



Increased Obligations for Franchisers

2022.03.28

The amended Fair Transactions In Franchise Business Act, which will become effective on July 5, 2022 (the “Franchise Business Act”), protects the rights of franchisees by (a) requiring the franchiser to obtain prior consent of the franchisees before advertising or holding promotional events paid by the franchisees, (b) prohibiting the lending of a franchise agent’s registration certificate or assisting in the same, and (c) providing a consensus voting system for prompt resolution of claims by franchisees. Details of the changes are as follows.

a. Obligation of the franchiser to obtain prior consent from the franchisees before advertising or holding promotional events paid by the franchisees (Article 12-6)

A franchiser must obtain prior consents from at least a certain ratio of franchisees as prescribed by the Presidential Decree if an advertising activity or a promotional event is paid partly or entirely by the franchisees. A franchiser found in violation of such obligation may be subject to a corrective order or administrative fine.

Under the proposed partial amendment of the Enforcement Decree of the Franchise Business Act, a franchiser who intends to hold an advertising or promotional event paid by the franchisees must obtain consent from at least 50% of the total franchisees in the case of advertising, and at least 70% of the total franchisees in the case of promotional events. In addition, a franchiser must ensure that an agreement on advertising or promotional events is executed, which is separate from and in addition to a franchise agreement, and which sets forth (i) the title, date, and time of the advertising or promotional event, (ii) the cost sharing ratio, and (iii) the maximum amount to be borne by the franchisees. The franchisees’ consent must be given in writing, through telecommunication network or information control system at the time of sales, or by other method as agreed between the franchiser and the franchisees.

b. Prohibition of lending franchise agent’s registration certificate or assisting in the same (Articles 29-2 and 41(4))

The lending or borrowing of a franchise agent's registration certificate or assisting in the same will be prohibited under the amended Franchise Business Act, and any person who violates such obligation will be punished with a fine of not less than KRW 10 million or imprisonment for not less than one year.

c. Consensus Voting System (Articles 34-2 through 34-4)

A consensus voting system has been introduced to provide prompt remedial measures for damages incurred by the franchisees.

Key Contacts

Anthony Chang

Senior Foreign Attorney

+82-2-316-4258

achang@shinkim.com

Michael Chang

Senior Foreign Attorney

+82-2-316-4653

mchang@shinkim.com

Hye Jung Lee

Partner

+82-2-316-1719

hjelee@shinkim.com

Jung Eun Choi

Partner

+82-2-316-1672

jechoi@shinkim.com

Joo Yun Kim

Partner

+82-2-316-1602

jyunkim@shinkim.com

Eesun Kwon

Partner

+82-2-316-4697

eskwon@shinkim.com

Gjumin Kim

Partner

+82-2-316-4412

gmkim@shinkim.com