

Franchising in Taiwan

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I. Taiwan: general Information

The Republic of China (ROC), more commonly known as Taiwan, is a sovereign state located in East Asia whose capital city is Taipei. With a total area of 36,191 km² and an estimated population of 23 million inhabitants, the ROC governs the island of Taiwan as well as other minor islands (Penghu, Matsu, Kinmen ...).

II. Taiwanese economy

Taiwan is a dynamic and developed country whose industry is mainly based on high technology. People's Republic of China is the main trading partner of Taiwan, followed by the US, the EU and Japan. With a total GDP of \$ 418.206 billion in 2010, Taiwan is the 24th largest economy in the world. Chain of stores and franchises play an important role in the development of Taiwan's economy and represented 48% of the turnover of the retail and food sector in 2008, i.e. NT\$ 1,7 trillion. The Taiwanese distribution network is characterized by the strong presence of convenience stores and shopping centers.

III. Franchise legislation in Taiwan

Since there is currently no specific law governing franchising in Taiwan, the relationships between franchisors and franchisees are regulated by the franchise agreements. However, the validity and the enforcement of such agreements remain governed by the Fair Trade Act of 2010 which deals with trading order and fair competition matters. Besides, the Fair Trade Commission (FTC) adopted specific guidelines regarding franchising which have been amended in 2009.

These "*Disposal Directions (Guidelines) on the Disclosure of Information by Franchisors*" aim to "*ensure fair competition in franchise business and to avoid concealment by franchisors of important information during recruitment of franchisees*" (Article 1). According to Article 4, the franchisor shall provide written information to the prospective franchisee 10 days before they enter into contracts, including:

1. The name of the franchiser's enterprise and the date on which it began franchising operations.
2. The names and relevant business experiences of the responsible person and the chief management personnel of the franchiser.
3. The franchise fees and other charges collected by the franchiser before the entry into the franchising contracts and duration of the franchising contracts, including their types of fees, amounts, methods of collection and conditions for refunds.
4. The intellectual property rights including trademarks, patents, copyrights and so on that the franchiser authorizes the usage to the franchisee, in regard to the time that the intellectual property rights are filed or granted, the content and duration of the rights, plus the scope and any restriction of the authorization to the franchisee.
5. The content and methods of management assistance, training guidance and so forth to be provided by the franchiser to the franchisee.
6. The franchiser's management program concerning the franchisee's areas of operation with those of other franchisees or directly operated stores.
7. All the other franchisees' names and business addresses of the franchiser in the city or county where the franchisee will be located, as well as, within the last accounting year, the statistic data number of

other franchisees and terminated numbers of the franchising contracts with the franchiser in the whole country and also the city or county where the franchisee will be located.

8. Within duration of the franchise contract, the restrictions over the business relationship between the franchiser and the franchisee in their operations of business.
9. Conditions and resolved means to modify, terminate and/or rescind the franchise contract.

Article 5 of the Guidelines provides that the franchisor must give the prospective franchisee a period of 5 days to review the proposed contract before signing such agreement.

Any violation of the Guidelines by a franchisor involving concealment or delaying disclosure of important information is considered as a violation of Article 24 of the Fair Trade Act if it is clearly unfair to the prospective franchisee and sufficient to affect the trading order of the franchising operations. According to Article 41, such an infringement may lead to corrective measures ordered by the FTC, administrative penalties (up to NT\$ 25,000,000) or a claim for compensation of damages (up to 3 times of the amount of the damages proven in case of an intentional infringement).

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