知) promulgated by the Ministry of Finance and the State Administration of Taxation on 22 February 2008, accumulative undistributed profits of foreign-invested enterprises, generated before 1 January 2008 and distributed to foreign investors after year 2008, shall be exempt from enterprise income tax.

The PRC and the government of Hong Kong signed Arrangement between the Mainland of the PRC and Hong Kong 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稅避免雙重徵稅和防止偷漏稅的安排) (the “**Arrangement**”) on 21 August 2006. According to the Arrangement, no more than 5% withholding tax rate applies to dividends paid by a PRC company to a Hong Kong resident, provided that the recipient is a company that holds at least 25% of the capital of the PRC company. The Notice on Issues relating to the Administration of the Dividend Provision in Tax Treaties (《關於執行稅收協定股息條款有關問題的通知》) (Guoshuihan 2009 No. 81) (the Notice 81) was promulgated on 20 February 2009 by the State Administration of Taxation. The Notice 81 reaffirms the qualification for dividend recipient to enjoy tax preferential of being levied at 5% rate as following: (1) the recipient of the dividend must be a corporation; (2) the recipient’s ownership in the Chinese company must meet the prescribed direct ownership thresholds at all times during the 12 consecutive months preceding the receipt of the dividends; (3) the deal or arrangement is not mainly for the purpose of obtaining the tax preferential.

After the implementation of New Tax Law, if overseas members are deemed to be PRC resident enterprises, dividend obtained by an eligible PRC resident enterprise from the other PRC resident enterprise can be exempted from enterprise income tax; if overseas members are deemed to be non-PRC resident enterprises, shareholders outside China will be subject to a withholding tax rate of 10% for any dividends paid by Xinwei (China) and Flyke (China). In the condition that Xinwei (Hong Kong) and Flyke (Hong Kong) satisfy the minimum direct ownership thresholds requirements of at least 25% of Xinwei (China) and Flyke (China) at all times during the 12 consecutive months preceding the receipt of the dividends, dividends from Xinwei (China) and Flyke (China) may be subject to a withholding tax rate of 5%.

PRODUCT QUALITY

The principal legal provisions governing product liability are set out in the Product Quality Law of the PRC (中華人民共和國產品質量法) (the “**Product Quality Law**”), which was promulgated on 22 February 1993, became effective on 1 September 1993 and amended on 8 July 2000. The Product Quality Law is applicable to all activities of production and sale of any product within the territory of the PRC, and the producers and sellers shall be liable for product quality in accordance with the Product Quality Law. Business in production and sale of Xinwei (China) and Flyke (China) should comply with the Product Quality Law and they shall be liable to product quality.

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CONSUMER PROTECTION

The rights and interests of consumers in purchasing and using commodities or receiving services for daily consumption, or business activities of business operators in their supply of commodities produced and sold by them or services to consumers are governed by 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 31 October 1993 and became effective on 1 January 1994.

According to the Consumer Protection Law, consumers whose legitimate rights and interests are infringed upon in their purchasing or using commodities may demand compensation from the sellers concerned. In case the liability is on the manufacturers or other sellers who supply the commodities to the said sellers, the said sellers shall have the right to recover the compensations from the manufacturers or the other sellers after paying the compensation. Consumers or other victims suffering personal injuries or property damage resulting from defects of commodities may demand compensations either from the sellers or from the manufacturers. If the liability is on the manufacturers, the sellers shall have the right to recover the compensations from the manufacturers after paying the compensations; if the liability is on the sellers, the manufacturers shall have the right to recover the compensations from the sellers after paying the compensations. As producers and sellers, Xinwei (China) and Flyke (China) shall be liable to consumers for their products in accordance with the Consumer Protection Law.

Our operations and products are also subject to the Law of China on Product Quality (the “**Quality Law**”). The Quality Law was promulgated on 22 February 1993 and amended on 8 July 2000. The Quality Law is applicable to the production and sales of any product in China, and manufacturers and selling operators are accountable for any failure to meet the quality standards of products.

ENVIRONMENTAL PROTECTION

Environmental Protection Law of the PRC (中華人民共和國環境保護法) (the “**Environmental Protection Law**”) was promulgated and became effective on 26 December 1989. Regulations on the Administration of Construction Project Environmental Protection (建設項目環境保護管理條例) (the “**Administration Regulations**”) was promulgated and became effective on 29 November 1998. According to the Environmental Protection Law and the Administration Regulations:—

- (a) any entity that might cause environmental pollution and harm public health shall establish environmental protection rules and adopt effective measures to prevent and control the pollution and harm to the environment by waste gas, waste water, waste residues, dust, malodorous gases, radioactive substances, noise, vibration and electromagnetic radiation and other hazards it produces during the process of production and other activities;
- (b) any entity that discharges pollutants must report to and register with the relevant authorities in accordance with the provisions of the competent department of environmental protection administration under the State Council. A statement on environmental impact should be compiled for a construction project that may cause light

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impact on the environment, giving analysis or special-purpose evaluation of the pollution generated and environmental impact caused by the construction project; and a registration form should be filled out and submitted for a construction project that has slight impact on the environment and necessitates no environmental impact evaluation; and

- (c) any entity that discharges pollutants in excess of the prescribed national or local standards must pay a fee for excessive discharge according to state provisions and shall assume responsibility for eliminating and controlling the pollution.

The competent department of environmental protection administration under the State Council shall conduct unified supervision and management of the environmental protection work throughout the country and establish the national standards for the discharge of pollutants. The competent departments of environmental protection administration of the local people's governments at or above the county level shall conduct unified supervision and management of the environmental protection work within areas under their jurisdiction. Different penalties shall be imposed against persons or enterprises in violation of the Environmental Protection Law depending on the individual circumstances and the extent of contamination. Such penalties include fines, the suspension of operations or shut-down or orders to close down or criminal responsibility.

Our operations are also subject to Law of the PRC on the Prevention and Control of Water Pollution (中華人民共和國水污染防治法), Law of the PRC on the Prevention and Control of Atmospheric Pollution (中華人民共和國大氣污染防治法), Law of the PRC on the Prevention and Control of Pollution From Environmental Noise (中華人民共和國環境噪聲污染防治法) and Law of the PRC on the Prevention and Control of Environmental Pollution by Solid Waste (中華人民共和國固體廢物污染環境防治法). These laws and regulations govern a broad range of environmental matters, including air pollution, noise emissions and water and waste discharge. Business operations of Xinwei (China) and Flyke (China) should comply with laws and regulations concerning the environment protection, such as the Environmental Protection Law and the Administration Regulations, and environmental impact assessment should be done and approval shall be obtained before the project was constructed. Operations of companies shall also be under the supervisor of the environment protection bureau. Xinwei (China) and Flyke (China) have obtained the approval as the above mentioned and was confirmed by the environment protection bureau to abide by the laws and regulations on the environment protection in the recent three years.

LAND OWNERSHIP

Pursuant to the People's Republic of China Real Right Law and the People's Republic of China Law on Urban Real Estate Administration of the PRC, the land for commercial use of industry, business, entertainment or commercial dwelling houses, etc. as well as the land with two or more intended users, the transfer thereof shall adopt such means as public tender, auction and other public listing-for-sales. Pursuant to Provisions for the Transfer of State-owned Construction land use right by way of a bid invitation, Auction or Listing on a Land Exchange (Order No. 39 of the Ministry of Land and Resources), assignees can only apply for land registration and obtain the land use rights certificate after the settlement of the transfer fees in accordance with the transfer agreement of the use right to State-owned construction

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land. The land under the application for by Xinwei (China) and Flyke (China) is for the industry use. Therefore, the procedures for public tender, auction and other listing-for-sales are necessary for Xinwei (China) and Flyke (China) to acquire the land use rights and obtain the land use rights certificate after paying the transfer fees.

LABOUR

Employment in the PRC is governed by Law on Employment Contracts of the People's Republic of China (中華人民共和國勞動合同法) (the “**Employment Contracts Law**”), its implementation regulation and the PRC Labour Law (中華人民共和國勞動法) (the “**Labour Law**”). The Employment Contracts Law promulgated on 29 June 2007 and effective on 1 January 2008 and its implementation regulation govern the establishment of employment relationships and the conclusion, performance, amendment, termination and ending of employment contracts between organisations such as enterprises, individual economic organizations and private non-enterprise units and employees in the PRC. According to the Employment Contracts Law and its implementation regulation, an employer's employment relationship with an employee is established on the date it starts using the employee and a written employment contract shall be concluded.

Labour law became effective on 1 January 1995, pursuant to which, the wage paid to employees shall not be lower than the minimum wage standard of the locality and an employer shall establish and perfect the labour safety and health care system, strictly implement the labour safety and health care regulations and standards of the State, carry out labour safety and health care education, provide the employees with labour safety and health conditions and necessary protective gear conforming to the stipulations by the State and provide regular body check-ups to employees engaging in hazardous jobs.

According to Labour Law and Employment Contracts Law, labour contracts shall be entered into from the date on which an employer employs an employee. We must provide wages which are no lower than local minimum wage standards to our employees. We are required to establish a system for labour safety and sanitation, strictly abide by State rules and standards and provide relevant education to our employees. We are also required to provide our employees with safe and sanitary labour conditions that meet State rules and standards and carry out regular health examinations of our employees engaged in hazardous occupations.

We are also subject to various labour and safety laws and regulations in the PRC including Labour Law, Employment Contracts Law, the PRC Production Safety Law (中華人民共和國安全生產法) (the “**PRC Production Safety Law**”), the Regulation of Insurance for Labour Injury (工傷保險條例), the Unemployment Insurance Law (失業保險條例), the Provisional Insurance Measures 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 Regulation on the Collection and the Payment of Social Insurance Premiums (社會保險費徵繳暫行條例) and other related regulations, rules and provisions issued by the relevant governmental authorities from time to time for our operations in the PRC.

The PRC Production Safety Law requires us to maintain safe production conditions as provided in it and other relevant laws, administrative regulations, national standards and industrial standards. Any entity that is not sufficiently equipped to ensure safe production may

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not engage in production and business operation activities. We are required to offer education and training programmes to our employees regarding production safety. In order to comply with applicable national or industrial standards, the design, manufacture, installation, use, checking and maintenance of our safety equipment is required. In addition, we are required to provide our employees with labour protection equipments that meet the national or industrial standards and to supervise and educate them to wear or use such equipments according to the prescribed rules.

LEGALITY OF THE STEPS INVOLVED IN THE REORGANISATION

The Rules on Merger with and Acquisition of Domestic Enterprises by Foreign Investors (Order No. 10) (the “**M&A Rules**”) was promulgated on 8 August 2006. The M&A Rules is applicable to the following situations:—

1. a foreign investor purchases shares or equity interest in a non-foreign-invested enterprise in China (domestic company) or by way of capital increase in the domestic company so as to convert the domestic company into a foreign-invested enterprise; or
2. a foreign investor establishes a foreign-invested enterprise and purchases and operates the assets of a domestic enterprise by agreement or a foreign investor purchases the assets of a domestic enterprise by agreement and uses these assets to establish a foreign-invested enterprise and operate the assets.

Pursuant to the second paragraph of Article 52 of the M&A Rules, the regulations shall not be applicable to a foreign investor purchasing the shares or equity interest in a foreign-invested enterprise in China or capital increase of the foreign-invested enterprise. In December 2008, the MOC reaffirms this interpretation. As for the Reorganisation, Xinwei (China) and Flyke (China) are foreign-invested enterprises and therefore the M&A Rules is not applicable.

The SAFE’s Notice on Relevant Issues Concerning Foreign Exchange Administration for PRC Residents to Engage in Financing and Inbound Investment through Overseas Special Purpose Vehicles) (SAFE Circular No. 75 2005) was promulgated on 21 October 2005. It specifies that “Inbound investment” (返程投資) refers to the direct investment activities inside China carried out by a domestic resident through the use of a special purpose vehicles, including the acquisition or exchange of the shares or equity interest in the Chinese party of a domestic enterprise, establishment of a foreign-invested enterprise inside China and acquisition or control of assets by agreement inside China through the use of this enterprise, acquisition of assets inside China by agreement and investment with the acquired assets to establish a foreign-invested enterprise and increase the capital of a domestic enterprise. The Reorganisation does not fall within the scope of “inbound investment”.

As confirmed by our PRC Legal Advisers, the above laws and regulations are not applicable to the Reorganisation. All approvals and permits required for the Reorganisation have been obtained. The Reorganisation steps took place in the PRC comply with the prevailing laws and regulations and is lawful and valid.