

# Due Diligence Issues

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## Bonded Processing Arrangements

### ■ Issues relating to Bonded Processing Arrangements

- factory transfer
  - transfer of partially finished goods to another factory for further processing before export
  - non-refund of VAT on inputs

## **Bonded Processing Arrangements (cont'd)**

- **import processing (“buy-sell”)**
  - **title to imported materials**
  - **under customs supervision (no customs duties & import VAT)**
- **processing & assembly (“consignment”)**
  - **no title to imported materials**
  - **no VAT on processing fees**

## **Bonded Processing Arrangements (cont'd)**

- **equipment import**
  - **VAT and duty free**
  - **preferential treatment may be changed**

## Licenses & Permits

- All licenses & permits (issued by national, provincial or other levels of government authorities)
  - e.g. chemical manufacturing WFOE
    - permits for production of dangerous chemical products
    - permits for emission of waste

## Taxes

- Smuggling
  - imported machinery
  - import VAT and Custom duties receipts
- Individual Income Tax
  - withholding tax
  - dual employment contract
- Potential issue of retroactive payment of taxes exempted under tax holiday, in asset acquisition scenario

## Tax Implications on Transfer

- Acquisition of equity interest
  - capital gain is subject to EIT

## Tax Implications on Transfer (cont'd)

- Acquisition of Asset
  - VAT on sale of equipment and machinery, inventory-exemption on used equipment
  - EIT on WFOE's gain
  - stamp tax of either 0.03% or 0.05%
  - deed tax on real property and land use rights 3% - 5%

## Transfer Pricing

- **Potential Tax Audit – Income Tax Adjustment**
- **Transactions with affiliates**
  - tangible property
  - intangibles – cost sharing arrangement?
  - services
- **Transfer Pricing Defense**
  - functional analysis
  - comparability studies

## Land and Building Issues

- **Types of land use rights**
  - collectively-owned, allocated or granted
- **Documents evidencing land use rights and building ownership**
  - land grant contract, land use rights certificate, building ownership certificate
- **Land use rights or building ownership encumbered?**
  - mortgaged?
- **Occupation of building**
  - building completion certificate and approval for fire protection

## Trademark (“TM”)

- Determine types of TM the WFOE possesses; identify the TM for the goods and/or services that will be acquired
- Ownership (own or user rights)
  - TM searches
  - any sub-license granted
- Any TM infringement litigation

## Employment

- Cross-border issues (expatriates visa, income tax liabilities, etc)
- Employment termination issues
- Severance payments for termination
- Insurance policies: employment, asset, medical, etc.

## **Due Diligence Checklist**

### **尽职调查文件清单**

This is a checklist for due diligence exercise on a foreign invested enterprise, which is in the nature of a wholly foreign owned enterprise (“WFOE”), a Chinese-foreign equity joint venture (“EJV”) or a Chinese-foreign cooperative joint venture (“CJV”).

以下系对外商投资企业(“公司”)进行尽职调查所需的文件清单, 该公司之性质为外商独资企业(“外资企业”)、中外合资经营企业(“合资企业”)或中外合作经营企业(“合作企业”)。

#### **1. Definitions/释义**

In this checklist, except as the context requires otherwise:

在此清单中, 除非另行规定:

1.1 “AIC” shall mean the State Administration for Industry & Commerce and its authorized local agency.

“工商局”系指国家工商行政管理局及其授权地方部门。

1.2 “Approval Authority” shall mean the Ministry of Foreign Trade and Economic Cooperation and its authorized local agency, of which:

“审批机关”系指对外贸易经济合作部或其授权地方部门, 其中:

(i) for general government bodies in a municipal level, shall mean the local bureau of foreign trade and economic cooperation (formerly the local commission of foreign trade and economic cooperation);

对于一般市级政府机构, 系指当地对外贸易经济合作局(原对外贸易经济合作委员会);

(ii) for special government bodies in bonded zones or development zones, shall mean the local administrative committee.

对于保税区或开发内政府机构, 系指当地管理委员会。

1.3 “SAFE” shall mean the State Administration of Foreign Exchange and its authorized local agency.

“外管局”系指国家外汇管理局及其授权地方部门。

1.4 “Quality Supervision Authority” shall mean the General Administration of Quality Supervision, Inspection and Quarantine and its authorized local agency.

“质监局”系指国家质量监督检验检疫总局及其授权地方部门。

1.5 “Labor Authority” shall mean the Ministry of Labor and Social Security and its authorized local agency.

“劳动部门”系指劳动和社会保障局及其授权地方部门。

## 2. Constitutive Documents/基本文件

2.1 Certificate of Approval (including initial copy and all of its amendment).  
批准证书(包括最初版本及其所有变更)。

2.2 Business license (including initial copy and all of its amendment).  
营业执照(包括最初版本及其所有变更)。

2.3 Joint Venture Contract (including all of its amendments, not applicable to WFOE).  
合营合同(包括所有其所有变更, 不适用于独资企业)。

2.4 Articles of Association (including all of its amendments).  
章程(包括其所有变更)。

2.5 Project Proposal and/or Feasibility Study Report.  
项目建议书及/或可行性研究报告。

2.6 Approval(s) ever issued by Approval Authority in respect of establishment of the Company, its Feasibility Study Report, Articles of Association and/or Joint Venture Contract (including all of their amendments).

审批机关曾就公司之设立、其可行性研究报告、章程及/或合营合同(包括其所有变更)签发的批复。

2.7 Capital verification report(s) issued by PRC Certified Public Accountants.  
中国注册会计师出具的验资报告。



- 2.8 All other governmental approval, license or permission documents in respect of the establishment and business activities of the Company.  
有关公司设立及业务经营的其它所有政府批准、执照或许可文件。
- 2.9 The full names, nationalities or legitimate domiciles the directors, senior management staff (including the general manager, deputy general manager and financial controller) and the related letters of appointment and/or the board resolutions.  
公司董事、高级管理人员(包括总经理、副总经理和财务总监)之名称、国籍和法定住所、及相关委任书和/或董事会决议。
- 2.10 The principal outside business and other activities performed by such persons listed in the preceding section which may have significant concern to the Company's business.  
前款所述人员进行的、可能对公司业务产生重大影响的主要外部业务及其它活动。
- 2.11 Minutes and resolutions of all board meetings and shareholder meetings (if any), and all the notices for convention of those meetings.  
所有董事会会议和股东会议(如有)之会议记录和决议、以及召开该等会议的所有通知。

### 3. Registration Documents/登记文件

All the governmental registration documents and certificates in relation to establishment and business operation of the Company, including:  
所有关于公司设立及业务运作的政府登记文件及证明, 包括:

- 3.1 Tax Registration Certificate issued by state tax authority;  
国家税务局签发之税务登记证;
- 3.2 Tax Registration Certificate issued by local tax authority;  
地方税务局签发之税务登记证;
- 3.3 Foreign Exchange Registration Certificate issued by SAFE;  
外管局签发之外汇登记证;

- 3.4 Organization and Institution Code Certificate issued by Quality Supervision Authority;  
质监局签发之组织机构代码证；
- 3.5 Registration Certificate for Self-declaration Units issued by Customs (if any);  
海关签发之自理报关单位注册登记证明书(如有)；
- 3.6 Finance Registration Certificate issued by local finance authority;  
地方财政部门签发之财政登记证；
- 3.7 Statistics Registration Certificate issued by local statistic authority;  
地方统计部门签发之统计登记证；
- 3.8 Social Insurance Registration Certificate issued by Labor Authority;  
劳动部门签发之社会保险登记证；
- 3.9 Other governmental registration documents or certificates as may be required by relevant laws or regulation ;  
法律法规可能要求之其他登记文件及证明。

#### 4. Corporate Structure/公司结构

- 4.1 Details of the Company's investors (shareholders)  
公司投资者(股东)详情
- (i) Business License, or the equivalent such as certificate of incorporation or business registration certificate;  
营业执照，或相同性质之文件、如设立证明或商业登记证；
- (ii) corporate authorizations or resolutions on execution of the constitutive documents of the Company, such as Joint Venture Contract and Articles of Association;  
有关签署公司基本文件(如合营合同和章程)的授权和决议  
:

- (iii) agreements on increase or decrease of the registered capital or total investment of the Company and related documents (if any);  
有关增加或减少公司注册资本或投资总额的协议和相关文件(如有);
- (iv) agreements on sales or purchase of equity interest in the Company and related documents (if any); and  
有关出售或收购公司股权的协议和相关文件(如有); 及
- (v) details of the charge established on equity interest in the Company (if any), and related documents such as the deed of charge, the resolution adopted by the Company's board of directors approving such charge, and the governmental approvals or registration documents.

有关部门设定于公司股权之质押(如有)的详情, 及相关文件如质押协议、公司董事会批准该质押的决议、及政府批准及登记文件。

4.2 Details of the Company's subsidiaries, branches, representative offices, liaison offices, distribution centers, research centers and associated companies or enterprises (if any).

公司之子公司、分公司、联络处、办事处、销售中心、研发中心及关联公司或企业(如有)的详情。

4.3 In respect of each such entity in preceding section, if any,  
就前款所述的每一实体(如有),

- (i) Certificate of Approval;  
批准证书;
- (ii) Business License, or Registration Certificate issued by AIC;  
批准证书, 或工商局签发之注册证;
- (iii) Other documents, where applicable, as referred to in Section 2 and Section 3 of this checklist.

本文件清单第2节及第3节提及的其他适用文件。

## 5. Leasehold Property/租赁物业

### 5.1 Lease agreements (the “Lease”) in respect of the lease or occupancy of real properties, and related documents including:

有关租赁或占用不动产之租赁协议(“租约”), 及以下相关文件:

(i) Land Use Right Certificate, Building Title Certificate or Real Property Title Certificates;

业主之土地使用权证、房屋所有权证或房地产权证;

(ii) Lease Permit of the landlord;

业主之租赁许可证;

(iii) Lease Registration Certificate or Documents;

租赁登记证明或文件;

(iv) Receipts or Official Invoices certifying the payment of rents for the last six (6) months.

最近六(6)个月支付租金之收据或正式发票。

### 5.2 The Company’s written confirmation that there is no material subsisting or anticipated breach of major terms or conditions under the Lease or relating documents, whether by the landlord or the Company.

公司书面确认: 无论是业主或公司, 均未或即将实质性地违反租约或其相关文件之主要条款。

## 6. Properties/财产

### 6.1 Details and, where possible, title certificates (or other documents relating to ownership) of all of the significant properties owned, leased, or licensed to used by the Company.

公司拥有、租赁或被许可使用的所有财产的详情, 及其权属证明(或与权属相关的其他文件(如有可能, )。

### 6.2 Details and, where possible, relating documents in respect of the

Company's holding of shares, bonds, notes of, or other investments in, other companies.

公司持有的其他公司的股份、债券、票据或其它投资的详情，及相关文件（如有可能）。

6.3 Details of any insurance or security arrangement established on the properties as referred to in 6.1 and 6.2 above, and where possible, relevant documents.

设置于上述第6.1款和第6.2款所述财产的保险及担保安排及相关文件

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## 7. Finance and Security/融资及融资担保

7.1 Outstanding RMB loans:

尚未清偿的人民币贷款：

- (i) loan agreements;  
贷款协议；
- (ii) agreements and related documents in respect of security arrange, such as mortgage, pledge or guarantee, provided by the Company or any third party for such loan facilities;  
有关公司或任何第三方为贷款提供之担保（如抵押、质押或保证）之协议及相关文件；
- (iii) details of use and repayment of the loan facilities.  
贷款使用及偿还的情况。

7.2 Outstanding foreign currency loans:

尚未清偿的外汇贷款：

- (i) loan agreements;  
贷款协议；
- (ii) agreements and related documents in respect of security arrange, such as mortgage, pledge or guarantee, provided by the Company or any third party for such loan facilities;

有关公司或任何第三方为贷款提供之担保（如抵押、质押或保证）之协议及相关文件；

- (iii) Foreign Debts Registration Certificate issued by SAFE;  
外管局签发之外债登记证；
- (iv) Outward Security Registration Certificate issued by SAFE (if any), and related approval by Approval Authority;  
外管局签发之对外担保登记证（如有），及审批机关之相关批复；
- (v) details of use and repayment of the loan facilities.  
贷款使用及偿还的情况。

### 7.3 Outstanding security arrangement

尚有效的担保安排：

- (i) details of security arrangement, such as mortgage, pledge or guarantee, provided by the Company, and related documents;  
公司提供之担保安排（如抵押、质押或保证）详情及相关文件；
- (ii) Outward Security Registration Certificate issued by SAFE (if any), and related approval by Approval Authority.  
外管局签发之对外担保登记证（如有），及审批机关之相关批复。

### 7.4 Details of other outstanding indebtedness, including but not limited to the shareholder loans.

尚未清偿之其它债务，包括但不限于股东贷款。

## 8. Taxation/税务

### 8.1 full details of types and rates of taxes applicable to the Company, its tax preferential, exemption and/or deduction treatment and outstanding or disputed tax liabilities; and

适用于公司的税种及税率、其享受的税收优惠及/或减免，以及未缴

付或有争议之税款的详情；

- 8.2 governmental approval and permit in respect of the tax preferential, exemption and deduction treatment.

有关税务优惠及减免之政府批准和许可。

## 9. Labor and Personnel/劳动人事

- 9.1 Samples of all types of labor contracts.

各类劳动合同之样本。

- 9.2 labor registration documents, such as Shenzhen Employees Quota Registration Book.

劳动用工登记文件，如深圳特区劳务工指标登记本。

- 9.3 Details of the Company's participation in social insurance schemes (including medical insurance, unemployment insurance, birth insurance, work-related injury insurance and pension schemes) and documentary evidences in respect of its payment of premiums (such all types of List of Premium Payment).

公司参加社会保险（包括医疗保险、失业保险、生育保险、工伤保险和养老保险）之详情，及支付保费之证明文件（如各类缴费清单）。

## 10. Business Contracts/经营合同

- 10.1 Details and relating documents of all material business contracts, which may have a material impact on the Company's business (such as materials supply or products sales contracts, license or sub-license agreements, franchise agreements, management contracts), the monetary amount or value of those contracts in any year shall meet either of the following two requirements: (i) constitutes at least 5 percent of the Company's consolidated revenues; or (ii) constitutes at least 5 percent of the Company's total consolidated net assets till the last day of the preceding financial year.

所有对公司的业务有实质性影响之重要合同（如原料供应或产品销售

合同、许可或分许可协议、特许经营协议、管理合同等 )之详情和相关文件，该等合同的金额或价值在任何一年应满足下述两项要求中的任何一项：(i)至少达到公司合并收益的5%；或(ii)至少达到公司截止前一财政年度最后一日的合并净资产值的5%。

- 10.2 Details and relating documents of all contracts with the Company's affiliates. The transaction under such contract shall be with, directly or indirectly, any of the following: (i) the management, or 5% or more shareholders of the Company, (ii) any entity in which any such person is interested, (iii) any person who is connected or related to any such person, (iv) any entity which is not a subsidiary of the Company, where the transaction is not at an arm's length and/or for full value. Such transaction may exist in aspects including but not limited to funding, human resources, premises and technical support of the Company.

与关联公司之间的所有合同的详情及相关文件。该等合同项下的关联交易应指直接或间接地与下列各方中任何一方的交易：(i)公司管理层、或者持有公司5%以上股权的股东，(ii)任何上述人员在其中享有权益的实体，(iii)任何与上述人员有关的人，(iv)与公司之子公司以外的任何实体间签订的、非按市场价格及/或完整价值进行的交易。该等交易可能存在于公司的各个方面，包括但不限于融资、人力资源、物业及技术支持。

- 10.3 Insurance policies that the Company holds with its business, including but not limited to those insurance policies mentioned in other sections of this checklist.

公司持有的、与其业务有关的保险单据，包括但不限于本清单其余部分中提及的保险单据。

## 11. Intellectual Property Rights/知识产权

- 11.1 A full list of all patents, trademarks, trade names, business names, registered designs or other intellectual property (collectively "Intellectual Property Rights") belonging to, used by or licensed to the Company for its business.



公司为其经营活动所拥有、使用或被许可使用的所有专利、商标、商号、厂商名称、工业设计或其它知识产权的清单。

11.2 In respect of each of the above Intellectual Property Rights, please supply:  
就上述每一项知识产权，请提供：

- (i) name of registered proprietor;  
所有权人名称；
- (ii) copy of registration certificate or equivalent documents;  
权利登记证明或类似文件；
- (iii) date of first registration and the expiry date (if any);  
首次登记的日期及到期日(如有)；
- (iv) geographical coverage of such Intellectual Property Rights  
该等知识产权权利的地理范围；
- (v) any registered user agreements and any assignments; and  
任何使用协议或转让协议；及
- (vi) any license agreements or royalty agreements.  
任何许可使用协议或有关许可使用费的协议。

## 12. Environmental Matters/环保事项

12.1 All assessment reports concerning environmental issues, such as site-selection, environmental impact, safety valuation, pollutant discharge and treatment, of the Company, made by either environmental professionals or government agency.

所有由专业人士或政府部门编制的有关公司环保事宜(如选址、环境影响、安全评价、污染排放及治理)的评价报告。

12.2 All governmental approval, licenses or registration, including:  
所有政府批准、许可及登记，包括：

- (i) approval on site-selection and environmental impact;  
关于选址及环境影响的批准；
- (ii) approval on pollutants treatment facilities;  
关于污染处理设施的批复；
- (iii) pollutant discharge permit;  
排污许可证；
- (iv) approval, registration and license for use, storage, transportation or distribution of dangerous substance (if any), such as dangerous chemical.  
关于使用、存储、运输或分销危险物品（如有）、如危险化学品、的批准，登记和执照。

12.3 Details of Company's pollutant discharge and treatment.  
有关公司之污染排放及治理之详情。

12.4 Receipts or Official Invoices certifying the payment of pollutant discharge fees for the last six (6) months.  
最近六（6）个月支付排污费之收据或正式发票。

### 13. Legal Proceedings/法律程序

Details and relating documents of any litigation, arbitration, administrative or mediation proceedings instituted by or against the Company since its establishment, present or pending, in the PRC and overseas.  
公司自成立起在国内外已经或即将提起或面临之诉讼、仲裁、行政程序、调解的详情和相关文件。