March 9, 2009

Summary Report
Third Party Complaint Regarding Higher Jack, China

Complaint

On February 17, 2006, the Fair Labor Association (FLA) received a Third Party Complaint filed by an individual who requested anonymity regarding Higher Jack Inc. ("Higher Jack"), a factory producing resin products located in Bai Yun District of Guangzhou, China; the factory also operated under the names Hua Hsin Crafts & Arts Products Co. Ltd. and Huaxin Crafts & Arts Products Co. Ltd. The complaint alleged noncompliance issues with respect to health and safety and excessive hours of work at the factory where, among other products, university-logoed goods were being produced for university licensee MBI Inc. ("MBI"), an FLA Category B licensee since 2003.

Prior to receiving the complaint, the FLA received information from the Worker Rights Consortium (WRC) that they had notified MBI of allegations of labor rights violations at Higher Jack. Included in the WRC communiqué was a China Daily article on the death of a Higher Jack worker, allegedly because of long hours of work.¹

Due to the seriousness of the situation, the FLA immediately moved the complaint to Step 2 of the FLA Third Party Complaint Procedure² and notified MBI. On February 21, 2006, MBI requested that the process go immediately to Step 3 of the FLA Third Party Complaint Procedure.³ Though MBI was not sure what leverage they could provide

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¹ China Daily reported on the death of a Higher Jack worker, He Chunmei, 30, in October 2005. The article reported that the Guangzhou Municipal Bureau of Labor and Social Security was investigating the case to see if there was a linkage between Ms. He's death and excessive work hours but, up to that point, no medical or legal verdict had been reached to conclude that Ms. He's overwork was the cause of death (reportedly consecutive 24-hour shifts). On a follow-up visit in December 2008, the local Labor Bureau was unable to provide any information or records regarding Ms. He's case.
² Step 2: Informing the Company or Licensee--The Executive Director will inform the company that a complaint has been filed against it and provide the company with the information supplied by the complainant. The FLA will also provide a preliminary indication as to which Workplace Standards are potentially non-compliant. The company then has up to 45 days either to request that the process go directly to Step 3 or to investigate the alleged noncompliance internally…
³ Step 3: Assessing of the Compliant by FLA--The FLA will determine whether … through use of either an expert or an FLA Independent External Monitor. … The company will ensure that the assessor has access
given that they accounted for a small share of production at Higher Jack, they committed to participate fully in this process.

**Assessment by FLA**

The FLA engaged Impactt Ltd., a FLA-accredited monitor in China, together with Hong Kong Workers' Health Centre (HKWHC), a non-profit, non-governmental organization with a 20-year history in protecting workers' health with service centers located in Hong Kong and Mainland China, to conduct an Independent External Monitoring (IEM) visit at Higher Jack.

Impactt and HKWHC, accompanied by FLA's Regional Manager for China, conducted an unannounced IEM at Higher Jack on April 3, 2006. The visit by the team took Higher Jack management by surprise and the team was initially not allowed into the factory. After extensive explanations and perseverance on the part of the FLA Regional Manager, the management allowed the monitoring team access to conduct the IEM.

The IEM documented that Higher Jack mainly produced wooden decorative items and poly-resin art crafts. The factory consisted of four buildings, including administrative offices, main production area, warehouse and workers' dormitory. Though the factory claimed that it employed about 200 workers, the monitoring team observed fewer than 100 workers; the workers were mainly women that appeared to be between the ages of 16 to early 40s.

Despite obstructions placed by Higher Jack management throughout the IEM process, including false payroll records, double books, coaching of workers, and even an attempt to bribe the monitoring team, the monitors were able to identify major labor code violations.⁴ Some of the findings from the IEM are the following:

- **Hours of Work and Overtime.** Overtime was compulsory and workers were fined if they did not work overtime. Overtime was not accurately recorded and overtime wage for hourly workers were below the legal requirements.

- **Wages and Benefits.** Worker interviews uncovered that workers were being paid less than legal minimum wage; most migrant workers were not provided social insurance; wages were being paid one month in arrears; and overtime records were being hidden by managers.

- **Health and Safety.** Not all chemicals were labeled and workers did not know about the hazards of the chemicals; no special precautions were made for pregnant

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⁴ http://www.fairlabor.org/trackingcharts?y=2006#MBI. Refer to the Appendix for full monitoring reports by Impactt and HKWHC.
women; the factory did not have the proper Occupational Health and Safety forms, including missing Material Safety Data Sheets for chemicals used in production.

- Child Labor. There were obvious discrepancies between workers' ID cards and information that appeared in their personnel records. The factory did not seem to have an adequate system to verify workers' real ages and to check that the ID cards were authentic.

- Forced Labor. Worker interviews illustrated the difficulty for workers to get approval for resignation, ultimately forcing workers to continue to work at the factory or leave without receiving the last 1-2 month's earned wages.

- Code Awareness. MBI did not communicate to the factory managers about the FLA or FLA's Code of Conduct and its policies of unannounced IEMs.

The worker interviews provided the opportunity to ask workers about the conditions and demands that workers were facing at the time of He Chunmei's death on October 28, 2005. Some workers mentioned that He's death coincided with a time when management sped up production and adopted piece-rate compensation as an incentive to finish current production before moving into a new production facility.

The IEM also elicited information from factory management indicating that MBI's share of production at the factory may have exceeded the share initially reported. During the IEM, Higher Jack management and MBI's agent, Ceramasters, stated that MBI accounted for up to 30 to 40% of production at Higher Jack. Since MBI sourced indirectly via an agent, the company representatives did not definitively know the percentage share of production at Higher Jack. They stated that the production at Higher Jack may have also been as low as 10% or less depending on the season and product demand.

Corrective Action Plan

Based on the April 2006 monitoring report, the FLA consulted with MBI, its agent Ceramasters, and a non-FLA affiliated company doing business at Higher Jack to develop a corrective action plan (CAP). The FLA recommended a strategic approach to remediation at Higher Jack, particularly due to the seriousness and extensiveness of the labor code violations and the perception that the owner of the factory might close the facility if too many remediation demands were placed at one time. Thus, the remediation process was divided into three phases, with Phases 1a and 1b to run concurrently, followed by Phase 2.

Phase 1a: Issues dealing with hazardous working areas, in particular unmarked chemical containers, lack of Material Safety Data Sheets (MSDS), areas where pregnant workers are present. Other issues to be addressed during this phase were posting of MBI's Code of Conduct, correcting minimum wage payments, removal of fines against workers, and issues dealing with juvenile workers.
An important element in this phase was to establish a remediation committee within the factory comprised of management and workers.

**Phase 1b:** Labor rights and code awareness training for workers and development by management of a plan to reduce overtime.

**Phase 2:** Management trainings and accurate record keeping.

**Remediation Efforts and Results**

On October 26, 2007, MBI provided the following report outlining its activities and the progress of remediation at Higher Jack:

**Summary**

The remediation that MBI initiated with Higher Jack in spring, 2006 has been unsuccessful. Despite some initial progress and continued monitoring (primarily by our locally based agent), this factory has not achieved sufficient or sustained improvement.

Higher Jack's deteriorating business leaves little hope for a turnaround. The painted resin giftware market has suffered a sharp decline. Much of what remains has shifted down-market to more price-sensitive products, where Higher Jack cannot compete with factories located in lower cost areas. At the same time, Higher Jack's local (Guangzhou) labor market has tightened; they continue to lose (many of their best) workers to newer, more profitable industries. The resulting drain has nearly destroyed the factory's ability to produce products that meet MBI's standards for detail, complexity and quality. Consequently, MBI has little, if any, potential for ongoing business with Higher Jack.

**Timeline**

1. **April, 2006:** Based on third party complaint filed, the FLA commissioned a 3rd party audit of Higher Jack. The extensive non-compliance findings are listed on the accompanying tracking chart. [http://www.fairlabor.org/trackingcharts?y=2006#MBI]
2. **May, 2006:** FLA and MBI representatives (including MBI's agent) traveled to the factory to review the non-compliance issues with both Higher Jack's owner and general manager. The factory's management agreed to participate in the remediation process, starting immediately with Phase 1A issues.
3. **June, 2006:** MBI sent a follow-up summary listing all relevant actions and a timetable to both the FLA and the factory for review and agreement.
4. **July, 2006:** MBI's agent visited the factory to review its initial progress and the detailed actions listed in the tracking chart.
5. **September-December, 2006:** MBI's agent continued to visit the factory to monitor its progress. The FLA code had been posted, punitive fines had
been eliminated (per the factory manager), and the factory agreed to install a confidential worker hotline monitored by a 3rd party. The worker hotline was installed shortly thereafter. During this period, however, the factory's business continued a steep decline (see above). In addition, the factory's owner became seriously ill; he remained incapacitated (in Taiwan) during early 2007.

6. January, 2007: Mixed reports from MBI's agent and negative feedback from the worker hotline provider prompted another MBI trip to the factory. The meeting included MBI, MBI's agent, and Higher Jack's general manager (the owner was still incapacitated). Many of the general manager's compliance claims -- including some of the simplest fixes -- were contradicted by our subsequent walk-through of the factory. FLA codes were no longer prominently displayed, first aid kits were sparse and lacking basic supplies, chemicals and power equipment were improperly labeled/secured, and protective masks, goggles, etc. were not in use (though some were available). No worker accident records were on file. Most all of the more complex issues remained unaddressed. After the walk through, the general manager's attitude indicated nothing more than a superficial effort to achieving compliance.

7. February - August, 2007: MBI and the FLA agreed to allow MBI's agent to meet with the factory owner in Taiwan, discuss the outcome of the January meeting, and provide a six month period to turn the situation around. The factory owner was open about the factory's declining business and diminished capabilities, yet willing to cooperate.

8. September, 2007: Reports from MBI's agent indicated no real progress. In addition, the factory's loss of skilled workers has damaged their ability to produce MBI's relatively complex products, leaving little, if any business together. Lastly, MBI's agent is skeptical that the factory can remain open for more than another 6-12 months.

Conclusion

The factory's compliance efforts over the past 18 months have been token, at best. Even with a change in attitude, their capacity to improve has diminished with the ongoing decline of their business. MBI's influence with Higher Jack has also waned as our business together has dried up.

Therefore, I recommend closing this remediation and re-focusing (these) compliance efforts to where we can have a real, sustained impact.

Conclusion and Recommendations by FLA

Despite agreement among MBI, Ceramasters, and Higher Jack to a corrective action plan (CAP), there is very little positive to report.

The cited October 2007 MBI report describes MBI's attempts to discuss compliance issues at the factory and clearly sets out Higher Jack's lack of cooperation in implementing the CAP. As an affiliate of the FLA, MBI bears ultimate responsibility for
the implementation of the remediation plan. MBI lacked experience in monitoring and remedying issues in its supply chain and relied heavily on its agent, Ceramasters, and on the good will of the factory manager and owner. Ceramasters, a partner with no labor compliance experience, reported remediation actions solely through discussions with management that were not verified and that were ultimately contradicted during MBI staff’s visit to the factory in January 2007. The remediation efforts did not yield adequate responses to the issues raised in the IEM and revealed that MBI was not sufficiently equipped to handle labor compliance risks in its contract supply chain as outlined in the FLA obligations of companies. The problems at Higher Jack were compounded by the lack of factory management commitment and decreasing orders at the factory. By the end of 2007, MBI reported having no more orders at Higher Jack.

During a follow-up visit in December 2008, the FLA was notified that Higher Jack no longer operated in the location or within the industrial zone where the factory was located when the IEM was conducted. It can be surmised that the factory closed, although it may have moved to some other location in the Guangzhou area or to another location in China. Given MBI's ending of a commercial relationship with the factory and its likely closure, continuation of the Third Party Complaint and of efforts to remediate noncompliance issues at the factory are impractical. However, in order to avoid a repetition of the situation at Higher Jack in the future the FLA developed the following list of recommendations that MBI agreed to fulfill and report on progress to the FLA.

1. Review the MBI annual progress report governing participation in the FLA and provide the FLA with a revised report that indicates how it plans to avoid the recurrence of the Higher Jack situation.

2. Ensure that the revised report includes an agent accountability policy and plan which requires agents to conduct pre-sourcing labor compliance audits and involve MBI in the factory selection process.

3. Attend FLA's trainings on labor compliance being offered to Category B Licensees and ensure that its agents also receive such training.

4. Increase from one to two the number of FLA IEMs conducted in 2009 and 2010 and work closely with factories to implement appropriate remediation, keeping the FLA informed of remediation activities and results.
APPENDIX
Hua Hsin Factory Assessment Report
For FLA
APRIL 2006

<table>
<thead>
<tr>
<th>ISSUE</th>
<th>DATE</th>
<th>PURPOSE OF ISSUE</th>
<th>APPROVED</th>
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<tr>
<td>I</td>
<td>04/04/2006</td>
<td>FOR CLIENT REVIEW</td>
<td>R.HURST</td>
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1. Introduction

This report details the findings of the factory visit carried out in April 2006 by:
• Jing Chen – Impactt Limited
• Ge Youli – FLA
• Janne Liu – Worker interviewer
• Sun Mei Qin – Worker interviewer

The visit was unannounced and contained the following elements:
• a visual inspection of the workplace
• discussions with managers including:
  o Mr. Jack H D – General Manager
  o Mr. He – Plant Manager
  o Mr. Tan – Assistant Plant Manager
  o Mr. Li – HR Department
• interviews with 17 randomly selected workers (6.36% of employees).
• review of pay and hours records, accident book and other key documentation.

2. Findings

Overview
The factory is a small Taiwanese-invested factory producing arts and crafts. At the end of 2005, the factory moved to its current location in the suburbs of Guangzhou. The main processes on-site include: moulding, trimming, colour-painting, paint spraying, assembly and packing.

The factory's main customers include: MBI (30%-40%, through a Taiwanese agent, Ceramasters) and (10%). The FLA and Impactt were visiting the factory on behalf of MBI. In recent years, the factory's business has significantly declined. 5 years ago, the factory employed 5000 workers; 1 year ago, it had 1500 workers; today it has fewer than 300 workers. We later called the agent, Ceramasters, and they said that business at the factory has suffered due to fierce competition and labour shortage problems.

The factory was taken by surprise by this unannounced audit. When we arrived, the General Manager was in a meeting with some customers and we were asked to stay in a meeting room while the factory verified the authenticity of the visit. As we waited for managers to get back to us (which was taking rather a long time), we realized that they were probably using this time to clean things up and prepare for our visit. In order to view what was actually happening in the factory, we decided to go to the workshop so that we could get started.

On the workshop bulletin board, we found that there was a notice that provided guidelines to workers about how they should respond to auditors' questions. This was in preparation for a audit which was planned for the following week.

Our factory walk around was soon interrupted by furious managers who said that they were not aware of the FLA and the relationship between the FLA and their client MBI. They also said that they would reject our visit because we entered their workshop without their permission. The visit was put on hold until the FLA was able to convince the General Manager that the visit should go ahead. However, we were not able to resume our work until the afternoon, by which time all bulletin board notices had been removed from the workshops and other preparations had been arranged.

Ceramasters said that they understand that MBI is an FLA member, but that they were not aware of FLA unannounced audits. They confided that while their factories did not sign contractual agreements to abide by the FLA Code, they have notified factories 2 years ago that
they should follow the Code. The factory may not be able to remember since they have not experienced with FLA unannounced audits before.

The factory was found to have false hourly and payroll records; there were serious discrepancies between clock cards and supervisor attendance records/leave records/disciplinary records. Unfortunately, the factory managers were unwilling to admit that their records were false and they refused to show any alternative records to the evaluation team despite our efforts to encourage their openness. Managers appeared worried that there may be some business repercussions from their buyers if problems at the factory were exposed and they therefore tried to encourage the audit team not to show the factory in too bad a light, even to the extent of offering the lead auditor a red envelope (a cash “bribe”). Workers were coached on how to answer auditor’s questions. They appeared to be extremely nervous and were not able to talk freely to the worker interviewers.

Part of the reason why the FLA and Impactt visited the factory was to investigate a recent incident at the factory where a female worker died from exhaustion after 4 consecutive days of excessive overtime working. However, factory managers seemed tired of talking about this case and they were not willing to talk in much detail about what happened.

Key findings include:

**Seasonality**
- The low season is usually from December to February.
- Workers reported that orders appear to be adequate all year around and that the factory may subcontract some work out in the peak season.

**Workers**
- The factory has 278 workers, of which 205 of them are production workers.
- The majority of workers are migrant workers from Sichuan, Henan, Hubei and Hunan provinces.
- Some workers have worked at this factory for around 3 or 4 years.
- The factory is facing a labour shortage problem, which was heightened after it moved out of Guangzhou into the suburbs.
- The attendance records of April 3rd showed that 99 workers worked on the colour painting lines but less than half of them were present on-site during the visit. It is possible that managers had asked some of the workers to leave the site during our visit because they did not want the audit team to see (or interview) these workers or the processes in which they usually engage.

**FORCED LABOUR**

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<tr>
<th>The law</th>
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<tbody>
<tr>
<td>Employers are not allowed to take deposits from workers.</td>
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<tr>
<td>Workers must have contracts which specify their salaries.</td>
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<tr>
<td>Employers are not allowed to retain original ID cards or residency permits.</td>
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<tr>
<th>Deposits</th>
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<tr>
<td>Workers reported that they are asked to pay RMB 35 for uniforms.</td>
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<tr>
<td>Worker said that 1% of their take home wages is compulsorily deducted for an internal pension fund. However, it is unclear where this money goes.</td>
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<tr>
<td>No other deposits were reported.</td>
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<tr>
<th>Contracts and Notice</th>
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<td>The factory buys contract templates from the local labour bureau.</td>
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CONFIDENTIAL
The duration of the contract is 1 year.

Workers sign 2 copies of their contract. One copy is kept in the HR department; the other is kept by the production supervisors. Workers are not given a copy of their signed contract.

The HR supervisor says that the factory has signed contracts with all workers who were recruited prior to December 1, 2005. Workers who have been recruited since that date have not yet signed contracts with the factory.

Some workers interviewed say that they have not signed a contract with the factory even though they have worked at the factory for more than 1 year.

Workers also sign to say that they have read and agree to comply with the factory’s rules.

The old factory rules, which were in operation prior to 2006, specified that
  o there is one week of apprenticeship and 3 months of probation for all new workers.
  o if workers violate 3 factory rules they will be dismissed
  o workers who are dismissed in the apprentice or probation periods will not receive any salary.

These rules were amended in January 2006 to 15 days of probation and a notice of 15 days.

Workers say that the probation period used to be 3 months, but has now been reduced to between 7 days and 1 month, depending on the performance of the worker involved.

Workers say that it is very difficult to obtain resignation approval. In most cases, they have to leave the factory without getting the needed approval which means that they can not receive their final 1-2 months’ salary.

In the past 3 months, more than half of the workers who left the factory left without obtaining approval from management.

Recommendations:
  - The factory should return the uniform fees to workers.
  - The factory should stop and return the pension fund money to workers (unless it is voluntary and it is clearly communicated to workers how they benefit from these payments).
  - The factory should make sure that all workers sign contracts with the factory as soon as they enter the factory. Workers should retain a copy of their contracts,
  - The factory should allow all workers who give one month’s notice to receive their full salary for all the months that they have worked.

CHILD LABOUR

The Law
  - The minimum working age is 16 throughout China.
  - Young workers (between the ages of 16 and 18) must be registered with the local labour department. They must not do hazardous work and must be given regular physical examinations.

The minimum age in the factory was 18 but it was recently reduced to 16 as a response to the factory’s recruitment difficulties.

The factory has a list of its young workers, of which there are 6. The youngest worker appears to be aged 17.

The factory is in the process of registering the young workers to the local labour bureau.

The HR supervisor says that all new workers need to fill out their personnel data on a registration form and show their ID cards (a copy of which is kept in the factory’s personnel files).
• However, the HR department was not aware about how to detect fake ID cards, which could mean that some workers at the factory may have presented false identification when they started at the factory. The audit team noted some obvious discrepancies in the personnel files with regards to ID cards:
  o Some information on the photocopies of the ID cards is not in line with the details filled out on the registration forms. That is dates of birth are not consistent in the 2 records.
  o 1 worker’s personnel data showed that her mother gave birth to her when she was 13. Her younger sister is listed as being only 9, while she is supposedly already 22.
  o 1 worker listed his age as 20, and his older sister’s age as 19.
• These discrepancies were not noticed or checked by the factory. The evaluation team asked for the original ID cards but none of them were available for further verification.

Recommendations:
• The factory should carefully inspect workers’ ID cards as well their personnel data in order to prevent the recruitment of child labour. The factory should ask workers more questions if there are any discrepancies.

HARRASSMENT OR ABUSE

**Discipline:**

<table>
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<tr>
<th>The law</th>
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<tbody>
<tr>
<td>Workers may only be fined if economic loss to the factory can be proven.</td>
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<tr>
<td>Employers may make deductions from employees’ wages for disciplinary offences.</td>
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<tr>
<td>Fines must not exceed 20% of the monthly wage.</td>
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<tr>
<td>If the remainder of the wage after deductions and fines is lower than the minimum wage, the worker must be paid the minimum wage.</td>
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• The factory uses a very strict disciplinary system. Workers said that the general manager is imperious and autocratic.
• Factory managers said that workers can be fined RMB 30 for minor behaviour violations and RMB 50 for more serious violations.
• Workers said that that they are afraid of being fined, but that this happens frequently for a variety of misdemeanours, including:
  o Quality problems
  o Incorrect production leading to defective products: deduction of half a day’s wages
  o Not attending overtime
  o Being late
  o Not responding to supervisors’ questions or not respecting supervisors
  o Being absent for 1 day: deduction of 3 days’ wages.
• Workers interviewed said that the factory levies
  o RMB 10 for a warning,
  o RMB 30 for a minor violation of rules
  o RMB 100 for a serious violation
• Workers said that a number of their colleagues had left the factory as a result of this strict disciplinary system.
• Workers reported that recently fines have been reduced since the factory is under pressure from the local government and due to high worker turnover levels.
• Fines are not reflected on the payroll that was shown to the auditors, so it was difficult for the audit team to identify the extent of fines at the factory.

Recommendations:
• The factory should have a transparent disciplinary system.
The factory should stop fines and move towards a positive disciplinary system.

HEALTH AND SAFETY
- The Workers’ Health Centre investigated the health and safety conditions at the factory. They will provide a separate report.

FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING
- There is no trade union at the factory
- There are suggestion boxes in the factory, but workers say that these are not used.
- Workers say that aside from talking directly to their supervisor, there are no other channels for them to raise their concerns or suggestions.
- Workers say that the relationship between workers and management is tense. This is partly due to workers having engaged in collective action in the past, including
  - In 2004, workers complained to the local government when they were not paid on time.
  - In the 1990s, there was a strike at the factory. Workers did not provide details about the cause of the strike.
- Workers interviewed said that that they are not happy about:
  - Low wages, especially for hourly rate workers (see wage section below).
  - The poor quality of food at the factory.
  - The lack of transparency of factory policies, particularly on wage calculations.

Recommendations:
- The factory should work to improve 2 way communication in the factory, so that workers’ grievances can be effectively addressed and resolved.
- Managers should make systems, such as wage calculations transparent.

WAGES AND BENEFITS

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<tr>
<th>The law</th>
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<tbody>
<tr>
<td>The minimum monthly wage varies between region, municipality and type of enterprise (foreign or state-owned). In Guangzhou, the minimum wage is 684 RMB per month for a 40-hour working week.</td>
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<tr>
<td>Evening overtime must be paid at 150% ordinary time.</td>
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<td>Rest day working must be paid at 200% ordinary time or be swapped for other work days.</td>
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<td>Working on public holidays days and annual holidays must be paid at 300% ordinary time.</td>
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<tr>
<td>Overtime must be calculated on the basis of the wage stated in each worker’s contract.</td>
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<td>Workers must receive payslips listing hours worked, wages, deductions etc.</td>
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<tr>
<td>5 types of insurance may be required after 12 months continuous employment (precise requirements vary by province). These include injury and death, health, pension, redundancy and maternity.</td>
</tr>
<tr>
<td>Worker and employer contributions vary by location after agreement with the local labour office. Injury/death insurance is always compulsory.</td>
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<tr>
<td>Paid Leave: Provisions vary between localities. In general:</td>
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<tr>
<td>- Annual leave: workers must have a minimum of 5 days paid annual leave after the first 12 months of continuous employment in Guangdong province.</td>
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<tr>
<td>- Sick leave: depending on length of service, between 3 and 24 months.</td>
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<tr>
<td>- Marriage leave: 3 days. 10 days if groom and bride are at least 25 and 23 years old respectively.</td>
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<tr>
<td>- Maternity leave: 90 days leave includes 15 days before and 75 days after the birth, with 15 additional days for difficult labour or twins.</td>
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The payroll shown to the auditors includes the following columns:
- Basic wage – this is RMB 684 for all workers (managers say that all workers are work on an hourly rate basis and that there are no piece rate workers)
- Long service bonus – RMB 30 per month for each year of service. After 4 years, this is increased to RMB 50 per month for each year of service.
- Position allowances – RMB 90 for assembly workers, RMB 70 for packing workers and colour painting workers
- Full attendance bonus: RMB 30 if workers take no leave.

This payroll does not show any deductions or performance bonuses.

The audit team believes that these payroll records are fake for the following reasons:
- Worker interviewed say that fines are listed on their payroll records. However, the payroll records seen did not list any disciplinary deductions.
- There is no overtime pay to workers for the recent couple of months.

While most workers were not open about their salaries (or about hours), the evaluation team happened to see a worker’s payslip and a few workers did offer some insight into the pay system, as follows:
- the majority of workers (including those in colour painting, trimming, assembly) are paid by the piece. Other workers are paid by the hour.

**basic wage for hourly paid workers:**
- RMB 430 for 30 days in a month for probation workers.
- This is increased to RMB 500-520 after the probation period.
- The factory adds RMB 180 as a food and accommodation allowance into the basic wage to make wages appear to be higher. This means that workers’ basic salaries appear to be RMB 610 for probation workers and between RMB 680 to 700 for other workers. However, the food and accommodation allowance does not actually exist as the factory deducts this amount of money for food and accommodation.
- The basic wage was as low as RMB 270 in 2004. Due to workers’ complaints about wages being too low as well as government investigations, the factory increased workers’ wages.

**overtime premium:**
- There are no overtime premiums for piece rate workers.
- Hourly rate workers are paid RMB 4.1 per overtime hour. (8 hours on Saturdays is not considered overtime working and therefore is not paid at a premium).
- Supervisors and QC receive a fixed overtime salary of RMB 150 per month.

**bonuses and allowances:**
- Long service bonus: RMB 30 per month for the first two years and RMB 50 per month for the third year. In March 2005, the factory abolished this bonus, and new hires are not entitled to this bonus. Workers who were employed before this date can continue to get the long service bonus based on the levels that they were paid when this bonus was abolished. They are unable to receive any increases on this bonus.
- Workers in colour painting, moulding and assembly and spraying receive an allowance of RMB 90-100 per month.
- Workers who do not ask for any leave receive an attendance bonus of RMB 30 per month.

**deductions:**
- RMB 180 for food and accommodation. This is compulsory whether or not workers live on-site.
- RMB 30 one-off cost for health checks. After last year’s accident, the factory arranged for all workers to have a check up. The factory shared the cost of the physical examination with workers.
- Disciplinary fines
FLA Hua Hsin Factory Assessment Report

- Pension fund. 1% of worker’s wages are deducted each month for a pension fund. (as mentioned above, it is unclear what this money actually goes towards)

- Accident insurance deductions – RMB 268 per year. After Ms. Hu's accident, the factory requires all workers to buy accident insurance (with AIA insurance company). The factory requires workers to pay these insurance costs.

**Payment:**

- Workers say that they normally earn RMB 600-800 per month, but that they may receive RMB 1000 in busy months.

- The factory used to pay salaries in cash to workers on the 15th of each month for the previous month of work. After the factory moved to the new site, the delivery of the payment is now postponed to the beginning of the next month. For instance, February 2006 wages were paid on March 3, 2006 shortly after we wrapped up the visit at 5:00pm.

- Workers say that wage calculations are not transparent and they are not clear about how their wages are calculated. They often think that their wage calculations are not in line with their actual working hours, and that on most occasions, they are paid less than they should receive.

**Insurance:**

- The factory buys social insurance (which includes pension, unemployment and accident) for 61 employees (21.9% of workforce) but these workers are mainly management and office clerks.

- Only one of these employees participates in the maternity and medical insurance as (s)he is a local citizen.

- The factory also buys accident insurance for all workers. Unfortunately, the factory requires workers to pay the cost of this insurance when it is the factory’s obligation to do so.

**Leave:**

- Factory policy specifies that workers are entitled to the following leave:
  - Paid Annual leave: 30 days for workers after one year’s service, 15 days for workers after half year’s service and 7 days for others.
  - Paid maternity leave: 90 days

- Workers say that annual leave is only provided to hourly rate workers.

- The procedure for asking for leave is complex as workers need to secure the approval of a number of managers. In general, it is easy to ask for a leave in the low season but usually difficult when the factory is busier.

- Standard working days are considered to be 30 days per month, and salary is deducted from the basic wage for all leave taken, including on weekends and national holidays.

- The leave records show that workers have only applied for two types of leave:
  - Sick leave
  - Personal leave

**Recommendations:**

- The factory should be open about actual pay conditions in the factory.

- It should also analyse how many workers fall below minimum wage in standard time (and by how much) and establish a plan to gradually move workers in line with the law in a step-by-step and sustainable fashion.

- Accident insurance should be paid by the factory for all workers.

- The factory should provide annual leave for all workers.

- The factory should only deduct leave time, on weekdays (and not on Weekends and National Holidays).
HOURS OF WORK

The law
- The standard workweek is 8 hours per day, 5 days per week.
- Workers must have a minimum of one day off per week.
- Workers may work a maximum of 3 hours overtime on any one day and 36 hours per month.
- Workers must have at least 10 days statutory holiday per year (New Year – 1 day, Spring Festival – 3 days, 1st May – 3 days, National Day – 3 days).

Time keeping:
- The factory uses clock card to record working hours.
- Aside from the clock cards, supervisors in each workshop record workers’ attendance.
- Overtime working needs to be approved by factory managers.
- Clock cards in recent months do not show any weekend working and very little evening overtime. These records are obviously inaccurate as supervisor attendance records, disciplinary records and leave records show some discrepancies, including:
  - The supervisor’s attendance records dated from 25th March to 3rd April 2006 show that the factory worked on April 1st - 2nd (a weekend), but the clock cards do not reflect this weekend working.
  - The disciplinary records showed that the factory worked the following overtime (which is not reflected on the clock card records). Note that workers were fined for not working the overtime listed below:
    - March 12, 2006 (a Sunday)
    - Evening overtime on January 6, 2006
    - Evening overtime on January 7, 2006 (a Saturday)
    - Evening overtime on December 24, 2005 (a Saturday)
    - Afternoon and evening overtime on December 25, 2005 (a Sunday)
  - The leave records also showed that workers asked for leave on January 14, February 11 and 18 which are all Saturdays.
- Despite these findings, factory managers were unwilling to show their real records on working hours. They continued to claim that the factory has not worked any overtime since moving to the new location and they refused to provide the overtime application records as well as attendance records for other months. We asked for other records to corroborate their claims, but managers said that they did not keep such records.

Hours
- One assembly worker named Hu Chunmei recently died at the factory after 4 consecutive long days of work, including some overnights. A local newspaper disclosed that this worker had worked the following schedule in October 2005 prior to her death:
  - 24th: 7:00am to 11pm of the 24th
  - 25th: 6:00am to 1am of 26th
  - 26th: 6:00am to 2am of 27th
  - 27th: 6:00am to 6:30am of 28th
- Workers interviewed said that this overtime was driven by a huge order.
- Ms. Hu died on Oct 28, 2005 at 9.30am, 3 hours after she fainted and was sent to hospital.
- Workers on the assembly line said that they were very shocked by the death of Ms. Hu and the local media exposure of the accident. They bought newspapers to learn more about the incident. Workers in other departments appeared not to have been aware of the accident. The factory did not communicate the accident to workers.
- The local ACFTU said that the factory compensated Ms. Hu’s family RMB130,000 (US$16,250) and that Ms. Hu’s relatives (a number of whom also worked at the factory) all left the factory by the end of last year.
- Interestingly, the clock cards do not show any late working in October 2005 at the time of the incident.
- Since real records of hours and pay are not available, it is very difficult for us to understand the extent of overtime working in the factory.

- Workers say that
  - The factory considers Saturday working as regular working hours.
  - Hours have been reduced after the factory moved to the new site.
  - Last year workers say that they were working 300 hours or so during peak months and had 2-3 days off per month.
  - Since the accident referred to above, workers say that they normally work 270-280 hours each month and have 3-4 days off per month.

- Workers are coached to give auditors standard answers and are under great pressure not to tell the truth, particularly on pay and hours issues. It was therefore impossible to verify the true extent of overtime working at the factory, which could well be much higher than the levels mentioned by workers above.

**Recommendations**

- The factory should be open with its clients/FLA on working hours. It is essential for the client to understand the problems and challenges at the factory so that they can work together to make improvements.
- Overtime working should be voluntary and workers should not be fined if they choose not to work overtime hours.
- Managers should analyse working hours at the factory and work towards reducing excessive hours on a step by step basis towards the law.

**Conclusions:**

- It was disappointing that the factory was not open with the evaluation team.
- We understand that the factory is encountering a lot of pressure at the moment, in terms of
  - business stress due to few orders
  - frustration from workers who are not happy working at the factory
  - requirements from local government and buyers.
- Considering the decline of the factory’s business, buyers should keep an eye on the factory to ensure that all workers are properly paid if the factory decides to close.
- The relevant laws are summarized as follows
  - **China Labour Law, clause 27.** if an enterprise needs to lay off workers due to business difficulties, the factory should communicate to the trade union or all employees and hear their opinions and report to the local labour bureau before laying off any worker.
  - **Compensation regulation of violation or termination of contract:** If an enterprise terminates a contract/lays off an employee, the enterprise should compensate workers one month of salary for each year of service. The maximum is 12 months compensation. Less than one year service is counted as 1 year.
- The FLA/Buyers should continue to work with the factory to encourage it to be open about the difficulties it is facing and support it to make sustainable change.
Appendix
Photo of a notice that provided guidelines to workers about how they should respond to auditors' questions.
Walk through Survey on Occupational Health & Safety of Hua Hsin (Huaxin) Crafts & Arts Products Co. Ltd (“Higher Jack Inc”)

Hong Kong Workers’ Health Centre
April 2006

General Information
Date of visit: April 3, 2006 (Monday)
Time of visit: 10:00 – 18:00
Independent External Monitor (IEM):
Mrs. Karen Lo & Ms. Kim Ng
Name and address of factory:
铧鑫工艺品有限公司
Hua Hsin (Huaxin) Crafts & Arts Products Co. Ltd (“Higher Jack Inc”)
Address: No 2 Qinglong Street, Dalongtou Village, Jiangao Town, Baiyun District, Guangzhou City, Guangdong Province, China

Background of the Factory
◆ Higher Jack Inc. mainly produces wooden decorative items and poly-resin art crafts.
◆ Factory director claims there are about 200 workers. However, there were less than 100 workers working in the factory at the afternoon for our auditing.
◆ Workers are mostly female, age between 16 and 40s.
◆ The reason of visit: To assess the major OHS hazards and the preventive measures of the factory
◆ The factory consists of 4 main buildings: administrative block, main production block, warehouse, and dormitory.

Rundown

<table>
<thead>
<tr>
<th>Time</th>
<th>Activity</th>
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<tbody>
<tr>
<td>10:00</td>
<td>♦ Arrive at the factory</td>
</tr>
<tr>
<td>10:45</td>
<td>♦ Short visual inspection of the production line, including Mold Making, Shaping, and Polishing before getting management approval*</td>
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<tr>
<td>(~10min)</td>
<td></td>
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<tr>
<td>Time</td>
<td>Activity</td>
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<tr>
<td>11:30</td>
<td>Lunch</td>
</tr>
<tr>
<td>12:55 (~15min)</td>
<td>Open Meeting&lt;br&gt;Meet with Management staff: factory manager, vice manager and general manager</td>
</tr>
<tr>
<td>13:10 (~4 hrs)</td>
<td>Walk through the factory&lt;br&gt;Areas include Mold making(制模), Shaping (成型), Polishing(研修), Fabricating(装配), Color Painting(彩绘), Storage(中心仓)&lt;br&gt;Walk through male and female dormitory, canteen, washroom, and kitchen&lt;br&gt;Short interview with management staff, supervisors and front-line workers</td>
</tr>
<tr>
<td>17:30</td>
<td>Close Meeting&lt;br&gt;Meet with Management staff: factory manager, vice manager and general manager</td>
</tr>
</tbody>
</table>

**Summary of Work Process**

The production process of art crafts started with mold making, then shaping, polishing, fabricating, and at last color painting.

![Mold Making](image1.png)

- **Mold Making** (制模)
- **Shaping** (成型)
- **Polishing** (研修)
- **Fabricating** (装配)
- **Color Painting** (彩绘)

**Health and Safety Issues**

*Physical Hazard – Noise*
- Noise from polishing machine
- Noise from use compress air to blow away the dust (around 20 workers using at the same time)
Further measurement is needed to quantify the noise level
No noise control or protective measure like ear plug or ear muff was used according to observation.

Physical Hazard – Lighting
- Lighting is inadequate, especially that many work tasks request workers to have high concentration;
- Natural sunlight may help for workers working near the window or front door, but not in cloudy or rainy day;
- Recommendation: improve general lighting or add local light source for fine work.

Chemical Hazard – Organic Solvent
- Large amount of polyester, thinner, and lacquer are used
- High concentration of VOC was detected by smell.
- Not all containers of solvent have putting on clear labels on hazards & precautions in Chinese
- Ventilation system is not efficient.
- Lack of local exhaust ventilation or the system is weak
- Solvent containers are not covered when not is use.
- Workers were given the PPE in afternoon like cotton mask & glove, but the PPE used did not able to help prevent the inhalation of organic solvent.
- Worker interviewed was suspected to be suffering from dermatitis (red dots on the hand) due to the production.
- During the afternoon inspection, some workers wore cotton masks, cotton gloves, and aprons, but the workers are not well-trained on using the PPE.
- MSDS of polyester and thinner was posted at the wall in Chinese version at afternoon.
- Chemicals such as 松香水, 松节油, acetone(丙酮), lubricate for compress air oil, and polyurethane coating (二液型硬化剂) are also in used, however, their MSDS were not posted in factory or found in the record.
- The process of polyurethane coating would
likely release toluene di-isocynates (TDI) or other isocynates, which can induce hypersensitivity reactions such as asthma.

♦ Palettes are immersed into unknown chemicals for cleaning purpose.

Chemical Hazard – Dust
♦ Dust comes from polishing machines and production in using polyester
♦ Local ventilation was observed, but not efficient in preventing the dispersion of dust
♦ Workers are using cotton mask which will is not sufficient enough to prevent the inhalation of dust
♦ The high concentration of dust in containing polyester will increase the risk on fire explosion

Machine Safety
♦ Polishing machine does not have guarding
♦ Emergency controls is visible and easy to reach

Fire Safety
♦ Provide at least 4 fire extinguishers each floor with easy reach and they are all powder extinguishers
♦ Fire extinguishers have inspection date and name of inspector but without labels from authorized department on the recent checking.
♦ Provide evacuation plan in emergency
♦ Warehouse which contain large amount of chemicals does not have fire
extinguishers and fire alarm

♦ Every floor has at least 2 unobstructed way out
♦ Workers received fire safety training twice per month (according to managers’ interview & workers’ interview)

Ergonomics

♦ There are no consideration on the ergonomics issue in production design while some of the workers need to stand for the whole day.

Occupational Health & Safety Management Concern

♦ No OHS policy setting up;
♦ No emergency plan on handling work injury;
♦ No OHS risk assessment has been done before;
♦ No formal & systematic training for all workers on OHS;
♦ Factory manager received training in occupational health and safety management, and fire safety in 2000.
♦ Factory manager said the workers have received training on chemical hazard and regular training on fire safety. No clear record on the training proved but just few photos displayed in computer of administrative department without clear date of photos taken.

Workers interviewed show that they had received training on fire safety but not chemical hazard.

♦ Orientation training was given to new staff but mainly target on skill training like painting
♦ In general there is lack of OHS training (including the use of solvent as chemical hazards, dust prevention, machine safety and proper use of PPE)
Others

♦ Each floor has 1-2 first aid box, but supplies are inadequate (only bandages and plasters)
♦ There are aprons, cotton gloves, and cotton mask for workers to use. But they are inadequately stocked and are not the most suitable type of PPE for the work-related hazards. (2 packs of masks are inadequate to distribute to 100 workers)
♦ Empty oil cans were stored improperly outside canteen.
♦ Other working facilities such as washroom and canteen are clean and well-maintained.
♦ Dormitory facilities are clean. There are 4-8 people per room. There are 14 showers and 12 toilets each floor.
♦ From the record, workers received annual medical checkup including general questionnaire, blood test, urine test, and electrocardiogram, but not other medical check up item in relating to OHS hazards.
♦ One supervisor interviewed claimed that some workers who did not “get use” to the smell of solvent, left the factory by themselves.

Recommendation

♦ During the short time of auditing, the potential health hazards of physical, chemical and safety problems were identified.
♦ The proper use of organic solvents and dust control were the two major OHS concerns.
♦ As there is no systematic record on OHS concerns of the factory, the factory is still appreciated on their effort on working for fire prevention and training.
♦ Management is suggested to train up a staff or find an external consultant to conduct a detailed risk assessment to evaluation the hazards. This would help collect further information on exposure period of workers and give suggestions on improvement.
♦ The prevention of health hazards should not be merely focused on providing PPE or medical check.
♦ Instead, the work station design and engineering controls should be included as a first priority in eliminating or reducing these hazards.
♦ Forming Safety and Health Committee is suggested which response to review work accident rates and organize training for workers. Relevant written record should be kept.

Conclusion
In general, Higher Jack Inc is a medium size factory in South China without adequate measures in addressing to the occupational health & safety issues of the workers. Although the auditors still appreciated the effort of the factory managers on fire prevention after moving to this new block of buildings in January 2006, there are still a lot of occupational hazards existed. Due to the limit of the OHS management training received by the manager, the buying company is suggested to provide adequate support on improving the OHS situation of the workers in this factory.

*As this is an unannounced auditing, the managers were not cooperative at the early morning and requested the whole auditing team to wait in the administrative block. When the auditors walked inside the floor of production block while waiting for the director for half hour, it was found that there was not much PPE provided to the workers at the moment and no MSDS posted on the board. At the afternoon after the director finally approved the auditing, it was found that workers were requested to put on the PPE like the cotton mask & cotton glove while the MSDS just newly placed on the wall for auditing purpose. Therefore the auditors, on a reasonable ground, could report that the factory did not have any PPE provided to the workers on daily production.

Background of Independent External Monitor (IEM):

Mrs. Karen Lo, Centre Manager of the Hong Kong Workers’ Health Centre, registered social worker and graduated with professional training in occupational hygiene. Working on OHS prevention & promotion in Hong Kong & China for the past ten years;
Ms. Kim Ng, Program Coordinator of the Hong Kong Workers’ Health Centre, physiotherapist and is now receiving training in occupational hygiene.

Hong Kong Workers’ Health Centre (WHC) is a non-profit making organization (NGO) registered in Hong Kong for 20 years aims at the protection of workers’ health. WHC sets up two service centre in Guangdong provinces as to promote occupational health & safety in Mainland China. WHC also provides community & occupational rehabilitation support to workers in suffering from work injury or occupational disease in HK and Mainland China.

Disclaimer for legal liability: Hong Kong Workers’ Health Centre Ltd will not take any legal liability on any damage or loss of stakeholders due to this report.