

Anexos

- **Anexo 1**

Regulation on the Administration of Commercial Franchises

2007-02-06 From: The State Council

Order of the State Council
(No. 485)

The Regulation on the Administration of Commercial Franchises, which was adopted at the 167th executive meeting of the State Council on January 31, 2007, are hereby promulgated and shall come into force as of May 1, 2007.

Premier Wen Jiabao
February 6, 2007

Chapter I General Provisions

Article 1 This Regulation is formulated for the purpose of regulating commercial franchises, promoting the healthy and orderly development of the commercial franchise industry and maintaining the market order.

Article 2 The engagement in commercial franchise within the territory of the People's Republic of China shall be governed by this Regulation.

Article 3 The term "commercial franchise" (hereinafter referred to as "franchise") as mentioned in this Regulation refers to such business operations by which an enterprise owning a registered trademark, enterprise mark, patent, know-how or any other business resource (hereinafter referred to as "franchiser") confers the said business resource to any other business operator (hereinafter referred to as "franchisee") by means of contract, and the franchisee undertakes business operations under the uniform business model as stipulated by the contract, and pay franchising fees to the franchiser.

No entity or individual other than enterprises may engage in the franchise business as a franchiser.

Article 4 The principles of free will, fairness, honesty and good faith shall be followed for engagement in franchise activities.

Article 5 The commercial administrative department of the State Council shall be responsible for supervising and administrating the franchise industry all over the country according to this Regulation. The commercial administrative department of the provinces, autonomous regions, or municipalities directly under the Central Government and the commercial administrative department of the people's government of the cities divided into districts shall be responsible

for supervising and administrating the franchise industry within its own jurisdiction according to this Regulation.

Article 6 Any entity or individual has the right to tip off any act against this Regulation to the commercial administrative department, and the commercial administrative department shall, after receipt of such tip-off, handle it in a timely manner.

Chapter II Franchised Operations

Article 7 A franchiser for engagement in franchise activities shall possess a mature business model and the ability to provide long-term business guidance, technical support, business training and other services to the franchisee.

A franchiser for engagement in franchise activities shall have at least two direct sales stores, and have undertaken the business for more than a year.

Article 8. A franchiser shall, within 15 days after having concluded a franchise contract for the first time, report it to the commercial administrative department for archival filing according to this Regulation. If a franchiser engages in any franchised operations within the scope of a province, autonomous region, or municipality directly under the Central Government, it shall be put on the archives of the commercial administrative department of the province, autonomous region or municipality directly under the Central Government; and if a franchiser engages in any franchised operations within the scope of two or more provinces, autonomous regions, or municipalities directly under the Central Government, it shall be put on the archives of the commercial administrative department of the State Council.

For the archival filing, a franchiser shall submit the following documents and materials to the commercial administrative department:

- (1) a photocopy of the business license or enterprise registration certificate;
- (2) a sample franchise contract;
- (3) a brochure for franchised operations;
- (4) a market plan;
- (5) a written commitment and relevant certification materials proving that the provisions in Article 7 of this Regulation are followed; and
- (6) other documents and materials prescribed by the commercial administrative department of the State Council.

In case the product or service for franchise cannot be dealt in until it is approved, the franchiser shall also submit a relevant approval document.

Article 9 The commercial administrative department shall carry out the archival filing and give a notice to the franchiser within 10 days after receipt of the documents and materials prescribed by Article 8 of this Regulation. In case the documents or materials submitted by the franchiser are incomplete, the commercial administrative department may require the franchiser to supplement relevant documents or materials within 7 days.

Article 10 The commercial administrative department shall publish a name list of franchisers

that have been put on archives on the government website, and renew the name list in a timely manner.

Article 11 For engagement in franchise activities, the franchiser and the franchisee shall conclude a franchise contract in writing.

A franchise contract shall include the following main contents:

- (1) basic information about the franchiser and the franchisee;
- (2) contents and term for the franchise;
- (3) type, amount and payment method for the franchising fees;
- (4) specific contents and methods for providing business guidance, technical support, business training and other services;
- (5) quality, standards and guaranty measures for the product or service;
- (6) sales promotion, advertising and publicity about the product or service;
- (7) the protection of rights and interests of consumers and the assumption of compensation liabilities in the franchise;
- (8) alteration, rescission and termination of the franchise contract;
- (9) liabilities for breach of the contract;
- (10) dispute resolution methods; and
- (11) other matters as stipulated by the franchiser and the franchisee.

Article 12 The franchiser and the franchisee shall stipulate in the franchise contract that the franchisee may unilaterally rescind the contract within a certain term after the franchise contract has been concluded.

Article 13 The franchise term stipulated in the franchise contract shall not be less than three years, unless it is otherwise agreed upon by the franchisee.

The preceding paragraph shall not be applicable when the franchiser and the franchisee renew the franchise contract.

Article 14. A franchiser shall provide a brochure for franchised operations to its franchisees, and shall continuously provide business guidance, technical support and business trainings, etc. to the franchisees according to the stipulated contents and methods.

Article 15 The quality and standards of the product or service for franchise shall conform to the laws, administrative regulations and the relevant requirements of the State.

Article 16 In case a franchiser requires a franchisee to pay expenses before a franchise contract is concluded, it shall explain in writing to the franchisee about the purposes of these expenses and the conditions and method for the refund of these expenses.

Article 17 The expenses for promotion and publicity as collected by a franchiser from a franchisee shall be used for the purposes as stipulated in the contract. The information about the use of expenses for promotion and publicity shall be timely disclosed to the franchisee.

A franchiser shall not resort to frauds or misleading in the promotion or publicity, and the

advertisements it releases shall not contain any publicity content that any franchisee has obtained the proceeds from engagement in the franchise.

Article 18 Without consent of the franchiser, a franchisee shall not transfer the franchise to anyone else.

A franchisee shall not divulge to anyone else or allow anyone else to use the business secret of the franchiser it has accessed to.

Article 19. A franchiser shall, in the first quarter every year, report the information about the conclusion of franchise contracts in the previous year to the commercial administrative department.

Chapter III Information Disclosure

Article 20 A franchiser shall, according to the provisions prescribed by the commercial administrative department of the State Council, establish and implement a perfect information disclosure system.

Article 21. A franchiser shall, at least 20 days before signing a franchise contract, provide the information prescribed by Article 22 of this Regulation and the text of the franchise contract to the franchisee in written form.

Article 22 A franchiser shall provide the following information to the franchisee:

- (1) the name, domicile, legal representative, registered capital, business scope of and basic information about the franchised operations of the franchiser;
- (2) the basic information about the registered trademark, enterprise mark, patent, know-how and business model of the franchiser;
- (3) type, amount and payment method of franchising fees (including whether the guaranty bonds should be collected as well as the conditions and methods for guaranty bonds);
- (4) prices and requirements for providing products, services and equipments to the franchisee;
- (5) specific contents, methods and implementation plans for continuously providing business guidance, technical support, business training and other services to the franchisee;
- (6) specific measures for guiding and supervising the business activities of the franchisee;
- (7) the investment budget for the franchise outlet;
- (8) the quantity, distribution and business evaluation of current franchisees within the territory of China;
- (9) digests of the financial statements and audit reports as audited by the accountant firm for the recent two years;
- (10) the conditions about franchise-related lawsuits and arbitration for the recent five years;
- (11) whether the franchiser or its legal representative has ever conducted major illegal business operations; and
- (12) other information prescribed by the commercial administrative department of the State Council.

Article 23. A franchiser shall provide authentic, accurate and complete information to its franchisees, and shall not hide any relevant information or provide false information.

In case the information provided by a franchiser to any of its franchisees has been significantly changed, the franchiser shall notify it to the franchisee in a timely manner.

In case a franchiser hides any relevant information or provides false information, the franchisee may rescind the franchise contract.

Chapter IV Legal Liabilities

Article 24 In case a franchiser does not meet the requirements prescribed in Paragraph 2 of Article 7 of this Regulation but engages in the franchise activities, the commercial administrative department shall order it to make a correction, confiscate its illegal proceeds, impose a fine of more than 100,000 Yuan but less than 500,000 yuan on it, and make an announcement about it.

In case an entity or individual which is not an enterprise engages in franchise activities as a franchiser, the commercial administrative department shall order it or him to stop the illegal business operations, confiscate its or his illegal proceeds, and impose a fine of more than 100,000 yuan but less than 500,000 yuan on it or him.

Article 25 In case a franchiser fails to put itself on the archives of the commercial administrative department according to Article 8 of this Regulation, the commercial administrative department shall order it to do so within a time limit, and impose a fine of more than 10,000 yuan but less than 50,000 yuan on it; and if it fails to do so within the time limit, it shall be fined more than 50,000 yuan but less than 100,000 yuan, and an announcement shall also be made.

Article 26 In case a franchiser violates Article 16 or 17 of this Regulation, the commercial administrative department shall order it to make a correction, and may impose a fine of less than 10,000 yuan; where the circumstances are serious, it shall be fined more than 10,000 yuan but less than 50,000 yuan, and an announcement shall also be made.

Article 27 In case a franchiser violates Paragraph 2 of Article 17 of this Regulation, the commercial administrative department shall order it to make a correction, and impose a fine of more than 30,000 yuan but less than 100,000 yuan on it; where the circumstances are serious, it shall be fined more than 100,000 yuan but less than 300,000 yuan, and an announcement shall also be made; and if a crime is constituted, it shall be subject to criminal liabilities.

In case a franchiser resorts to frauds or misleading by making use of advertisements, it shall be punished according to the relevant provisions in the Advertising Law.

Article 28 In case a franchiser violates Article 21 or 23 of this Regulation, and a franchisee tips it off to the commercial administrative department and the tip-off is found to be true upon verification, the commercial administrative department shall order the franchiser to make a correction and impose a fine of more than 10,000 yuan but less than 50,000 yuan on it; and where the circumstances are serious, it shall be fined more than 50,000 yuan but less than 100,000 yuan, and an announcement shall also be made.

Article 29 In case any entity or individual cheats the property of someone else in the name of franchise and a crime is constituted, it or he shall be subject to criminal liabilities; and if no crime is constituted, it or he shall be punished by the public security organ according to the Law of the People's Republic of China on Public Security Administrative Punishments.

In case any entity or individual engages in pyramid selling in the name of franchise, it or he shall be punished according to the Regulation on Prohibiting the Pyramid Selling.

Article 30 In case any functionary of the commercial administrative department abuses his authorities, neglects his duties or resorts to cheats and a crime is constituted, he shall be subject to criminal liabilities; and if no crime is constituted, he shall be punished according to law.

Chapter V Supplementary Provisions

Article 31 The license of trademarks and patents involved in the franchised operations shall be implemented according to the laws and administrative regulations on trademarks and patents.

Article 32 Relevant associations and organizations shall, under the guidance of the commercial administrative department of the State Council, formulate the provisions on franchises according to this Regulation, strengthen guild self discipline, and provide relevant services for the parties involved in the franchise.

Article 33 Any franchiser that has engaged in franchise activities before the implementation of this Regulation shall be put on the archives of the commercial administrative department according to this Regulation; and if it fails to do so within the time limit, it shall be punished according to Article 25 of this Regulation.

The franchiser prescribed in the preceding paragraph shall not be applicable to the provisions in Paragraph 2 of Article 7 of this Regulation.

Article 34 This Regulation shall come into force as of May 1, 2007.