

商务部令 2007 年第 15 号

## 商业特许经营备案管理办法

Ministry of Commerce 2007 Decree No. 15

# Commercial Franchise Registration Administrative Measures

Translation and notes by

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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.

商务部令 2007 年第 15 号  
商业特许经营备案管理办法

Ministry of Commerce 2007 Decree No. 15

**Commercial Franchise Registration<sup>1</sup> Administrative  
Measures**

商业特许经营备案管理办法》已于 2007 年 4 月 6 日经中华人民共和国商务部第六次部务会讨论通过，现予以公布，自 2007 年 5 月 1 日起施行。

The “Commercial Franchise Registration Administrative Measures,” which were adopted at the 6<sup>th</sup> Inter-Departmental Meeting<sup>2</sup> of the Ministry of Commerce of the People’s Republic of China on April 6, 2007, are hereby promulgated and come into force as of May 1, 2007.

部长：薄熙来  
Minister: Bo Xilai

二〇〇七年四月三十日  
April 30, 2007

**商业特许经营备案管理办法**

**Commercial Franchise Registration Administrative Measures**

第一条 为加强对商业特许经营活动的管理，规范特许经营市场秩序，根据《商业特许经营管理条例》（以下简称《条例》）的有关规定，制定本办法。

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<sup>1</sup> The Chinese phrase “备案” (bei an) literally means to “set up a file” and accordingly these Measures are often translated as the “Commercial Franchise Filing Administrative Measures.” However we feel that in this context, and for a non-Chinese audience, the word “register” better conveys the meaning.

<sup>2</sup> 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.

**Article 1** These Measures are formulated in accordance with the Commercial Franchise Administration Regulation (hereinafter referred to as the “Regulation”) for the purpose of strengthening the administration of commercial franchise operations and regulating the market order of franchise operations.

第二条 在中华人民共和国境内（以下简称中国境内）从事商业特许经营活动，适用本办法。

**Article 2** These Measures apply to commercial franchise activities conducted within the People’s Republic of China.<sup>3</sup>

第三条 国务院商务主管部门及省、自治区、直辖市人民政府商务主管部门是商业特许经营的备案机关。在省、自治区、直辖市范围内从事商业特许经营活动的，向特许人所在地省、自治区、直辖市人民政府商务主管部门备案；跨省、自治区、直辖市范围从事特许经营活动的，向国务院商务主管部门备案。

商业特许经营的备案工作实行全国联网。符合《商业特许经营管理条例》规定的特许人，都应当通过政府网站进行备案（网址为 [www.mofcom.gov.cn](http://www.mofcom.gov.cn)）。

**Article 3** The Commerce Department of the State Council and the Commerce Departments of each province, autonomous region and municipality directly under the central government<sup>4</sup> are the relevant administrative authorities for the registration of commercial franchises. Where a franchisor engages in commercial franchise operations within the territorial scope of a province, autonomous region or municipality directly under the central government, the franchisor shall register with the Commerce Department of the respective province, autonomous region or municipality directly under the central government where it is located. Where a franchisor engages in commercial franchise operations across the territorial boundaries of a province, autonomous region or

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<sup>3</sup> 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 practised 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. Also see Article 17 of these Measures.

<sup>4</sup> The second level of government in China consists of 22 provinces (Heilongjiang, Jilin, Liaoning, Hebei, Henan, Anhui, Shandong, Jiangsu, Zhejiang, Shanxi, Shaanxi, Hubei, Hunan, Jiangxi, Fujian, Guangdong, Hainan, Sichuan, Yunnan, Guizhou, Gansu and Qinghai); five autonomous regions (Ningxia, Inner Mongolia, Guangxi, Xinjiang and Tibet); and four municipalities directly under the authority of the central government (Beijing, Tianjin, Shanghai and Chongqing). China is a unitary state and there is accordingly only a limited division of powers compared to what is found in federal states such as Canada, Germany and the United States. Each subordinate level of government can exercise the same powers as the national level government (with certain exceptions) provided that they do not contradict or conflict with the laws and regulations adopted by a superior level of government. See China’s 宪法 (xian fa or Constitution) and in particular Article 100, and the 中华人民共和国立法法 (Zhonghua Renmin Gongheguo Lifa Fa – Legislation Law of the People’s Republic of China, adopted at the Third Session of the Ninth National People’s Congress on March 15, 2000 that came into force on July 1, 2000, and in particular Chapter 2 of that Law.

municipality under the central government, the franchisor shall register with the Commerce Department of the State Council.<sup>5</sup>

A national network shall be used for commercial franchise registrations. Franchisors who meet the requirements of the provisions of the Commercial Franchise Administrative Regulation shall register through the government web site ([www.mofcom.gov.cn](http://www.mofcom.gov.cn)).

第四条 任何单位或者个人对违反本办法规定的行为，有权向备案机关举报。

**Article 4** Any entity or individual may report a breach of these Measures to the relevant registration authorities.

第五条 申请备案的特许人应当向备案机关提交以下材料：

- (一) 商业特许经营基本情况。
- (二) 中国境内全部被特许人的店铺分布情况。
- (三) 特许人的市场计划书。
- (四) 企业法人营业执照复印件或其他主体资格证明的复印件。
- (五) 与特许经营活动相关的商标权、专利权及其它经营资源的注册证书复印件。

(六) 由设区的市级商务主管部门开具的符合《条例》第七条第二款规定的证明文件；直营店位于境外的，特许人应当提供直营店营业证明（含中文翻译件），并经当地公证机构公证和中国驻当地使领馆认证。

在 2007 年 5 月 1 日前已经从事特许经营活动的特许人不适用于上款的规定，但应当提交特许人与中国境内的被特许人订立的第一份特许经营合同。

- (七) 特许经营合同样本。
- (八) 特许经营操作手册的目录（须注明每一章节的页数和手册的总页数，对于在特许系统内部网络上提供此类手册的，须提供估计的打印页数）。
- (九) 国家法律法规规定经批准方可开展特许经营的产品和服务，须提交相关主管部门的批准文件。

(十) 经法定代表人签字盖章的特许人承诺。  
上述第（一）至（三）项材料直接在网上填报，第（四）至（十）项应当在网上提交便携文件格式（PDF）的电子版材料。

**Article 5** Franchisors applying for registration shall submit the following items to the relevant registration authority:

- (1) The basic information about the commercial franchise system.
- (2) The location of all of the franchisee stores within China.
- (3) The franchisor's marketing plan.

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<sup>5</sup> Also called the Ministry of Commerce (“MOFCOM”).

- (4) A photocopy of the business license of the legal entity<sup>6</sup> or a photocopy of any other entity qualification certificate.
- (5) Photocopies of the registration certificates of the trademarks, patents and operational resources relating to the franchise system.
- (6) Evidentiary documents issued by the relevant municipal level Commerce Department certifying that the applicant satisfies the requirements of Article 7, second paragraph, of the Regulation.<sup>7</sup> Where the directly operated units are located outside of China, the franchisor shall provide certificates evidencing such operations (together with a Chinese translation), and such certificates shall be notarized by a local notary public and authenticated by the Chinese Embassy or Consulate where such outlets are located.

The preceding paragraph does not apply to franchisors who had already engaged in franchise operations prior to May 1, 2007, but such franchisors shall submit the first franchise agreement concluded between the franchisor and a franchisee in China.

- (7) A sample franchise agreement.
- (8) The table of contents of the franchise operations manual (the number of pages of each chapter and the total number of pages in the manual shall be indicated. Where such manual is provided on an internal web site of the franchise system, an estimate of the number of pages in a print-out shall be indicated).
- (9) Where national laws and regulations require prior approval to offer the product or service to be franchised, the franchisor shall submit an approval document from the relevant administrative authority.
- (10) The franchisor shall provide an undertaking<sup>8</sup> signed by its legal representative<sup>9</sup> and stamped with the franchisor's corporate seal.

Items (1) to (3) above may be completed and submitted online. Documents required by (4) to (10) above may be submitted online in PDF format.

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<sup>6</sup> This may also be translated as "juristic person."

<sup>7</sup> This refers to the requirements to have operated two company-owned locations for one year.

<sup>8</sup> This is an undertaking to comply with the law. A sample form as prepared by the Shanghai Chain Management Association is provided in Annex 1.

<sup>9</sup> 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>.

第六条 特许人应当在与中国境内的被特许人首次订立特许经营合同之日起的 15 天内向备案机关申请备案。在 2007 年 5 月 1 日前已经从事特许经营活动的特许人，应当自《条例》施行之日起 1 年内，依照本办法的规定向有关商务主管部门申请备案。

**Article 6** Franchisors shall apply for registration to the relevant Commerce Department within 15 days of concluding their first franchise agreement in China. Franchisors that have engaged in franchise activities prior to May 1, 2007 shall apply to the relevant Commerce Department for registration in accordance with these Measures within one year after the implementation of the Regulation.

第七条 特许人的备案信息有变化的，应当自变化之日起 30 日内向备案机关申请变更。

**Article 7** Where there is a change in the registration information of a franchisor, the franchisor shall within 30 days of the change apply to the registration authority to have the registration amended.

第八条 特许人应当在每年 3 月 31 日前将其上一年度订立、撤销、续签与变更的特许经营合同情况向备案机关报告。

**Article 8** Franchisors shall, prior to March 31 in each year, submit to the registration authority any terminations, rescissions, extensions or modifications of franchise agreements that have occurred or been entered into in the preceding year.

第九条 特许人应认真填写所有备案事项的信息，并确保所填写内容真实、准确和完整。

**Article 9** Franchisors shall faithfully complete all items required for registration and ensure that the information submitted is truthful, accurate and complete.

第十条 备案机关应当自收到特许人提交的符合本办法第五条规定的文件、资料之日起 10 日内予以备案，并在商务部网站予以公告。

特许人提交的文件、资料不完备的，备案机关可以要求其在 7 日内补充提交文件、资料。备案机关在特许人材料补充齐全之日起 10 日内予以备案。

**Article 10** The registration authority shall, within 10 days after receiving the documents and materials prescribed in Article 5 of these Measures, complete the registration formalities and publicly announce the registration on the web site of the Ministry of Commerce.

Where the documents or materials submitted by the franchisor are incomplete, the registration authority may require supplemental submissions within 7 days. On receipt

from the franchisor of all of the supplemental documents and materials that it required it shall complete the registration within 10 days.

第十一条 已完成备案的特许人有下列行为之一的，备案机关可以撤销备案，并在商务部网站予以公告：

- （一）因特许人违法经营，被主管登记机关吊销营业执照。
- （二）备案机关收到司法机关因为特许人违法经营而做出的关于撤销备案的司法建议书。
- （三）特许人隐瞒有关信息或者提供虚假信息经查证属实的。
- （四）特许人自行注销的。

**Article 11** Where any of the following circumstances apply to a franchisor who has completed the registration procedures, the relevant Commerce Department may cancel the registration and make a public announcement of the same on the web site of the Ministry of Commerce.

- (1) The franchisor's business license is revoked by the relevant registration authority due to its illegal business operations.
- (2) The registration authority receives advice from a judicial authority proposing a revocation of the registration because of the franchisor's illegal business operations.
- (3) It is found upon investigation that the franchisor concealed relevant information or provided false information.
- (4) The franchisor cancels the registration on its own initiative.

第十二条 各省、自治区、直辖市人民政府商务主管部门应当将备案及撤销备案的情况在 10 日内反馈商务部。

**Article 12** The relevant commerce departments of the provinces, autonomous regions and municipalities directly under the central government shall report all registrations and cancellations of registrations to the Ministry of Commerce within 10 days.

第十三条 备案机关在完成备案手续的同时，应当完整准确地记录和保存特许人的备案信息材料，依法为特许人保守商业秘密。

**Article 13** In completing the registration formalities the registration authority shall completely and accurately record and maintain the franchisor's submissions, and

shall maintain the confidentiality of the franchisor's commercial secrets in accordance with the law.

第十四条 公众可通过商务部政府网站查询以下信息：

（一）特许人的企业名称及特许经营业务使用的注册商标、企业标志、专利、专有技术等经营资源。

（二）特许人的备案时间。

（三）特许人的法定经营场所地址与联系方式、法定代表人姓名。

（四）中国境内的被特许人营业地址。

**Article 14** The general public shall have access to the following information on the government web site of the Ministry of Commerce:

(1) the franchisor's business name, registered trademarks, business logo, patents, technical know how and operational resources relating to the franchise system.

(2) the franchisor's registration date.

(3) the franchisor's legal address, contact information, and the name of the legal representative<sup>10</sup> of the franchisor.

(4) the business address of the franchisees in China.

第十五条 特许人未按照《条例》和本办法的规定办理备案的，由国务院商务主管部门及特许人所在地省、自治区、直辖市人民政府商务主管部门责令限期备案，处1万元以上5万元以下罚款；逾期仍不备案的，处5万元以上10万元以下罚款，并予以公告。

**Article 15** Where the franchisor does not comply and fails to register as required by the Regulation and these Measures, the commercial administration authority of the State Council and the relevant Commerce Department of the People's Government of each province, autonomous region, or municipality directly under the administration of the central government where the franchisor is located shall order registration within a specified period of time, and that a fine of not less than 10,000 RMB and not more than 50,000 RMB.<sup>11</sup> Where the franchisor fails to register within such specified period of time, a fine of not less than 50,000 RMB and not more than 100,000 RMB<sup>12</sup> shall be imposed and a public announcement shall be made.

第十六条 特许人违反本办法第八条规定的，由备案机关责令改正，可以处1万元以下的罚款；情节严重的，处1万元以上5万元以下的罚款，并予以公告。

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<sup>10</sup> See *supra* note 9.

<sup>11</sup> From about \$1,300.00 USD to about \$6,500.00 USD at the April 5, 2007 conversion rate.

<sup>12</sup> From about \$6,500.00 USD to about \$13,000.00 USD at the April 5, 2007 conversion rate.

**Article 16** Where the franchisor breaches Article 8 of these Measures,<sup>13</sup> the registration authority shall order compliance and may impose a fine of not more than 10,000 RMB.<sup>14</sup> If the circumstances are serious it may impose a fine of not less than 10,000 RMB and not more than 50,000 RMB<sup>15</sup> and a public announcement shall be made.

第十七条 境外特许人在中国境内从事特许经营活动，按照本办法执行。香港、澳门特别行政区及台湾地区特许人参照本办法执行。

**Article 17** Franchisors from outside China engaging in franchise operations in China shall be governed by these Measures. Franchisors from Hong Kong SAR, Macau SAR, and Taiwan Region shall be governed by these Measures by analogy.

第十八条 国家行业协会应协助政府主管部门做好企业备案工作，充分发挥行业协会的协调作用，加强行业自律。

**Article 18** The national trade association<sup>16</sup> shall assist the relevant administrative units of the government with the registrations. It shall also completely fulfill its co-ordination function and strengthen self discipline in the franchise industry.

第十九条 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.

第二十条 本办法自 2007 年 5 月 1 日起实施。

**Article 20** These Measures shall come into effect on May 1, 2007.

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<sup>13</sup> This refers to the requirement for a franchisor to annually update its registration.

<sup>14</sup> About \$1,300.00 USD at the April 5, 2007 conversion rate.

<sup>15</sup> From about \$1,300.00 USD to about \$6,500.00 USD at the April 5, 2007 conversion rate.

<sup>16</sup> The 中国连锁经营协会 – zhongguo liansuo jingying xiehui or China Chain Store & Franchise Association (“CCFA”).

## **Annex 1: Form of Undertaking**

As developed by the Shanghai Chain Management Association

July 9, 2007

本特许人作如下保证：

The Franchisor undertakes that:

一、遵守《商业特许经营管理条例》、《商业特许经营备案管理办法》及其相关法律、法规、规章。

1. It will comply with the “Commercial Franchise Administration Regulations” and the “Commercial Franchise Administration Measures” and the related laws and regulations.

二、服从主管部门、行业协会对商业特许经营的行业管理，自觉维护商业特许经营的经营秩序。

2. It will comply with the relevant ministerial departments and industry associations for commercial franchise industry management, it will consciously safeguard the orderly conduct of franchising.

三、按要求认真填写、及时提交与经营活动有关的文件和资料。

3. It will complete and submit in a timely fashion the required documents and information related to management activities.

四、《商业特许经营备案管理办法》要求的任何事项发生变化之日起，30 日内到原备案机关办理变更手续。

4. It will update the original registration office regarding any change in the requirements of the “ Commercial Franchise Administrative Measures” within 30 days of such change.

五、所有备案材料及其备案变更材料中的信息是完整的、准确的、真实的。

5. All information in the registration documents and updates filed is complete, accurate and true.

以上如有违反，将承担一切法律责任。

It will be legally responsible for any breach of the above undertakings.

特许人名称\_\_\_\_\_

Franchisor name

法定代表人或授权代表人  
(签字、盖章)

Legal Representative<sup>17</sup> or Authorized Representative  
(Signed, Sealed)

年 月 日

Year Month Day

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<sup>17</sup> See note 9, *supra*.