Provisions on Administration of Commercial Franchising

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Chapter I — General Provisions

Article 1 — These Regulations are formulated to regulate commercial franchising activities, promote the healthy and orderly development of commercial franchising, and maintain market order.

Article 2 — Commercial franchising activities within the territory of the People's Republic of China shall be governed by these Regulations. For purposes of these Regulations, "commercial franchising" (hereinafter referred to as "franchising") means business activities in which an enterprise (hereinafter referred to as "franchisor") that owns a registered trademark, corporate logo, patent, know-how, or other business resources licenses such business resources to another business operator (hereinafter referred to as "franchisee") in the form of a contract, and the franchisee conducts business operations under a unified business model in accordance with the stipulations of the contract and pays franchise fees to the franchisor. No entity or individual other than an enterprise may engage in franchising activities as a franchisor.

Article 3 — Franchising activities shall comply with the principles of voluntariness, fairness, good faith, and lawfulness. The lawful rights and interests of the parties to a franchising contract shall be protected by law. When engaging in franchising activities, neither party may harm the interests of consumers or the public interest, and shall not seek improper benefits by taking advantage of the other party's disadvantaged position.

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Article 4 — The administrative department for commerce under the State Council shall be responsible for supervising and administering franchising activities nationwide. The administrative departments for commerce under the people's governments of provinces, autonomous regions, and municipalities directly under the Central Government, and the administrative departments for commerce under the people's governments of cities divided into districts shall be responsible for supervising and administering franchising activities within their respective administrative areas in accordance with the provisions of these Regulations.

Chapter II — Franchising Activity

Article 5 — A franchisor engaging in franchising activities shall have a mature business model and the ability to provide the franchisee with continuous business guidance, technical support, business training, and other services. A franchisor shall have at least two directly-operated stores and have operated such stores for more than one year before engaging in franchising activities.

Article 6 — A franchisor shall file for record with the administrative department for commerce within 15 days from the date of first conclusion of a franchising contract. When filing for record, the franchisor shall submit the following documents and materials: (1) a photocopy of the business license or enterprise registration certificate; (2) a sample franchising contract; (3) the franchising operation manual; (4) a market plan; (5) written commitments and relevant certification materials indicating compliance with the conditions specified in Article 5 of these Regulations; and (6) other documents and materials prescribed by the administrative department for commerce under the State Council. Franchisors of the catering and other industries that provide consumer services to end consumers shall also submit documentation of their consumer complaint handling system in accordance with the regulations.

Article 7 — A franchisor shall give the franchisee a written notice at least 30 days before the conclusion of a franchising contract, informing the franchisee of the relevant matters specified in Article 21 of these Regulations, and providing the franchising contract text. The franchisor may not charge any fee from the franchisee prior to providing the notice and contract text.

Article 8 — A franchising contract shall be in writing and the franchisor and the franchisee shall enter into a franchising contract in accordance with the provisions of these Regulations. The contents of a franchising contract shall be agreed upon by both parties and shall generally include the following matters: (1) basic information of the franchisor and franchisee; (2) the content and term of franchising; (3) the type, amount, and method of payment of franchise fees; (4) the specific content and method of provision of business guidance, technical support, business training, and other services; (5) quality, standard requirements, and assurance measures for products or services; (6) the promotion and advertising of products or services; (7) the protection of consumer rights and interests and liability for compensation in franchising activities; (8) the modification, termination, and expiration of the franchising contract; (9) liability for breach of contract; and (10) dispute resolution methods.

Article 9 — The term of a franchising contract shall not be less than three years, unless otherwise agreed upon by the franchisee. Where the franchising contract expires and the franchisee applies for renewal of the contract under equivalent conditions, the franchisor shall give priority to the franchisee.

Article 10 — The franchisor shall fulfill the following obligations: (1) provide the franchisee with a franchising operation manual and provide business guidance, technical support, business training, and other services to the franchisee in accordance with the stipulations of the franchising contract and the provisions of these Regulations, and continuously provide the aforesaid services during the term of the franchising contract; (2) disclose information to the franchisee in accordance with the stipulations of the franchising contract and the provisions of these Regulations; (3) guarantee the quality of products and services provided as agreed in the franchising contract; (4) protect the franchisee's right to use the franchised business resources; (5) keep confidential the trade secrets of the franchisee; and (6) other obligations stipulated in the contract.

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Article 11 — The franchisee shall fulfill the following obligations: (1) conduct business operations in accordance with the stipulations of the franchising contract; (2) pay franchise fees in accordance with the stipulations of the franchising contract; (3) maintain the uniformity of the franchising system; (4) keep confidential the trade secrets of the franchisor; (5) truthfully report the business situation to the franchisor in accordance with the stipulations of the franchising contract; and (6) other obligations stipulated in the contract.

Article 12 — The franchisor shall establish and implement a complete franchising management system, including business guidance, technical support, business training, consumer complaint handling, etc. Where the franchisee commits fraud in the course of business operations or damages the interests of consumers, the franchisor shall assist the franchisee in handling consumer complaints. Where the franchisee's business conduct causes damage to consumers, the franchisee shall bear civil liability in accordance with the law. Where the franchisor is at fault, the franchisor shall also bear civil liability.

Chapter III — Information Disclosure

Article 13 — A franchisor shall establish and implement a sound information disclosure system. The information disclosed by the franchisor to the franchisee shall be truthful, accurate, and complete, and shall not contain any falsehoods, misleading statements, or material omissions. The franchisor shall promptly notify the franchisee of any material changes in the information disclosed by the franchisor.

Article 14 — A franchisor shall, in accordance with the provisions of these Regulations, disclose the following information to the franchisee: (1) the name, domicile, legal representative, registered capital, business scope, and scale of business of the franchisor; (2) the basic information on the franchisor's registered trademarks, corporate logos, patents, know-how, and other business resources; (3) the duration, quantity, and geographical distribution of the franchisor's franchising activities; (4) the investment budget of a franchisee; (5) the type, amount, and method of payment of franchise fees charged by the franchisor to the franchisee, and the type, amount, and method of payment of other fees; (6) proof of the quality of products, services, or equipment provided to the franchisee, or proof that the products, services, or equipment meet the required standards; (7) the content, method of provision, and implementation plan of business guidance, technical support, business training, and other services provided to the franchisee; (8) the audited financial and accounting reports and summary of the franchisor's business operations for the most recent two fiscal years; (9) the summary of litigation or arbitration involving the franchisor within the most recent five years; (10) records of administrative penalties imposed on the franchisor and its legal representative for any material illegal business activities; and (11) other information that shall be disclosed as prescribed by the administrative department for commerce under the State Council. Where the franchisor conceals relevant information or provides false information, the franchisee may rescind the franchising contract.

Article 15 — The franchisor and the franchisee shall perform the confidentiality obligations stipulated in the franchising contract. The parties shall keep confidential the trade secrets of the other party that they come to know during the performance of the contract, and shall not divulge or use such secrets without authorization, nor shall they use such secrets for purposes other than those stipulated in the contract. This obligation shall survive the termination of the contract.

Chapter IV — Legal Liability

Article 16 — Where a franchisor engages in franchising activities without having a mature business model and without meeting the condition of having at least two directly-operated stores that have been in operation for more than one year in violation of the provisions of Article 5 of these Regulations, the administrative department for commerce shall order it to make rectification, confiscate its illegal gains, and impose a fine of not less than RMB 100,000 and not more than RMB 500,000, and shall make a public announcement.

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Article 17 — Where a franchisor fails to file for record with the administrative department for commerce within 15 days from the date of the first conclusion of a franchising contract in violation of the provisions of Articles 6 and 10 of these Regulations, the administrative department for commerce shall order it to make rectification within a prescribed time limit and impose a fine of not less than RMB 10,000 and not more than RMB 50,000; where the circumstances are serious, a fine of not less than RMB 50,000 and not more than RMB 100,000 shall be imposed, and a public announcement shall be made.

Article 18 — Where a franchisor fails to disclose information to the franchisee or conceals relevant information or provides false information in violation of the provisions of Articles 7, 13, and 14 of these Regulations, the administrative department for commerce shall order it to make rectification and impose a fine of not less than RMB 10,000 and not more than RMB 50,000; where the circumstances are serious, a fine of not less than RMB 50,000 and not more than RMB 100,000 shall be imposed, and a public announcement shall be made. Where the franchisee suffers damage as a result of the franchisor's concealment of information or provision of false information, the franchisor shall be liable for compensation in accordance with the law.

Article 19 — Where a franchisor concludes a franchising contract without having a mature business model and without meeting the relevant conditions in violation of the provisions of these Regulations, the franchisee may rescind the contract.

Chapter V — Supplementary Provisions

Article 20 — Where the State Council has made separate provisions on franchising for specific industries, such provisions shall apply. Where a foreign enterprise engages in franchising activities within the territory of China, it shall comply with the relevant provisions of the laws and administrative regulations on foreign investment.

Article 21 — These Regulations shall enter into force on May 1, 2007.

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