

Your Disclosure Document: A Living Document

The *Arthur Wishart Act (Franchise Disclosure), 2000* (Ontario) (the “**Act**”) requires franchisors to provide potential franchisees with a disclosure document containing all *material facts*, financial statements, copies of agreements to be signed, and other relevant information and documents regarding the franchisor, its principals, franchisees and system. With circumstances ever changing and the potential consequences of rescission and damages against the franchisor, its agent, broker, those who sign the disclosure document, *and* associates (those who control or are controlled by the franchisor, and who are directly involved in the grant of the franchise), it is critical that every disclosure document be carefully reviewed to ensure that it is current, correct and complete. It is also important that information be set out accurately, clearly and concisely.

We recommend that you review the following checklist each and every time you prepare a disclosure document. This checklist is prepared on the assumption that you have a “base” disclosure document that complies with the Act and we have only identified information that is most *likely* to be subject to change. This checklist is not a substitute for legal advice and serves only as a guide for further discussion.

Before providing your disclosure document to a potential franchisee, you should review the following information:

- The business background of the franchisor:**
 - i. Have there been any changes to the franchisor’s legal or operating name, address, or business structure, such as a new corporate structure or a new parent company?
 - ii. Have you introduced any new lines of business?
- The business background of the directors, general partners and officers:**
 - i. Have there been any new appointments or resignations?
 - ii. Have any directors, general partners or officers changed their principal occupation or employer during the five years immediately preceding the date of the disclosure document?
- Are there any pending or have there been any **charges or convictions of fraud, unfair or deceptive business practices, or violations of franchise or business law** against any of the franchisor, franchisor’s associate or a director, general partner or officer in the ten years immediately before the date of the disclosure document?
- Are there any pending or have there been any **administrative orders or penalties imposed** against any of the franchisor, franchisor’s associate or a director, general partner or officer of the franchisor under a law of any jurisdiction regulating franchises or business?
- Are there any pending **civil actions** against the franchisor, the franchisor’s associate or a director, general partner or officer of the franchisor or have there been **such civil actions** in which any such persons have been found liable for misrepresentation, unfair or deceptive business practices or violating franchise or business law?

- Have any **bankruptcy or insolvency proceedings** taken place during the six years immediately before the date of the disclosure document against the franchisor, the franchisor's associate, a corporation of which a current director, officer or general partner of the franchisor was a principal, or a director, an officer or a general partner of the franchisor in their personal capacity?
- Have you included **financial statements** for the most recently completed fiscal year that have been audited or prepared on a review engagement standard (unless the date of the disclosure document is within 180 days of the end of the most recently completed fiscal year and if the financial statements have not yet been prepared, in which case, the previous year's financial statements may be used)?
- Have you included copies of **all agreements that the franchisee is required to sign**, as well as any offer to lease?
- Is the **list of the franchisee's estimated costs** to establish the franchise accurate and complete, together with all assumptions underlying the estimate?
- If annual operating costs estimates are provided**, have you included complete and accurate assumptions underlying the estimates, together with the location where such information is available for inspection?
- If earnings projections are provided**, have you included complete and accurate assumptions underlying the projections, together with the location where such information is available for inspection?
- Have you reviewed what **percentage of advertising funds**:
 - i. were spent and retained in the two fiscal years before the date of the disclosure document; and
 - ii. are projected to be spent and retained for the current fiscal year?
- Have there been any changes in status of the **franchisor's trade-mark**, such as changes to the status of trade-mark registrations, additions or cancellations of trade-marks?
- Will an **exclusive territory** be granted to this potential franchisee? If so, what are the conditions required to be met to maintain such territory?
- Is the **list of franchises that have been terminated, cancelled, not renewed or reacquired by the franchisor** or otherwise left the system within the last fiscal year immediately preceding the date of the disclosure document accurate and complete?
- Is the **list of franchise closures within the three fiscal years** immediately before the date of the disclosure document and the reasons for the closure accurate and complete;
- Is the **list of the locations of all franchises**, including the business address, telephone number and name of the franchisee (or, if there are less than 20 franchises in the applicable province, a list of at least 20 franchises geographically closest to such province), accurate and complete;
- Is the **Certificate of Disclosure** dated and signed by the sole director or officer or, if there is more than one director or officer, by at least two persons who are directors or officers?

If any material change occurs after disclosure, you must provide the franchisee with a statement of material change as soon as practicable after the change has occurred and, in any case, before

either signing any agreement with the franchisee or accepting payment from the franchisee. Statements of material change are intended to update changes that occur during the 14-day disclosure period.

Franchisors need to pay close attention to the information in each disclosure document to ensure that there are no such deficiencies or else franchisors risk facing the rescission penalties imposed by the Act. Using this checklist as a roadmap for maintaining your disclosure documents will assist you in this process but you may also consider diarizing an annual or bi-annual review of your disclosure document, your franchise documents and operations manual. In doing so, you will ensure that these “living documents” continue to evolve with your system and with the developments in the law.

For more information on franchising, please contact Derwin Wong or Dixie Ho at (416) 368-0600 or by email at dwong@businesslawyers.com or dho@businesslawyers.com.

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