國楓律師事務所
GRANDWAY LAW OFFICES

Newsletter

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Update

GACC Issued Announcement on Adjusting Requirements for Declaration of Imported Goods

On September 19, 2022, the General Administration of Customs of the PRC ("GACC") issued the Announcement on Adjusting the Requirements for Declaration of Imported Goods ("Announcement"). The Announcement clarifies that the filling requirements for the relevant items of the "Customs Declaration Form for Imported Goods" and the "Filing List of Imported Goods at Customs" are adjusted as follows: (i) A new declaration item "Preventive Disinfection Has Been Implemented" has been added. This item is a tick option, including two options of "Yes" and "No". If the domestic consignee of imported goods or its customs declaration agent has carried out "preventive disinfection", select "Yes", otherwise select "No". (ii) The actual inbound goods must be filled with "Preventive Disinfection Implemented" and "Departure Date".

GACC Announced Administrative Measures for Customs Import and Export Commodity Inspection and Acceptance

On September 20, 2022, GACC announced the Administrative Measures for Customs Import and Export Commodity Inspection and Acceptance ("Measures"), which will come into force on December 1, 2022. The Measures consists of five chapters and 28 articles, which are applicable to Custom's acceptance of inspection results of the inspection agencies in the inspection of import and export commodities, as well as the supervision and management of the inspection agencies. The Measures clarifies that the inspection agencies are managed through the directory management system and the Customs will not accept the inspection results of inspection agencies that are not in the directory. The Measures stipulates the access conditions, procedures and corresponding exit mechanism. An inspection agency that has been removed from the directory by GACC shall not re-apply to become an inspection agency within one year.

87 Kinds of Commodities Will No Longer be Subject to Import Inspection

On August 30, 2022, GACC issued the Announcement on Adjusting the Catalogue of Import and Export Commodities that must be Subject to Inspection ("Announcement"), which will take effect on October 1, 2022. The Announcement clarifies that 87 kinds of commodities involving processing equipment in the electronic industry will no longer be subject to imported commodity inspections, including laser cutting machines for irradiating components, machines for assembling components on other printed circuit boards, and aluminum alloy wheels for vehicles and their accessories.

CBIRC Cancelled Administrative License of the Issuance of Non-Capital Bonds

On September 2, 2022, the China Banking and Insurance Regulatory Commission ("CBIRC") issued the Decision on Amending Several Administrative Licensing Regulations, which will take effect on October 8, 2022. The Decision amends relevant provisions of bank administrative licensing, including optimizing the scope and mechanism of bank bond issuance approval. In terms of the approval items for bank bond issuance, it has the following amendments: (i) the administrative license for the issuance of non-capital bonds shall be canceled, and a report shall be made to the CBIRC or the local provincial office within 10 days after the issuance of non-capital bonds; (ii) the issuance mechanism of capital bonds is clarified.

Foreign Equity Investment Pilot Enterprises established in Shenzhen that Only Raise Funds Overseas may not File with AMAC

On September 9, 2022, the Shenzhen Municipal Financial Regulatory Bureau issued the Supplementary Notice on the Pilot Scheme for Foreign-funded Equity Investment Enterprises ("Supplementary Notice"). The Supplementary Notice clarifies that, according to the Shenzhen Pilot Measures for Foreign-Invested Equity Investment Enterprises, foreign-funded equity investment pilot enterprises established in Shenzhen that raise funds overseas and only have foreign investors as contributing shareholders or partners shall be implemented with reference to the relevant regulations of foreign-funded enterprises in Shenzhen, and there is no mandatory requirement for the filing with the Asset Management Association of China ("AMAC").

Security Assessment Measures for Outbound Data Transfers Came into Effect

The Security Assessment Measures for Outbound Data Transfers ("Measures") issued by the

Cybersecurity Administration of China ("CAC") came into effect on September 1, 2022. All critical data and personal information generated and collected in China to be provided abroad shall be subject to security assessment. Critical data and personal information have been identified clearly. It is noted that self-assessment is the pre-procedure of the declaration of security assessment. The Measures have explained the assessment factors and the process thereof. In addition, there is a six-month period to complete the rectification of the outbound data transferred before the effectiveness of the Measures.

Shenzhen Issued Regulation of Shenzhen Special Economic Zone on Foreign Investment

On September 7, 2022, Shenzhen issued the Regulation of Shenzhen Special Economic Zone on Foreign Investment to promote higher-level opening-up. It is prohibited to formulate restrictions for foreign investment access outside the negative list. Shenzhen encourages and guides foreign investors to invest in key development fields and provides foreign investors with investment facilitation, such as tax, financial, clearance and land use preferential policies and corresponding electronic settlement services.

Foreign investors can equally participate in the formulation and amendment of local standards. The process period of complicated foreign investment complaints is shorter than the provisions in Guangdong Province and national standard. In addition, it allows international talents with corresponding overseas professional qualification or accreditation by a recognized international professional organization to engage in practice activities upon recognition of competency level or filing.

Article(s)

Regulatory Compliance for Cosmetics Contract Manufacturing in China

by Kerry Zhang & Ran An

In recent years, consumer demand for cosmetics in China has grown rapidly and per capita consumption expenditure of cosmetics has increased significantly. The regulators also stepped up the supervision of the cosmetics industry by introduction of a number of cosmetics-related regulations such as *"Regulation on the Supervision and Administration of Cosmetics", "Measures for the Supervision and Administration of Production and Distribution of Cosmetics", "Measures for the Administration of the Registration, Recordation of Cosmetics", "Good Manufacturing Practice for Cosmetics"*.

The regulators' efforts have caused cosmetics industry reshuffle. Companies getting prepared and operating compliantly will benefit huge in the coming years. This article will discuss the overall requirements of cosmetics contract manufacturing in China and how cosmetics contract manufacturer ("OEM") and foreign cosmetics brands can adapt to the new regulatory environment and avoid regulatory risks.

1. License

A cosmetics manufacturer shall apply for a special cosmetics production license from provincial drug supervision and administration authority. Such license will be issued only after application materials have been duly submitted, on-site verification of the applicant's production site has been conducted by the regulator, and all approval conditions are met. In the case of entrusted contract manufacturing of

cosmetics, the entrusting party shall be the registrant or record-filing party of the cosmetics manufactured. The entrusted manufacturer shall be an enterprise with a valid cosmetics production license which accepts the entrustment manufacturing within the scope of its approved licenses. The time limit for entrusted production shall not exceed the validity period of the cosmetics production license and the business license. Failing that, there might be civil, administrative, even criminal liabilities.

2. Filing for Contract Manufacturing

When a foreign registrant or recordation entity of imported cosmetics entrusts the production of cosmetics to a local OEM, the foreign registrant needs to make filing with the regulator for its contract manufacturing by submitting relevant materials on the entrustment relationship. If a domestic registrant of cosmetics establishes entrusted production relationship with an OEM, such relationship shall be confirmed by the cosmetics manufacturer through an information service platform.

3. Essentials of Contract Manufacturing Agreement

A typical cosmetics contract manufacturing agreement meeting the filing requirement should cover the following essential matters to pass muster:

(1) The respective recordation obligations of both parties and the corresponding liability for breaches. If the OEM fails to complete the recordation due to the entrusting party's reasons, the entrusting party shall compensate the OEM for any administrative penalty or civil damages suffered as a result.

(2) The entrusted manufacturing products and their properties as well as requirements for craftsmanship, formula, quality, labeling and other aspects. For example, if a foreign entrusting party provides the raw materials for the production of cosmetics, containers and packaging materials that directly contact the cosmetics, the local OEM shall require the entrusting party to be responsible for the raw materials, containers and packaging materials provided, and shall inspect the raw materials provided by the entrusting party to confirm compliance with the requirements prior to proceeding with production.

(3) If the entrusting party uses third party's trademarks and copyrights for entrusted manufacturing, the OEM needs to check the relevant authorization documents provided by the entrusting party, and the entrusting party shall bear full responsibility if there is any infringement.

4. Compliance with Good Manufacturing Requirements

The Good Manufacturing Practice for Cosmetics, which came into force on July 1, 2022, stipulates the requirements that cosmetics production shall meet in terms of institutions and personnel, plant facilities and equipment, materials and product management, production process management, and product sales management. In general, the cosmetics OEM shall standardize production from the following aspects:

(1) OEMs shall conduct production in accordance with the formula and technical requirements of registered or filed products to ensure product quality. Otherwise, the OEM may be civilly liable for breach of contract such as returns or compensation and criminally liable for manufacturing or marketing fake or shoddy products or manufacturing or selling cosmetics not up to hygienic standards.

(2) The cosmetic OEMs shall establish and implement a supplier management system which shall require suppliers to provide at least the following documents: business license; qualification certificate of raw material and packaging material manufacturers; inspection certificate for raw materials and packaging materials. In addition, suppliers of trademark and barcode printing should also provide printing license

and barcode printing license. Suppliers shall also issue official sales invoices and related vouchers indicating raw materials and packaging materials' name, specification, quantity, production date/batch number, expiration date, unit price, amount, date of sale, and the address and contact information of suppliers.

(3) The cosmetic OEMs shall establish and implement a cosmetic material management system under which the purchasing of cosmetic raw materials, containers and packaging materials directly in contact with cosmetics shall be subject to a purchase inspection and acceptance system to verify product certifications, product identifications and inspection reports. The manufacturer shall also establish a purchase ledger to record the product name, specification, quantity, production batch number, the name, address and contact information of suppliers, and purchase date, etc. OEMs should conduct full inspection, random inspection and batch inspection of all purchased raw materials and packaging materials.

(4) The cosmetic OEMs shall establish and implement a quality control system for cosmetic production such that: a. production shall be conducted in accordance with the formula and technical requirements of registered or filed products; b. establishing and implementing a cosmetic production management and record system; c. properly keeping records of receiving raw materials and shipping finished goods, product formulas, weighing records, batch production records, batch packaging records, operation records, and monitoring records of key control points in the production process.

(5) OEMs shall require employees who are directly engaged in cosmetics manufacturing to undergo annual health inspections, obtaining a health certificate prior to engaging in cosmetics manufacturing activities.

(6) Cosmetics manufacturer shall establish and implement a system for the management and inspection record of cosmetics ex-factory inspection. Before putting cosmetics on the market, the OEMs must conduct sanitary inspection of the products in accordance with the national cosmetics hygiene standards, and the qualified products shall be so marked. The OEM's full-time inspectors must have corresponding qualifications. In case the OEM is incapable of in-house inspection, it shall entrust an authorized inspection agency to conduct the inspection.

(7) OEMs shall establish and implement a sample retention management and record system for finished products. Finished products shall be sampled and recorded in each batch. The reserve samples shall be kept under specified conditions and with enough quantity to meet the needs of product quality inspection.

(8) OEMs shall establish and implement a cosmetics sales management and record system. OEMs shall establish a cosmetics sales ledger, record the product flow of cosmetics in detail, including product name, specification, production batch number, quantity, delivery date, consignee and its address and contact information, etc., and retain sales vouchers with relevant information for statutory required time period. Product sales records shall be authentic, accurate and complete.

(9) OEM will generally have access to and become knowledgeable of the product information of the entrusting party during the entrusted production process. Much of such information is business secrets of the entrusting party and should be protected through stricter confidentiality obligations and covenants of the OEMs.

5. Conclusions

When a foreign cosmetics brand owner wants to do contract manufacturing in China, it should carry out

the following steps to stay out of potential regulatory problems: (1) check whether the local OEM meets the regulatory requirements in terms of license, permit, filing, internal compliance policies to stay out of any potential legal risks; (2) draft a proper contract manufacturing agreement with the essential elements; (3) periodic compliance and best practice evaluation on OEM.

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