



## PRC Labor and Employment Law Newsflash

**April, 2012**

### **How Should Chinese Suppliers Deal with Corporate Social Responsibility Audit?**

In recent years, an increasing number of MNCs have incorporated Corporate Social Responsibility (CSR) terms into their procurement contract, requiring the supplier to pass an extensive social responsibility audit conducted by an independent third-party accreditation body as a condition to obtain orders. If a supplier fails to pass the audit and any periodic assessments in the future, the supplier will lose its qualification and orders may be cancelled. How should Chinese suppliers respond to CSR audit? The Labor Law Team of Dacheng Law Offices summarizes the key issues and offers our comments for your guidance.

#### **1. What is the Corporate Social Responsibility Audit?**

Corporate Social Responsibility (Hereinafter may referred to as CSR) refers to the principle that an enterprise shall undertake social responsibilities towards its employees, customers, its community and environment during process of generating profits and serving the shareholder interests.

Corporate Social Responsibility audit involves a vendee or an independent third-party accreditation body representing the vender conducting an on-site audit on the supplier, covering issues surrounding health, safety, child laborer, labor protection, working hour, remuneration, disciplinary measures, environmental impact, etc.

#### **2. What are the contents of CSR standard?**

SA8000<sup>1</sup>, short for Social Accountability 8000, is the one of the global social responsibility standards; the main requirements on labor management include:

- (1) No direct or indirect use of child labor.
- (2) No direct or indirect use of forced or compulsory labor.
- (3) A normal workweek, not including overtime, shall not exceed 48 hours. Overtime shall be performed on a voluntary basis, and shall not exceed more than 12 hours per week. All overtime hours shall be compensated.
- (4) At the minimum, all workers shall be compensated by the legal minimum wage to sufficiently meet the basic needs.
- (5) Provide a safe and healthy workplace, such as hygienic toilets, decent dormitories, etc.

It is important to note that the SA8000 is not the sole compulsory international

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<sup>1</sup>SA8000 is one of the world's first social standards that has improved the lives of over a million workers in 65 countries, launched by Social Accountability International (SAI), a non-governmental, international, multi-stakeholder organization.

standard. For instance, McDonald's conducted CSR audits on all of its suppliers in 2011 using the SA8000 as a standard in addition to more add-on requirements.

3. How to positively respond to CSR audits with the help from professional attorneys?

The business culture will increasingly demand more and more supplier and purchaser of intermediate links to face CSR audit, and we believe that only by participating audit actively with the help of compliance professionals, the business can generate more profits in the long run and build a good reputation. Following are some of the compliance key areas we have listed that the enterprises should pay special attention to:

- (1) Exercise due diligence on investigation and preliminary review. Conduct thorough investigations on the enterprise and make any corrections necessary according to CSR standards and report the findings in the preliminary review.
- (2) First meeting. The auditor and auditee will hold a first meeting to analyze the first round of findings. The attorney will analyze the reports, vendor policies, collect documents related to the audit.
- (3) Internal training. The attorney will provide internal trainings to help various personnel familiarize with the audit standard, compliance strategies and guide them through the implementation process.
- (4) Document review. The attorney will assist with the drafting and reviewing of various documents concerning labor and human resource, rebuilding and designing process to ensure the compliance is up to standard.
- (5) On-site Audit. The attorney will participate in the inspection process, to help ensure the key areas such as manufacturing workshop, warehouse, dormitory, canteen, toilet, bathroom, entrance guard, infirmary, special equipment safety, fire control, storage of dangerous goods and other environmental protection safeguards all in compliance with the CSR standard.
- (6) Accompany interview. The attorney will attend the meetings between the auditor and the enterprise administrative staff to address any concerns relating to the audit and provide legal advice on other related issues.
- (7) Remedial measures. The attorney will propose remedial measures to bring the deficiencies up to meet the CSR standard.

## Case Study: Corporate Social Responsibility Audit, Supplier Must Face

On March 30<sup>th</sup>, 2012, Fair Labor Association (FLA), the US nonprofit institution, conducted an investigation in three Foxconn factories. The FLA team inspected the manufacturing area, dormitory and other facilities, and also examined the living and working conditions of the 35,500 employees. In its report, the FLA team reported that Foxconn violated dozens of labor rights rules and regulations, on issues such as not meeting the overtime work hours and pay standard, etc.

Some of the main problems disclosed in the report are:

1. Significantly surpassing the work hours legal limit. In the past 12 months, workers in all the aforementioned factories have worked well beyond the Chinese labor law standard and FLA standard of 60 hours a week.
2. Significant delay in overtime compensation. 14% of the Foxconn employees may be delayed or not be able to receive their overtime salary for hours worked beyond the limitations stated in their employment contract. The reason being is that Foxconn calculates overtime pay by an increment of 30 minutes, meaning that the employee will not be compensated if the overtime period is 29 minutes. And if overtime period is 58 minutes, only 30 minutes will be credited.
3. Many health and safety concerns. Selectively record accidents that ceases or hinders the production process, blocked fire exits, insufficient protective equipment, etc.

The company's main commitments and remedial measures are:

1. The factory promised to be completely in compliance with legal requirements in China and the standard of FLA, including confining overtime limit within 49 hours a week by July 2013.
2. Compensate overtime pay on a fair basis, and will compensate for owed and delayed overtime pay.
3. Take health and safety measures. The company promises that all supervisors and employees shall report every single accident that leads to injuries. The company also promised to pay closer attention monitoring the work health and safety conditions.

Through this typical case, we can clearly see that failing to meet the CSR audit standards will cause an adverse impact on the enterprise production and management as well as damaging the company reputation. If supplier and purchaser of intermediate link can shift the passive obedience attitude to actively embracing the social responsibility and incorporate it into the business vision and culture, the benefits will ultimately elevate the enterprise strength, competitiveness, image and reputation.

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## 中国劳动法资讯速递

二零一二年四月刊

### 企业社会责任审核，中国供应商如何应对？

近年来，越来越多的跨国公司在采购合约中加入社会责任条款，要求供应商必须按规定通过社会责任审核，并委托第三方认证机构对供应商展开大规模的社会责任审核。只有通过审核才能获得订单，以后还要求进行定期评估，如果后续评估未通过，将面临订单被逐渐取消直至丧失供应商资格。面对企业社会责任审核，中国供应商如何应对？大成劳动法团队提出如下问题及我们的建议，供大家参考：

#### 1. 什么是企业社会责任审核？

企业社会责任（Corporate Social Responsibility，简称 CSR）是指企业在创造利润、对股东承担责任的同时，还要承担对员工、消费者、社区和环境的责任。

企业社会责任审核是买家或其委托的第三方独立机构，依照社会责任标准，通过对供应商的健康安全、童工、工时、工资支付、劳动保护、惩戒措施、环境影响等情况进行的现场审核。

#### 2. 社会责任标准的主要内容：

SA8000 标准<sup>1</sup>是 Social Accountability 8000 的英文简称，是国际上最为通用的社会责任标准之一，其中涉及劳动用工合规方面的主要内容包括：

- (1) 不应使用或者支持使用童工；
- (2) 不得使用或支持使用强迫性劳动；
- (3) 任何情况下都不能经常要求员工一周工作超过 48 小时，每周加班时间不超过 12 小时，应保证加班能获得额外津贴；
- (4) 支付给员工的工资不应低于法律或行业的最低标准，须足以满足员工基本需求；
- (5) 为所有员工提供安全卫生的生活环境，包括干净的浴室、洁净安全的宿舍等。

但企业需要注意的是，SA8000 并非唯一的、强制性的国际标准。如 2011 年麦当劳公司对其供应商进行社会责任审核时，所使用的标准只是与 SA8000 相似，包括了但不限于 SA8000 标准条款。

#### 3. 如何应对企业社会责任审核——变被动为主动，在专业律师参与下积极应对

当越来越多的供应商、中间环节采购商不得不面对企业合规审核时，我们认为企业只有在专业人员的协助和参与下熟悉审核标准、审核流程，积极应对合规审核，才能变被动为主动，争取更多的商业利益，塑造企业良好形象及声誉。我们建议企业结合合规审核流程，在以下几个方面做好应对：

- (1) 尽调与预审。对企业情况做尽职调查、按社会责任标准预审及整改；
- (2) 首次会议。由专业律师一同参与审核方和被审核方的首次会议，协助分析审核目的、买家政策、梳理需要审核的文件资料清单等；
- (3) 企业内训。由专业律师为企业管理人员开展内部培训，使企业熟悉审核标准、审核流程，掌握应对企业合规审核的操作策略与技巧；
- (4) 文件审核。律师协助企业撰写、审核劳动人事管理文件，流程再造与设计，使其合规化；
- (5) 现场核查。专业律师参与、协助现场核查及整改，使得包括生产车间、仓库、宿舍、饭堂、厕所、浴室、门卫、医务室、特种设备安全、消防、危险品存放及环保等符合社会责任标准；
- (6) 陪同访谈。律师参与审核员与被审核企业管理人员的访谈，协助沟通、解释、回答审核员询问；
- (7) 整改措施。针对企业不符合社会责任标准之处，提出并实施切实可行的整改措施，使其合规。

<sup>1</sup>SA8000 是全球首个道德标准，已经改善了世界上 65 个国家，100 万工人的生活，是由美国社会责任国际组织(Social Accountability International，简称 SAI)，一个非政府的国际民间组织提出并制定。

## 案例分析：社会责任审核，供应商不得不面对

2012 年 3 月 30 日，美国非营利机构公平劳工协会（FLA）发布报告称，富士康公司存在数十桩违反劳工权利的行为，如加班时间过长、“克扣”加班工资等。FLA 团队对富士康公司三家工厂中 3.55 万名员工的工作和生活条件进行了调查，包括薪酬和工作时长等。此外，审计内容还涵盖对制造区、宿舍区及其他设施的检查等。

### FLA 报告披露的主要问题包括：

1. 工作时间超标。工作时间严重超过法定标准，在过去 12 个月时间里，富士康三家工厂的工人工作时长都超出了中国劳动法规定的标准，也超出了 FLA 的每周工作 60 个小时标准。
2. 拖欠加班工资。严重拖欠加班工资，14% 的富士康员工可能无法拿到被拖欠的计划外加班工资，原因是富士康以 30 分钟为增量来支付加班工资。也就是说，如果加班 29 分钟，那么就无法拿到加班工资；如果加班 58 分钟，那么就只能拿到 30 分钟的加班工资。
3. 健康和安全问题。存在大量健康和安全方面的问题，如只记录导致停产的事故、逃生出口堵塞、缺乏或配备错误的个人防护装备。

### 富士康公司的主要承诺及整改措施为：

1. 减少工作时间。富士康承诺将在 2013 年 7 月使工厂完全符合中国法律要求和 FLA 的标准，将包括加班时间在内的工作时间限制在每周 49 小时内。
2. 支付加班工资。为所有加班时间支付公平的工资，向拖欠加班费的工人发放追溯性补偿。
3. 采取健康和安全措施。富士康承诺将立即开始要求主管和工人报告任何导致受伤的事故记录，而不仅仅记录导致停产的事故，并将在监控和决策中更多考虑工人的健康和安全。

通过这起典型案例，可以清楚的看出：企业社会责任审核未达标的，不仅仅影响到企业的生产经营，还将对企业声誉造成重创。如果供应商、中间环节采购商能够变被动为主动，把社会责任融入公司经营之中，不仅可以提升员工归属感与向心力，还可以提升企业竞争力和企业形象及声誉。

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