

商务部令 2012 年第 2 号

商业特许经营信息披露管理办法

Ministry of Commerce 2012 Decree No. 2

Commercial Franchise Information Disclosure Administrative Measures

Translation and notes by

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Based on a translation of the previous version by Paul Jones and 卜秋丽(Jennifer Bu)

Readers should be aware that both legally and linguistically the only authoritative text of the Measures is the Chinese version. A translator is often required to make imperfect choices in preparing a translation. A translation is thus also an interpretation of these Measures. For this reason we have included the original Chinese text. The translated text has been provided as a guide only. For more complete answers with regard to the interpretation of these Measures readers should consult the Chinese text and a lawyer familiar with the two languages and the two systems of law.

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修订后的《商业特许经营信息披露管理办法》已经 2012 年 1 月 18 日商务部第 60 次部务会议审议通过，现予发布，自 2012 年 4 月 1 日起施行。《商业特许经营信息披露管理办法》（商务部令 2007 年第 16 号）同时废止。

The “Commercial Franchise Information Disclosure Administrative Measures,” which were adopted at the 60th Inter-Departmental Meeting¹ of the Ministry of Commerce of the People’s Republic of China on January 18, 2012, are hereby promulgated and come into force as of April 1, 2012. The Commercial Franchise Information Disclosure Administrative Measures (Order No. 16 [2007] of the Ministry of Commerce) shall be concurrently abolished.

部长：陈德铭

Minister: Chen Deming

二〇一二年二月二十三日

February 23, 2012

¹ The Chinese phrase “部务会” (bu wu hui) is a common and somewhat vague phrase and indicates a regular meeting within the particular Ministry.

商业特许经营信息披露管理办法

Commercial Franchise Information Disclosure Administrative Measures

第一条 为维护特许人与被特许人双方的合法权益，根据《商业特许经营管理条例》（以下简称《条例》），制定本办法。

Article 1 These Measures are formulated in accordance with the Commercial Franchise Administration Regulation (hereinafter referred to as the “Regulation”) for the purpose of protecting the lawful rights and interests of both franchisors and franchisees.

第二条 在中华人民共和国境内开展商业特许经营活动适用本办法。

Article 2 These Measures apply to commercial franchise activities conducted within the People’s Republic of China.²

第三条 本办法所称关联方，是指特许人的母公司或其自然人股东、特许人直接或间接拥有全部或多数股权的子公司、与特许人直接或间接地由同一所有人拥有全部或多数股权的公司。

Article 3 The term “affiliated party” as used in these Measures refers to the parent company or the individual shareholder of the franchisor, the subsidiaries where the franchisor directly or indirectly owns all or most of the equitable rights,³ and companies in which all or most of the equitable rights are owned, directly or indirectly, by the same person or persons who directly or indirectly own most or all of the equitable rights in the franchisor.

² Under the principle of “one country, two systems” the Hong Kong and Macau Special Administrative Regions have their own separate legal systems, even though they are within the boundaries of the People’s Republic of China. Article 5 of the basic laws of the two regions state that “The socialist system and policies shall not be practiced in the [Hong Kong or Macau respectively] Special Administrative Region, and the previous capitalist system and way of life shall remain unchanged for 50 years.” Accordingly these Measures do not apply in Hong Kong SAR and Macau SAR.

³ The Chinese word “股” (gu) can mean both “share in a company” or “one of several equal parts of a property.” Accordingly here we have chosen to translate “股权” (gu quan) as “equitable rights” which has a broader meaning.

第四条 特许人应当按照《条例》的规定，在订立特许经营合同之日前至少 30 日，以书面形式向被特许人披露本办法第五条规定的信息，但特许人与被特许人以原特许经营合同相同条件续约的情形除外。

Article 4 The franchisor shall in accordance with the provisions of the Regulation not less than 30 days before the expiry of the franchise agreement, disclose in writing to the franchisee the information specified in Article 5 of these Measures, except that such disclosure is not required if the renewal of the franchise agreement is on the same terms and conditions.⁴

第五条 特许人进行信息披露应当包括以下内容：

Article 5 The Franchisor shall include the following information in its required disclosure document:

(一) 特许人及特许经营活动的基本情况。

(I) Basic information about the franchisor and its management.

1、特许人名称、通讯地址、联系方式、法定代表人、总经理、注册资本额、经营范围以及现有直营店的数量、地址和联系电话。

1. The franchisor's name, mailing address, contact information, legal representative⁵, general manager, registered capital amount, business scope as well as the number, addresses and telephone numbers of existing outlets directly operated by the franchisor.

2、特许人从事商业特许经营活动的概况。

2. Overview of the franchise activities of the franchisor.

3、特许人备案的基本情况。

⁴ The Chinese word “相同” means “identical, the same, alike.” There is more emphasis on the similarity of the terms and conditions than if other words were used.

⁵ Each corporation in China must have a “法定代表人” (fading daibiao ren) a person with broad powers and potentially significant liability as the agent for the corporation. The name of the person should appear on the business license (营业执照 or yingye zhizhao) of the corporation. This individual can sign for the corporation. It does not refer to the lawyers for the franchisor. For further information see Neal Stender, William Soileau & Yan Zeng, “Representative Roulette- Individual and Corporate Risks & Precautions Affected by China Law Changes,” March 2007 *Amcham China Brief*. Available online at <http://www.orrick.com/fileupload/1146.pdf>.

3. Basic information regarding the franchisor's registration.⁶
- 4、由特许人的关联方向被特许人提供产品和服务的，应当披露该关联方的基本情况。
4. Where an affiliate of the franchisor supplies products or services to the franchisees, the basic information regarding such affiliate.
- 5、特许人或其关联方在过去 2 年内破产或申请破产的情况。
5. Information regarding the bankruptcy of or applications for bankruptcy of the franchisor or its affiliates in the past two years.

(二) 特许人拥有经营资源的基本情况。

(II) Basic information regarding the operational resources of the franchisor.

- 1、注册商标、企业标志、专利、专有技术、经营模式及其他经营资源的文字说明。
1. A written statement of the information that it can provide regarding its registered trademarks, business logos, patents, technical know how, operational systems and other business operating resources.
- 2、经营资源的所有者是特许人关联方的，应当披露该关联方的基本信息、授权内容，同时应当说明在与该关联方的授权合同中止或提前终止的情况下，如何处理该特许体系。
2. Where the owner of the above-mentioned operational resources is an affiliate of the franchisor, the basic information regarding the affiliate and the content of the license shall be disclosed and the franchisor shall specify how it will operate the franchise system once the license from the affiliate to use the resource is canceled or terminated.
- 3、特许人（或其关联方）的注册商标、企业标志、专利、专有技术等与特许经营相关的经营资源涉及诉讼或仲裁的情况。
3. Information regarding any litigation or arbitration involving the resources related with the franchise operation, including the registered trademarks, business logos, patents, or technical know how of the franchisor or its affiliate.

(三) 特许经营费用的基本情况。

(III) Basic information about franchise fees.

⁶ As required by Article 8 of the Regulation.

1、特许人及代第三方收取费用的种类、金额、标准和支付方式，不能披露的，应当说明原因，收费标准不统一的，应当披露最高和最低标准，并说明原因。

1. The categories, amounts, rates and terms for payment of the fees collected by the franchisor for itself or on behalf of third parties. Where the information can not be disclosed an explanation as to why must be given. Where the fees charged are not uniform, the minimum and maximum amounts shall be disclosed and an explanation shall be given.

2、保证金的收取、返还条件、返还时间和返还方式。

2. The conditions under which security deposits are collected and refunded, as well as when and how refunds will occur.

3、要求被特许人在订立特许经营合同前支付费用的，该部分费用的用途以及退还的条件、方式。

3. Where the franchisee is required to pay any fees before the conclusion of the franchise agreement, the franchisor shall specify the purpose of such fees and the conditions and method for the refund of such fees.

(四) 向被特许人提供产品、服务、设备的价格、条件等情况。

(IV) Information regarding the prices and conditions for products, services or equipment supplied to the franchisees.

1、被特许人是否必须从特许人（或其关联方）处购买产品、服务或设备及相关的价格、条件等。

1. Whether the franchisees must purchase any products, services or equipment from the franchisor (or its affiliate) and the relevant prices and terms etc.

2、被特许人是否必须从特许人指定（或批准）的供应商处购买产品、服务或设备。

2. Whether the franchisees must buy products, services or equipment from a supplier designated (or approved) by the franchisor.

3、被特许人是否可以选择其他供应商，以及供应商应具备的条件。

3. Whether or not the franchisees are allowed to choose other suppliers and the qualification requirements for such suppliers.

(五) 为被特许人持续提供服务的情况。

(V) Ongoing services to be provided to the franchisee.

- 1、业务培训的具体内容、提供方式和实施计划，包括培训地点、方式和期限等。
1. The specific content, delivery and implementation methods, including location, method and duration, of the training.
- 2、技术支持的具体内容、提供方式和实施计划，包括经营资源的名称、类别及产品、设施设备的种类等。
2. The specific content, delivery and implementation methods of the technical support, including the itemization of the types of business resources, the categories and types of products, facilities and equipment.

(六) 对被特许人的经营活动进行指导、监督的方式和内容。

(VI) The components and method for the operational guidance and supervision provided to the franchisee.

- 1、经营指导的具体内容、提供方式和实施计划，包括选址、装修装潢、店面管理、广告促销、产品配置等。
1. The specific content, delivery and implementation methods of the operational guidance, including site selection, premises decor, store management, advertising and promotion and product configuration etc.
- 2、监督的方式和内容，被特许人应履行的义务和不履行义务的责任。
2. The method and content of supervision of the operations of the franchisee; and the obligations that the franchisee must fulfill as well as the consequences resulting from the failure of the franchisee to fulfill such obligations.
- 3、特许人和被特许人对消费者投诉和赔偿的责任划分。
3. Whether or not the franchisor will have joint and several liabilities for customer complaints and compensation, and if so how this will be implemented.

(七) 特许经营网点投资预算情况。

(VII) Information about the estimated investment⁷ required for a franchise outlet.

1、投资预算可以包括下列费用：加盟费；培训费；房地产和装修费用；设备、办公用品、家具等购置费；初始库存；水、电、气费；为取得执照和其他政府批准所需的费用；启动周转资金。

1. The investment estimate may include the following expenses: franchise fees; cost of training; cost of real estate and décor; cost of equipment, office furniture and supplies etc.; initial inventory; cost of water, electricity and gas; the cost of obtaining licenses and other governmental approvals; and start-up capital.

2、上述费用的数据来源和估算依据。

2. The basis for such estimates and the source of the data.

(八) 中国境内被特许人的有关情况。

(VIII) Relevant information about franchisees in China.

1、现有和预计被特许人的数量、分布地域、授权范围、有无独家授权区域（如有，应说明预计的具体范围）的情况。

1. The number, geographic distribution, and scope of permitted sales for the existing and anticipated franchisees, and whether or not they have any exclusive territories or rights (if there are any such territories or rights the scope of such).

2、现有被特许人的经营状况，包括被特许人实际的投资额、平均销售量、成本、毛利、纯利等信息，同时应当说明上述信息的来源。

2. Information regarding the operations of the franchisees, including the actual amount of investment, average gross sales, costs, gross profits and net profits, and describe the source of the above information.

(九) 最近 2 年的经会计师事务所或审计事务所审计的特许人财务会计报告摘要和审计报告摘要。

(IX) Summaries of the franchisor's financial statements and audit reports, audited by an accounting firm, for the two most recent years.

⁷ This could also be translated as “investment budget.” The Chinese word “预算” is commonly translated as “budget.”

(十) 特许人最近 5 年内与特许经营相关的诉讼和仲裁情况，包括案由、诉讼（仲裁）请求、管辖及结果。

(X) Information (including the cause of action, claim, jurisdiction and results) about litigation or arbitration of the franchisor, which is related to the franchise business for the last 5 years.

(十一) 特许人及其法定代表人重大违法经营记录情况。

(XI) Information regarding any record of material illegal operations with respect to the franchisor or its legal representative.

1、被有关行政执法部门处以 30 万元以上罚款的。

1. Being fined not less than 300,000 RMB by an administrative law enforcement department.

2、被追究刑事责任的。

2. Being subject to criminal liabilities.

(十二) 特许经营合同文本。

(XII) Copy of the franchise agreement

1、特许经营合同样本。

1. A sample franchise agreement.

2、如果特许人要求被特许人与特许人（或关联方）签订其它有关特许经营的合同，应当同时提供此类合同样本。

2. Where the franchisor will require the franchisee to sign any other franchise related agreement with it or one of its affiliates, it shall provide a sample of such agreement.

第六条 特许人在推广、宣传活动中，不得有欺骗、误导的行为，其发布的广告中不得含有宣传单个被特许人从事特许经营活动收益的内容。

Article 6 The franchisor shall not conduct advertising and promotion activities of a fraudulent or misleading nature, or issue any advertising publicizing the earnings from its franchise operations of a single franchisee.

第七条 特许人向被特许人披露信息前，有权要求被特许人签署保密协议。

被特许人在订立合同过程中知悉的商业秘密，无论特许经营合同是否成立，不得泄露或者不正当使用。

特许经营合同终止后，被特许人因合同关系知悉特许人商业秘密的，即使未订立合同终止后的保密协议，也应当承担保密义务。

被特许人违反本条前两款规定，泄露或者不正当使用商业秘密给特许人或者其他造成损失的，应当承担相应的损害赔偿责任。

Article 7 Before it makes any information disclosure to a franchisee, a franchisor has the right to require that the franchisee sign a confidentiality agreement.

In terms of the business secrets learned by the prospective franchisee during the process of concluding the franchise agreement, whether the agreement is concluded or not, the franchisee shall not disclose those business secrets or use them improperly.

After the franchise agreement is terminated, even though the franchise and franchisee have not signed a Non-Disclosure Agreement that regulates the confidential obligations after the franchise agreement is terminated, the franchisee has an obligation to keep the franchisor's business secrets confidential.

The Franchisee who breaches the previous two provisions above by disclosing and improperly use franchisor's business secrets, and causes damages to the franchisor and others, shall be liable for compensation damages.

第八条 特许人在向被特许人进行信息披露以后，被特许人应当就所获悉的信息内容向特许人出具回执说明（一式两份），由被特许人签字，一份由被特许人留存，另一份由特许人留存。

Article 8 After a franchisor makes an information disclosure to a franchisee, the franchisee shall issue an acknowledgement or receipt (in duplicate) to the franchisor specifying the contents of the disclosure received from the franchisor, which shall be signed by the franchisee. One copy shall be retained by the franchisee and the other copy shall be retained by the franchisor.

第九条 特许人隐瞒影响特许经营合同履行致使不能实现合同目的的信息或者披露虚假信息的，被特许人可以解除特许经营合同。

Article 9 Where the franchisor has concealed which should have been disclosed⁸ thereby affecting the performance of the agreement and frustrating the fulfillment of the purpose of the agreement, or has disclosed false information, the franchisee may terminate the franchise agreement.

⁸ Although the English word "conceal" implies an intent not to disclose something, there are some who interpret the Chinese word "隐瞒" (yinman) as simply requiring the failure to disclose a required item. Therefore it is not clear that a franchisee will have the burden of proving intent on the part of the franchisor in the event of a material omission from a disclosure document.

第十条 特许人违反本办法有关规定的，被特许人有权向商务主管部门举报，经查实的，分别依据《条例》第二十六条、第二十七条、第二十八条予以处罚。

Article 10 Where the franchisor has breached a provision of these Measures, the franchisee may report such breach to the relevant Commerce Department. Upon verification, the relevant Commerce Department may punish the franchisor according to Article 26, 27 and 28 of the *Commercial Franchise Administration Regulation*.

第十一条 本办法由中华人民共和国商务部负责解释。

Article 11 The Ministry of Commerce of the People's Republic of China is responsible for the interpretation of these Measures.

第十二条 本办法自 2012 年 4 月 1 日起施行。原《商业特许经营信息披露管理办法》（商务部令 2007 年第 16 号）同时废止。

Article 12 These Measures shall come into effect as of April 1, 2012. The Commercial Franchise Information Disclosure Administrative Measures (Order No. 16 [2007] of the Ministry of Commerce) shall be concurrently abolished.