

## REVISED MEASURES FOR FRANCHISE RECORDAL IN CHINA

With the rapid growth in China's franchising businesses in recent years, franchising has an important role in the Chinese economy. According to China Chain Store & Franchise Association ("CCFA"), the official representative of retailing & franchising industry in China, there are currently 900 members with 180,000 outlets, including domestic & overseas retailers, franchisers and suppliers in China. The total sales of China's top 100 franchising retailers exceeded USD298.6 billion in 2010, accounting for 13% of the entire retail sales of social consumables.

In order to introduce uniformed franchising recordal procedures in China, the Ministry of Commerce of the People's Republic of China ("MOFCOM") adopted and promulgated the Revised Measures for Franchise Recordal in China ("Revised Measures") which came into force as of 1 February 2012. Further, on 4 January 2012, MOFCOM issued the Guiding Opinion on Promoting the Development of Franchising Business ("Opinion"). In the Opinion, MOFCOM declared that it will strengthen the enforcement of relevant franchising laws and regulations.

The following are the significant changes incorporated in the Revised Measures:

	Old Measures	Revised Measures
1) Notarization and legalization of supporting documents originated outside PRC	Only the Certificate of Incorporation of the Franchiser need to be notarized and legalized	<u>All</u> supporting documents and their Chinese translation must be notarized and legalized.
2) Business scope requirement	None	The Certificate of Approval of the FIE must include "conducting franchising business".
3) Disclosure	Location of some of the franchising stores	Location of <u>all</u> of the franchising stores
4) Penalty for non-compliance	May be fined RMB10,000 to RMB50,000	<u>Must</u> be fined RMB10,000 to RMB50,000

### 1. Notarization and legalization of the supporting documents for the application of recordal of franchising agreements

Under the Revised Measures, if any supporting documents originate from outside PRC, the supporting documents must be notarized in the country of origin and must then be legalized by the local Chinese consulate. The Chinese translation of the supporting documents must also be notarized in the country of origin. For example, foreign applicants will be required to supply a notarized and legalized copy of the Certificate of Incorporation (or its equivalent) of the applicant, and a notarized and legalized copy of the Trademark Certificate or Patent Certificate relating to the franchising activities. Under the old Measures, only the Certificate of Incorporation of the Franchiser needed to be notarized and legalized. In the past, some local authorities would not stringently require having all the documents notarized and legalized.

Therefore, this revised requirement will inevitably require more preparation and lead time for franchise recordal procedure in China.

For Hong Kong applicants, if the supporting documents originate from Hong Kong, the supporting documents have to be attested by a China-Appointed Attesting Officer.

### 2. New mandatory business scope requirement for foreign invested enterprises

Under the Revised Measures, a foreign-invested enterprise in China, such as a wholly foreign owned enterprise or a joint venture in China must submit its Certificate of Approval. The business scope of such Certificate of Approval should include "conducting franchising business".

### 3. Disclosure requirement

Under the Revised Measures, the applicant must disclose the locations of all franchised stores in China and this information will be made available to the public.

### 4. Penalty for non compliance of the Revised Measures

The Revised Measures stipulate that if the franchisor does not comply with the Revised Measures, it will be ordered to perform recordal within a specified period of time and will be punished with a fine within the ambit from RMB 10,000 to RMB 50,000. Prior to the amendment, the relevant authority may not necessarily impose a fine for the non-recordal of the franchising agreement.

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