

AAAAA (China) Beverage Co., Ltd.

To whom it may concern

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RE: Opinions from the Preliminary Investigation of the Treatment of Human Resource Problems Involved in Company Merging

With respect to your company's inquiry of issues concerning the treatment of the human resource problems involved in company merging, after our preliminary investigations with the Social and Labor Security Bureau of Minhang District, the General Trade Union of Minhang District and the Shanghai Municipal Foreign Economic Relations and Trade Commission, we hereby report the results of the investigations as follows for your reference.

I. About the signing of labor contract for the recruitment of new employees by the old company

As to the issue that the employees employed by AAAAA Company (hereinafter referred to as the "old company") next year will still sign labor contract with the old company, we think that as before the completion of the merging, the two companies are still independent legal persons and are both entitled to sign labor contracts with their employees on the basis of reaching consensus. If the company needs to recruit new employees or renew labor contracts, the old company may sign labor contracts with employees, and after the completion of the merging, the new company will continue to execute the labor contracts, and the new company does not have to renew labor contracts with the employees. The above operation is feasible in theory.

However, what should be noted is that according to the related merging scheme provided to your company in the last investigation, your company plans to transfer the assets to the new company and let it carry out production and operation by the end of 2008. Therefore, quite a number of working posts will not be provided by the old company but the old company will dispatch employees to work in the new company. In consideration of the above conditions, if new employees are employed next year and the old company signs labor contracts with the new employees, it is suggested that special stipulations should be made on employees' working post in the labor contracts to be signed. For example, the employees' posts will be determined according to the contents of the service agreements or temporary transfer agreements signed by and between the new company and the old company, and the employees' working place should be where the new company is located.

II. Issues concerning the processing of employee removal, recruitment formalities and social security transfer formalities involved in merging

The issue as to whether labor contracts renewed or signed with the new company should be

presented for processing employee removal and recruitment formalities, and social security transfer formalities and so on after the merging of the companies and when the new company receives employees from the old company.

1. Reply of the labor department to the investigation

We called the Shanghai Municipal Labor and Social Security Bureau and the related working personnel replied that under normal conditions no labor contract should be provided for going through the above formalities. However, as what we inquire of is special, they suggest that we should contact the district employment promotion center for their opinions.

We called the Shanghai Municipal Labor and Social Security Bureau and the related working personnel replied that no labor contracts signed by and between the employees and the new company should be provided for going through the above formalities. However, as for merging, though labor contracts continue to be executed by the new company, as the company in which employees work is not the same as the one in the past and the company name has also been altered, the cancelled old company is still required to have the existing new company process recruitment formalities. After the employment filing formalities are completed, it will do to go to the social security center to transfer the employees' social security individual accounts.

2. Consultation of laws, regulations and policies

According to the provisions of the “Opinion on Further Strengthening Labor Employment Filing” (Hu Lao Nao Jiu Fa [2007] No. 25) and the “Supplementary Opinion on Further Managing Well the Labor Employment Filing Formalities” (Hu Jiu Zi [2007] No. 25), as well as the guidelines for handling business released on the website of the Shanghai Municipal Labor and Social Security Bureau: processing of the employee removal and recruitment formalities can be settled within one work day. If an employer holds the “password for online business handling”, the recruitment registration filing procedure can be gone through online (website: www.12333sh.gov.cn), and it is not necessary to go through them in the employment promotion center.

According to the guidelines on business handling released on the website of the Shanghai Municipal Labor and Social Security Bureau, employees' signature or cooperation is not required for the transfer of employees' social security accounts, which can be handled by clerks of the employers, and the related formalities can be settled on the site. But in one of the following cases, employees should provide their employers with certain information before the transfer is handled: ① employees participating in social insurance holding the “Shanghai Residence Permit” for imported personnel should carry a photocopy of the “Shanghai Residence Permit” and the “Notice on Handling the “Shanghai Residence Permit””; ② if employees whose land has been requisitioned and who make payment of premiums at one time select to only pay premiums for unemployment, fertility and work injury insurance, they should present a copy of the labor manual affixed with a confirmation seal of the labor administration department indicating that **“15-year premiums have been made at once for land requisition已经完成征地一次性15年缴费”**. The copies of the above materials should be affixed with the employer's official seal.

According to the above opinions, after the new company and the old company complete merging, the new company does not have to renew or change labor contracts with its employees, but the old company should go through the formalities for employment removal, and the new company should go through the formalities on employment, and then the related formalities for the transfer of the employees' social security accounts to the new company should be gone through. Generally the above formalities can be settled within one work day.

However, what should be noted is that though after the completion of the merging of the new company and the old company, the new company does not have to sign or change labor contracts with employees in theory, yet in consideration of the fact that some employees may have limited understanding of the mode of merging of the new company and the old company, employees may, out of consideration as to whether the change of the employer and of the former length of service are acknowledged, require signing agreements with both the new company and the old company on the acknowledgement of the change of the employer and of the former length of service or require the new company and the old company to issue the related letter of acknowledgement.

III. About the application and formulation of regulations and systems after the completion of the merging

After the completion of the merging of the new company and the old company, the employees of the old company were absorbed by the new company and became its employees, and the new company will continue to execute the labor contracts signed by and between the employees and the old company, but following that will be how the regulations and system of the new company will apply to employees of the old company and the formulation of the rules and regulations of the new company.

1. Consultation of laws, regulations and policies

Article 13 of the “Opinions on the Related Problems Concerning the Implementation of the ‘Labor Contract Law of the People’s Republic of China’ (Draft for Solicitation of Opinions)” by the Ministry of Labor and Social Security stipulates that “when a company is merged, the regulations and systems of the merging company should automatically apply to employees of the merged company, but it should be announced or the employees of the merged company should be notified in the first place. If employees of the merged company have any objection against the rules and regulations of the merging company, they may put forward opinions according to Paragraph 3 of Article 4 in the “Labor Contract Law”.”

2. Reply of the Ministry of Labor to our investigation

Considering the uncertainty of the validity of the above documents, we went the Minhang District Labor and Social Security Bureau for investigation, and the working personnel of the related business department relied: after the merger of the companies, so long as the regulations and systems of the new company are made through democratic procedure, such regulations and systems should automatically apply to the employees of the old company merging into the new

one, who, as the newly recruited employees of the employer, should observe the current regulations and systems of the unit. But the new company should fulfill the obligation of announcement or notification.

“Announcement or notification” means that the employer’s rules and systems or decisions on major events may be known to its employees by sending or passing on such decisions to them in full through legally accepted methods such as giving one labor manual to one person, study and training.

3. Reply of the trade union department to our investigation

With respect to issues involved in trade union transfer and the formulation of regulations and systems of the new company in the course of merging, we went to the Minhang District Trade Union Council for investigation. A staff member surnamed Qiao in the trade union organization department gave detailed reply to our questions.

As the old company is registered in the Minhang Development Area, while the new company in the Zizhu Industrial Park, Mr. Qiao said at first that the trade union of the Minhang Development Area is led by the Shanghai Federation of Trade Union, parallel with the Minhang District Trade Union Council instead of being subordinate to it. The Trade Union of the Zizhu Industrial Park is also directly managed and directed by the Minhang District Trade Union Council, and the trade union to be established by the new company will also be led and guided by the Minhang District Trade Union Council.

Considering that the number of employees in the new company is small, and the minimum number required for establishing a trade union organization has not been reached, and the merging of the new company and the old company will involve many problems related with the trade union, he suggested that we consider first establishing a trade union preparatory team for the new company so as to facilitate the development of future work.

Besides, considering that the present regulations and systems of the new company are not sound and related regulations and systems may have to be formulated and perfected, this will involve how to implement the democratic procedure to formulate regulations and systems as well as how the regulations and systems will apply to the employees of the old company after the merging of the two companies. He said in reply that the law stipulates that the formulation and revision of corporate regulations and systems must be discussed by a staff representatives’ meeting or a plenary staff meeting, while the organization and convention of the staff representatives’ meeting or the general staff meeting should be operated and implemented by the trade union organization. If the trade union organization has not been established in the new company, it will be difficult to organize an effective staff representatives’ meeting or plenary staff meeting and also difficult to implement the related democratic procedure, and the regulations and systems formulated in the new company will also lose their applicability and legality. Therefore he suggested that when the merging process is being realized substantively but not yet completed, the company may consider adding staff to the new company so as to reach the minimum number for establishing a trade

union organization, then the new company establish a formal trade union organization in accordance with law, and a plenary staff meeting be organized and convened afterwards (when the number is less than 100). The regulations and systems of the new company should be formulated through democratic procedure and the regulations and systems of the new company should have procedural legality, and after the completion of the merging, the regulations and systems of the new company should directly apply to the employees of the old company. Meanwhile, he explained that only when the trade union deems that the work load is heavy and new members should be added to the trade union committee can such members be added. The absorption of a large number of employees of the old company by the new company does not necessarily require that committee members be added to the trade union. So long as the term of the committee members of a current trade union does not expire, no matter how many staff members are added, they should automatically become members of the trade union and accept its guidance. He thinks that under such operation, there will be no problem for the representativeness of the trade union, and that the trade union handover and takeover in the period when the new company and the old company are merged and the formulation and application of the regulations and systems of the new company can be completed through the work of the first trade union of the new company.

As for the trade union of the old company, the staff member replied that in fact on the date of cancellation/dissolution of the old company, its trade union would also be dissolved and no longer exists. However, as the property of the trade union is independent, if the trade union of the old company has property, it should be submitted to the trade union of the upper level at the time of dissolution of the old company, but property such as funds may be used in organizing staff activities or staff welfare benefits before the dissolution.

Besides, according to our consultation with the Shanghai Federation of Trade Union, as for an enterprise with less than 25 staff members for which a trade union has not been set up, all the staff members may be summoned in a meeting to hold discussions and the regulations and systems of the enterprise can be formulated upon discussions.

According to the above opinions from investigation and the specific conditions of the new company, we think that matters concerning the formulation of regulations and systems of the new company may be treated with the following methods:

- (1) Formulate and perfect the related regulations and systems before the completion of the merging of the new company and the old company;
 - Before the completion of the merging of the new company and the old company, increase the staff members of the new company to over 25 so as to reach the minimum number for establishing a trade union organization, then the new company establishes a formal trade union organization in accordance with law, then a plenary staff meeting is organized and convened (when the number is less than 100) to formulate the regulations and systems of the new company through democratic procedure to give procedural legality to the regulations and systems of the new company.

- Before the completion of the merging of the new company and the old company, increase employees in the new company (if the number is below 25), then summon all the staff members to hold a meeting to discuss matters concerning the formulation of the regulations and systems of the new company, and put forward schemes and opinions, formulate the regulations and systems of the new company after equal consultation between the new company and all the staff members to give procedural legality to the regulations and systems of the new company.

Besides, after the completion of the merging of the new company and the old company, the new company establishes a formal trade union organization in accordance with law, and the regulations and systems of the new company can be revised or perfected again by the trade union organization according to needs following the legal democratic procedures.

- (2) Formulate and perfect the related regulations and systems after the completion of the merging of the new company and the old company:

After the completion of the merging of the new company and the old company, the new company establishes a formal trade union organization in accordance with law, and the trade union organization formulates and perfects the regulations and systems of the new company according to legal democratic procedures so that the regulations and systems of the new company have procedural legality. .

Our comments on the above two schemes:

Scheme (1): Advantages: before the completion of the merging of the new company and the old company, the regulations and systems of the new company can be established and perfected; after the completion of the merging of the new company and the old company, such regulations and systems can directly apply to the employees of the old company.

Disadvantages: employees have to be added to the new company before the completion of the merging of the new company and the old company.

Scheme (2): Advantages: employees do not have to be added to the new company before the completion of the merging of the new company and the old company

Disadvantages: after the completion of the merging of the new company and the old company, the new company establishes a trade union organization, which will organize and go through the legal procedures for formulating the regulations and systems of the

enterprise. It will take a certain period of time to complete the work, so within this period after the new company absorbs a large amount of employees from the old company, the absence of corporate regulations and systems in the new company as the basis for management may inconvenience the management of the new company (for example, employees violating disciplines cannot be punished during this period).

Besides: considering that in the current judicial practice, regulations and systems not formulated through democratic procedures will not be taken as the basis for judicial decisions, we suggest that the new company, when formulating regulations and systems and implementing the democratic procedures, written materials such as memoranda and summary of opinions in discussion for the implementation of the democratic procedures and formulation of regulations and systems (such documents, in form, should have the signature of the participants or the seal of the trade union etc. so that it has legal validity in form).

IV. About matters concerning the handling of filing procedures of salary, welfare and individual income tax

With respect to the filing procedures of salary, welfare and individual income tax with the labor department involved in the new company in company merging, we consulted related business departments of the Minhang District Labor and Social Security Bureau. The working personnel replied that according to the related regulations, after an enterprise receives the “Manual on the Total Amount of Salary” from a financial institution, it should file with the labor department in time as the basis for withdrawing cash for salary payment. After the completion of the merging of the new company and the old company, if the “Manual on the Total Amount of Salary” is sufficient, it will not be necessary to go through the formalities for changes in filing. If the “Manual” of the enterprise is not enough, the enterprise should go to the labor department to carry out changes in filing by presenting the “Manual on the Total Amount of Salary”.

As for the related filing of welfare and individual tax of the enterprise, the working personnel replied that it was not necessary to carry out such filing. When we called the related taxation department of Minhang District to inquire about the filing of individual income tax, the working personnel also replied that it was not necessary to carry out such filing.

V. About the time node for completing company absorption and change and the payment of employee salaries

With respect to whether the time node when employees are transferred from the old company to the new one is the date when the new approval certificate is ratified or the date when the business license is issued, we went to the Shanghai Municipal Foreign Economic Relations and Trade Commission for consultation and investigation.

1. Consultation of laws, regulations and policies

We have consulted the “Regulations on Merging and Splitting of Foreign-funded Enterprises”, which stipulate that where the companies take the form of merger, the absorbing company should, as the applicant, submit the related materials to the authorities for examination and approval to apply for approval. If over two of the companies to be merged are to be dissolved by the original authorities for examination and approval, it should before submitting the related documents to the authorities for examination and approval according to Article 18 of these Regulations, file an application with the original authorities for examination and approval for dissolution due to merging. If the authorities for examination and approval do not agree with or approve of the merging of the companies, the approval of the original authorities for examination and approval on the dissolution of the companies should automatically become invalid. The Regulations also stipulate that the existing company should, within 30 days after the approval of the merging by the authorities for examination and approval, go through the formalities for the alteration of the approval certificate for foreign investment, while the dissolved company should go through the formalities for handing in the approval certificate of foreign investment for cancellation. Besides, the existing company and the dissolved companies should, from the date when the approval certificate for the foreign-funded enterprises is altered and cancelled, complete the alteration and cancellation registration with the administration for industry and commerce.

According to the above terms, we can judge that the approval of dissolution of companies to be merged should take effect at the same time with the approval of the merging of the two companies, and the loss of the legal entity qualifications of the old company and the alteration of the new company should be deemed as marking the completion of the merging.

2. Reply of the Shanghai Municipal Foreign Economic Relations and Trade Commission to our investigation

To our consultation with the Shanghai Municipal Foreign Economic Relations and Trade Commission, the working personnel there replied that the acquisition of the approval document on merging from the foreign economic relations and trade commission and the completion of the alteration of the approval certificate of the new company should be deemed as marking the completion of the merging, and the dissolution of the old company. Within 30 days after the acquisition of approval, the company should go to the administration for industry and commerce to complete the alteration and cancellation of the business license. The cancellation of the old company in other departments should be carried out according to their respective regulations and terms.

Summarizing the above results of investigation, we think the time node of the transfer of the related employees to the new company should be the time when the merging is approved by the authorities for examination and approval and the new company has altered the approval certificate for foreign-funded enterprises. Within thirty (30) days after the acquisition of the approval certificate, the two companies should complete the alteration or cancellation registration with the administration for industry and commerce.

What should be noted is that according to the related regulations on tax cancellation, the old

company should complete tax cancellation before handling cancellation of registration with the administration for industry and commerce. Then, the tax cancellation of the old company must be handled immediately after the obtainment of the approval certificate. However, after tax cancellation, the old company cannot complete the submission of the related taxes or the submission of individual income tax on behalf of its employees. Therefore, after the merging of the new company and the old company and the acquisition of the approval certificate, it should be more reasonable and feasible for the new company to pay salaries to its employees and submit individual income tax for them. So we suggest that the new company and the old company should manage well the corresponding preparatory work and work relating to handover and takeover before the acquisition of the approval certificate so that the salary payment, individual income tax submission of the new company and the cancellation procedure of the company can be completed smoothly.

Besides, according to our consultation with the Shanghai Municipal Labor and Social Security Bureau, the payment of employee salaries is not related to the employment removal or recruitment filing procedures of the employer, and the employee recruitment and employment removal filing procedures of the employer can be settled within one working day. Therefore, within the same month when the new company acquires the approval certificate, the handover, takeover and settlement of the matters concerning the payment of employee salaries can be completed.

The above opinions from investigations are for your reference.