

Order of the State Council

No. 485

The Regulations on Administering Commercial Franchises have been adopted at the 167th executive meeting of the State Council on January 31, 2007. They are hereby promulgated and shall go into effect on May 1, 2007.

Premier Wen Jiabao
February 6, 2007

Regulation on Administering Commercial Franchises

Chapter I General Rules

Article 1 For the purpose of regulating commercial franchises, promoting the healthy and orderly development of the commercial franchise industry and maintaining the market order, the present Regulations are formulated.

Article 2 The present Regulations shall apply to the activities of engaging in commercial franchise within the territory of the People's Republic of China.

Article 3 The term "commercial franchise" (hereinafter referred to as "franchise") as mentioned in the present Regulations means such business operations by which an enterprise that possesses a registered trademark, enterprise mark, patent, know-how or any other business resource (hereinafter referred to as "franchiser") confers the aforesaid business resource to any other business operator (hereinafter referred to as "franchisee") through contract, and the franchisee conducts 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 conduct franchise business as a franchiser.

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

Article 5 The commerce department under the State Council shall take charge of supervising and administrating the franchise industry all over the country in accordance with the present Regulations. The commerce department of each province, autonomous region, or municipality directly under the Central Government and the commerce department of the people's government of the cities divided into districts shall take charge of supervising and administrating the franchise industry within its own jurisdiction in accordance with the present Regulations.

Article 6 Any entity or individual is entitled to tip off any act with violation of the present Regulations to the commerce department, and the commerce department shall, after receiving such tip-off, handle it promptly.

Chapter II Franchised Operations

Article 7 For engaging in franchise activities, a franchiser shall have a mature business model and be capable of providing the franchisee with consecutive business guidance, technical support, business training and other services. A franchiser for engaging in franchise activities shall have two direct sales stores at least,

and have conducted such business for more than one year.

Article 8 A franchiser shall, within 15 days after the subscription of a franchise contract for the first time, submit it to the commerce department for archival filing in accordance with the present Regulations. In case a franchiser engages in any franchised operations within the scope of a province, autonomous region, or municipality directly under the Central Government, it shall report to the commerce department of the province, autonomous region or municipality directly under the Central Government for archival filling; and in case 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 report to the commerce department under the State Council for archival filling.

A franchiser shall, for the archival filing, submit the commerce department the following documents and materials:

- (1) a copy of the business license or enterprise registration certificate;
- (2) a sample of the franchise contract;
- (3) a brochure for franchised operations;
- (4) a market plan;
- (5) a written commitment and related certification materials testifying that the provisions in Article 7 of the present Regulations are satisfied ; and
- (6) other documents and materials as prescribed by the commerce department under the State Council.

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

Article 9 The commerce department shall conduct the archival filing and notify the franchiser within 10 days after its receipt of the documents and materials as provided for in Article 8 of the present Regulations. Where the documents or materials reported by the franchiser are incomplete, the commerce department may require the franchiser to supplement related documents or materials within 7 days.

Article 10 The commerce department shall publish a name list of franchisers, which have been put on archives, on the government website, and timely renew the name list.

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

A franchise contract shall cover the main contents as follows:

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

Article 12 It shall be stipulated in the franchise contract concluded between the franchiser and the franchisee that the franchisee may unilaterally terminate the contract within a certain term after the franchise contract has been signed.

Article 13 Unless it is otherwise agreed upon by the franchisee, the franchise term as stipulated in the franchise contract may not be less than three years. When the franchiser and the franchisee renew the franchise contract, the preceding paragraph may not apply.

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

Article 15 The quality and standards of the product or service for franchise shall comply with the laws, administrative regulations and the related requirements of the State.

Article 16 Where a franchiser requires a franchisee to pay expenses before the subscription of the franchise contract, it shall explain to the franchisee in respect of the purposes of these expenses and the conditions and method for the refund of these expenses in written form.

Article 17 The promotion and publicity expenses as collected by a franchiser from a franchisee shall be used for the purposes as agreed upon in the contract. The information in respect of the use of promotion and publicity expenses shall be released to the franchisee in a timely manner.

A franchiser may not resort to frauds or misleading in the promotion or publicity, and the advertisements it publicized may not include any publicity content that any franchisee has gained proceeds from engaging in the franchise.

Article 18 A franchisee may not transfer the franchise to anyone else without consent of the franchiser.

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

Article 19 A franchiser shall report to the commerce department the information in respect of the subscription of franchise contracts in the previous year in the first quarter every year.

Chapter III Information Disclosure

Article 20 A franchiser shall set up and carry out a perfect information disclosure system in accordance with the provisions as prescribed by the commerce department of the State Council.

Article 21 A franchiser shall provide the franchisee with the information as prescribed in the present Regulations and the text of the franchise contract in written form at least 20 days before the subscription of a franchise contract.

Article 22 A franchiser shall provide the franchisee with the information as follows:

- (1) the name, domicile, legal representative, registered capital, business scope of the franchiser and basic information in respect of the franchised operations;
- (2) the basic information in respect of the registered trademark, enterprise mark, patent, know-how and business model of the franchiser;
- (3) type, amount of franchising fees and payment method (including whether the guaranty bonds should be collected as well as the conditions and methods for refunding guaranty bonds);
- (4) prices and requirements for providing the franchisee with products, services and equipments;
- (5) specific contents of business guidance, technical support, business training and other services to be continuously provided to the franchisee as well as the providing methods and implementation plans;

- (6) concrete 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 franchisees currently existing within the territory of China;
- (9) digests of the financial statements and audit reports for the recent two years as audited by the accountant firm;
- (10) the conditions in respect of franchise-related lawsuits and arbitration for the recent five years;
- (11) in case the franchiser or its legal representative has any record of major illegal business operations; and
- (12) other information as prescribed by the commerce department under the State Council.

Article 23 A franchiser shall provide its franchisees with authentic, accurate and complete information, and may not conceal any related information or provide false information.

Where any significant change has occurred to the information provided by a franchiser to any of its franchisees, the franchiser shall timely notify it to the franchisee.

If a franchiser conceals any related information or provides false information, the franchisee may terminate the franchise contract.

Chapter IV Legal Liabilities

Article 24 Where a franchiser does not satisfy the requirements as prescribed in Paragraph 2 of Article 7 of the present Regulations but engages in the franchise activities, the commerce department shall order it to make corrections, confiscate its illegal proceeds, impose a fine of more than 100,000 Yuan but less than 500,000 Yuan thereon, and make an announcement in respect of it.

Where an entity or individual, which does not possess an enterprise status, engages in franchise activities as a franchiser, the commerce department shall order it/him to cease the illegal business operations, confiscate its/his illegal proceeds, and impose a fine of more than 100,000 Yuan but less than 500,000 Yuan thereon.

Article 25 Where a franchiser fails to put itself on the archives of the commerce department in accordance with Article 8 of the present Regulations, the commerce department shall order it to do so within a fixed period, and impose a fine of more than 10,000 Yuan but less than 50,000 Yuan thereon; and in case it fails to do so within the fixed period, it shall be fined more than 50,000 Yuan but less than 100,000 Yuan, and an announcement shall also be delivered.

Article 26 Where a franchiser violates Article 16 or 17 in the present Regulations, the commerce department shall order it to make corrections, and may impose a fine of less than 10,000 Yuan; in the case of serious circumstances, it shall be fined more than 10,000 Yuan but less than 50,000 Yuan, and an announcement shall also be delivered.

Article 27 Where a franchiser violates Paragraph 2 of Article 17 in the present Regulations, the commerce department shall order it to make corrections, and impose a fine of more than 30,000 Yuan but less than 100,000 Yuan thereon; in the case of serious circumstances, it shall be fined more than 100,000 Yuan but less than 300,000 Yuan, and an announcement shall also be delivered; and if a crime is committed, it shall be subject to criminal liabilities.

Where a franchiser conducts frauds or misleading by making use of advertisements, it shall be punished in accordance with the related provisions in the Advertising Law.

Article 28 Where a franchiser violates Article 21 or 23 of the present Regulations, and a franchisee tips it off to the commerce department and, upon verification, the tip-off is found to be true, the commerce department shall order the franchiser to make corrections and impose a fine of more than 10,000 Yuan but less than 50,000 Yuan thereon; and in the case of

serious circumstances, it shall be fined more than 50,000 Yuan but less than 100,000 Yuan, and an announcement shall also be delivered.

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

Where any entity or individual engages in pyramid selling in the name of franchise, it or he shall be punished in accordance with the Regulation on Prohibiting the Pyramid Selling.

Article 30 Where any functionary of the commerce department abuses his authorities, neglects his duties or resorts to cheats and a crime is committed, he shall be subject to criminal liabilities; and if no crime is committed, he shall be punished in accordance with law.

Chapter V Supplementary Rules

Article 31 The license of trademarks and patents in relation to the franchised operations shall be handled in accordance with the laws and administrative regulations on trademarks and patents.

Article 32 Related associations and organizations shall, under the guidance of the commerce department of the State Council, set down the provisions on franchises in accordance with the present Regulations, intensify guild self-discipline, and provide related services to the parties involved in the franchise.

Article 33 Any franchiser engaging in franchise activities before the implementation of the present Regulations shall be put on the archives of the commerce department in accordance with the present Regulations; and where it fails to do so within the time limit, it shall be punished in accordance with Article 25 of the present Regulations.

The franchiser prescribed in the preceding paragraph does not apply to the provisions in Paragraph 2 of Article 7 of the present Regulations.

Article 34 The present Regulations shall go into effect as of May 1, 2007.

The State Council 2007-02-06