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COMMITTEE OF GOVERNMENTAL EXPERTS FOR THE PREPARATION OF A
MODEL FRANCHISE DISCLOSURE LAW

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Comments submitted by the People's Republic of China

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1. Under the present draft, the franchisee is entitled to terminate the contract if the franchisor has not disclosed the information it is required to disclose. Terminating a contract however destroys a trade relationship and this violates the principle of encouraging trade and operates against the development of the economy. The remedies the franchisee chooses should both benefit trade and be in the interests of the franchisee. We would therefore suggest that the draft should provide franchisees with two options to protect their interests. In general terms, the franchisee should be able to suspend performance when the franchisor fails to perform its obligations under the contract, or when the performance it renders fails to satisfy the terms of the contract. This would offer the parties an opportunity to correct the performance. However, if continuing to perform harms the franchisee, the franchisee should be able to terminate the contract immediately.

2. In consideration of the weakness of the position of the franchisee, the draft should provide for other remedies in addition to termination or suspension of the contract, such as disciplining by the professional associations and administrative and judicial sanctions.

3. In the interests of the franchisee, the role of the public administration should be enhanced and the supervision of the performance of the disclosure obligation entrusted to the administration. We would therefore suggest that the draft should contain provisions to clarify the functions and role of the administration, so as to induce the franchisor to disclose as required by law.