

# Administrative Regulations on Commercial Franchise Operations

State Council Order No. 485

6 February 2007

## Chapter I — General Principles

### [Article 1](#)

These Regulations are formulated for the purposes of regulating commercial franchise operations, promoting steady and orderly development of commercial franchise operations and safeguarding market order.

### [Article 2](#)

These Regulations shall apply to persons engaging in commercial franchise operations in the People's Republic of China.

### [Article 3](#)

Commercial franchise operations referred to in these Regulations (hereinafter referred to as "franchise operations") shall mean a grant by an enterprise owner of registered trademarks, enterprise logos, patents, proprietary technologies or other business resources (hereinafter referred to as the "franchisor") to another business operator (hereinafter referred to as the "franchisee") to use such business resources owned by the franchisor through a contractual arrangement, where the franchisee operates the business according to a uniform business model stipulated under the contract and pay the franchisor franchising fees.

Organisations and individuals other than enterprises shall not engage in franchise operation in the capacity of a franchisor.

### [Article 4](#)

The principles of voluntariness, fairness, honesty and trustworthiness must be observed in any engagement of franchise operations.

### [Article 5](#)

The commerce administration department of the State Council shall, pursuant to the provisions of these Regulations, be responsible for nationwide supervision and administration of franchise operations.

The commerce administration authorities of the People's Government of provinces, autonomous regions, centrally-administered municipalities and the commerce administration authorities of the People's Government of municipalities divided into districts shall, pursuant to the provisions of these Regulations, be responsible for supervision and administration of franchise operations within their jurisdiction.

[Article 6](#)

Any organisation or individual shall have the right to report any violation of the provisions of these Regulations to the commerce administration authorities. The commerce administration authorities shall take prompt action upon receipt of a report.

## **Chapter II — Franchise Operations**

[Article 7](#)

Franchisors must possess a matured business model and the ability to provide continual operational guidance, technical support, business training, and other service support when engaging in franchise operations.

A franchisor must own at least two direct sales stores that have been operating for more than one year when engaging in franchise operations.

[Article 8](#)

A franchisor shall file records with the commerce administration authorities within 15 days upon conclusion of the first franchise contract pursuant to the provisions of these Regulations. Franchisors engaging in franchise operations within a province, autonomous region or centrally-administered municipality shall file records with the commerce administration authorities of the People's Government of the province, autonomous region or centrally-administered municipality at where the franchisor is located. Franchisors engaging in franchise operations across provinces, autonomous regions and centrally-administered municipalities shall file records with the commerce administration authorities of the State Council.

Franchisors shall submit the following documents and materials to the commerce administration authorities when filing records:

- (1) a photocopy of the business licence or enterprise registration (incorporation) certificate;
- (2) a sample of the franchise contract;
- (3) the operating manual of the franchise operation;
- (4) a market proposal;
- (5) a letter of undertaking and the relevant evidentiary materials on compliance with the provisions of Article 7; and
- (6) any other document or material stipulated by the commerce administration authorities of the State Council.

The approval of the products or services under a franchise operation must be obtained prior to commencement of operations pursuant to law, and the franchisor shall provide the relevant approval documents.

#### [Article 9](#)

The commerce administration authorities shall grant filing and notify the franchisor within 10 days upon receipt of the documents and materials submitted by a franchisor which comply with the provisions of Article 8. Where the documents and materials submitted by a franchisor are incomplete, the commerce administration authorities may require the franchisor to make a supplementary submission of documents and materials within seven days.

#### [Article 10](#)

The commerce administration authorities shall announce and promptly update the list of franchisors which have completed filing on the government website.

#### [Article 11](#)

A franchisor and a franchisee shall enter into a written franchise contract when engaging in a franchise operation.

The franchise contract shall include the following key contents:

- (1) basic information on the franchisor and the franchisee;
- (2) contents and term of the franchise operation;
- (3) types, amounts and methods of payment of franchise operation fees;
- (4) specific contents and methods of providing operational guidance, technical support, business training and other service support;

(5) requirements on quality, standards and warranty measures for the product or service;

(6) advertising and promotion of product or service;

(7) protection of consumer interests and undertaking of compensation liability under the franchise operation;

(8) alteration, rescission and termination of the franchise contract;

(9) liability on default;

(10) method for dispute resolution; and

(11) any other matter agreed between the franchisor and the franchisee.

[Article 12](#)

The franchisor and franchisee shall include as a term of the franchise contract, the ability of the franchisee to terminate the contract unilaterally upon the lapse of a fixed term after the franchise contract is concluded.

[Article 13](#)

Unless the franchisee agrees otherwise, the fixed term of a franchise operation under a franchise contract shall not be less than three years.

The provisions of the preceding paragraph shall not apply to a renewal of a franchise contract between the franchisor and franchisee.

[Article 14](#)

The franchisor shall provide the franchisee with an operating manual for franchise operations and provide continual operational guidance, technical support, business training and other support services to the franchisee pursuant to the agreed contents and methods.

[Article 15](#)

The quality and standard of the product or service in a franchise operation must comply with the requirements under the laws and regulations and the relevant State provisions.

[Article 16](#)

Where a franchisor requires a franchisee to pay franchise fees prior to the execution of a franchise contract, the franchisor shall provide the franchisee with a written explanation of the proposed use and the terms and methods of refund for such franchise fees.

[Article 17](#)

Where a franchisor collects advertising and promotion expenses from a franchisee, the franchisor shall use the funds collected pursuant to the stipulated uses under the contract. The circumstances of use of the funds for advertising and promotion expenses must be disclosed to the franchisee promptly.

Franchisors must not engage in deceptive or misleading conduct in advertising and promotional activities; the advertisements must not contain any content which discloses the gains of a franchisee from franchise operations.

[Article 18](#)

A franchisee must not transfer franchise operation rights without consent of the franchisor.

A franchisee must not disclose or allow others to use the commercial secrets of the franchisor which it has access.

[Article 19](#)

Franchisors shall report to the commerce administration authorities in the first quarter of each year on the status of the franchise contracts concluded in the preceding year.

### **Chapter III — Information Disclosure**

[Article 20](#)

A franchisor shall establish and implement a proper system of information disclosure pursuant to the provisions of the commerce administration authorities of the State Council.

[Article 21](#)

The franchisor shall provide the franchisee in writing the information stipulated in Article 22 and a specimen of the franchise contract at least 30 days before execution of the franchise contract.

[Article 22](#)

The franchisor shall provide the following information to a franchisee:

- (1) name, address, legal representative, amount of registered capital, scope of business of the franchisor and basic information of the franchise operation;
- (2) registered trademarks, enterprise logos, patents, proprietary technologies and basic information of the business model of the franchisor;
- (3) types, amounts and methods of payment of franchise fees (including whether a security deposit is collected and its terms and methods of refund);
- (4) prices and conditions for the products, services and equipment provided to the franchisee;
- (5) specific contents of continual operational guidance, technical support, business training and other services to the franchisee and the method of provision and implementation plan thereof;
- (6) specific measures on guidance and supervision of the franchisee's business activities;
- (7) investment budget for a franchise operation network;
- (8) quantity, geographical distribution and an evaluation of the business situation of existing franchisees in China;
- (9) abstracts of the audited financial accounting reports and the auditor's report for the last two years;
- (10) information on the legal and arbitration proceedings relating to franchise operations during the last five years;
- (11) records of any major unlawful business operations the franchisor or its legal representative may have; and
- (12) any other information stipulated by the commerce administration authorities of the State Council.

[Article 23](#)

The information provided by a franchisor to a franchisee must be truthful, accurate and complete, with no concealment of any relevant information or any falsehoods.

Where there is a significant change to the information provided by a franchisor to a franchisee, the franchisee must be notified promptly.

Where the franchisor has concealed any relevant information or provided false information, the franchisee may terminate the franchise contract.

## **Chapter IV — Legal Liability**

[Article 24](#)

Where a franchisor engages in franchise operations and fails to satisfy the criteria stipulated in the second paragraph of Article 7, the commerce administration authorities shall order the franchisor to make correction, confiscate the illegal income, impose a fine ranging from RMB100,000 to RMB500,000 and make a public announcement.

Where any organisation or individual other than an enterprise engages in franchise operations in the capacity of a franchisor, the commerce administration authorities shall order the organisation or individual to cease the unlawful business activities, confiscate the illegal income and impose a fine ranging from RMB100,000 to RMB500,000.

#### [Article 25](#)

Where a franchisor fails to file records pursuant to the provisions of Article 8 with the commerce administration authorities to file records within a stipulated period, the commerce administration authorities shall order the franchisor to file records within a stipulated period, impose a fine ranging from RMB10,000 to RMB50,000; where the franchisor fails to file records within the stipulated period, a fine ranging from RMB50,000 to RMB100,000 shall be imposed and a public announcement shall be made.

#### [Article 26](#)

Where a franchisor violates the provisions of Article 16 and Article 19, the commerce administration authorities shall order the franchisor to make correction and may impose a fine of not more than RMB10,000; where the case is serious, a fine ranging from RMB10,000 to RMB50,000 shall be imposed and a public announcement shall be made.

#### [Article 27](#)

Where a franchisor violates the provisions of the second paragraph of Article 17, the administration for industry and commerce shall order the franchisor to make correction, impose a fine ranging from RMB30,000 to RMB100,000; where the case is serious, a fine ranging from RMB100,000 to RMB300,000 shall be imposed and a public announcement shall be made; where the case constitutes a criminal offence, criminal liability shall be imposed according to law.

A franchisor that uses advertisements to deceive or mislead the public shall be penalised pursuant to the relevant provisions of the *Advertisement Law*.

[Article 28](#)

Where a franchisor violates the provisions of Article 21 and Article 23 and the commerce administration authorities find the report lodged by the franchisee to be true, the commerce administration authorities shall order the franchisor to make correction and impose a fine ranging from RMB10,000 to RMB50,000; where the case is serious, a fine ranging from RMB50,000 to RMB100,000 shall be imposed and a public announcement shall be made.

[Article 29](#)

Where fraud is found to be perpetrated over property belonging to another in the name of franchise operations and the act constitutes a criminal offence, criminal liability shall be imposed according to the law; where the case does not constitute a criminal offence, the public security department shall impose penalties pursuant to the provisions of the *Law of the People's Republic of China on Security Administration and Punishment*.

Penalties shall be imposed pursuant to the relevant provisions of the *Regulations on Prohibition of Direct Selling* where direct selling is engaged in the name of franchise operations.

[Article 30](#)

Where personnel of the commerce administration authorities abuse official powers, abdicate duties or engage in corruption and such acts constitute a criminal offence, criminal liability shall be imposed according to law; where the case does not constitute a criminal offence, the personnel shall be subject to penalties pursuant to law.

## **Chapter V — Supplementary Provisions**

[Article 31](#)

Rights to the use of trademarks or patents involved in a franchise operation shall be pursuant to the provisions of the relevant laws and regulations on trademarks and patents.

[Article 32](#)

Under the guidance of the commerce administration authorities of the State Council, the relevant associations shall formulate franchise operation norms pursuant to the provisions of these Regulations, strengthen industry self-regulation, and provide parties under franchise operations with relevant services.

[Article 33](#)

Where a franchisor has been engaging in franchise operations prior to the implementation of these Regulations, the franchisor must file records with the commerce administration authorities pursuant to the provisions of these Regulations within one year from the date of implementation of these Regulations; franchisors that fail to file records within the stipulated period shall be penalised pursuant to the provisions of Article 25.

The provisions of the second paragraph of Article 7 shall not apply to franchisors mentioned in the preceding paragraph.

[Article 34](#)

These Regulations shall be effective 1 May 2007.