

**REGULATION MADE UNDER THE
ARTHUR WISHART ACT (FRANCHISE DISCLOSURE), 2000**

GENERAL

**PART I
CO-OPERATIVE ASSOCIATIONS**

1. For the purpose of paragraph 3 of subsection 2 (3) of the Act, a co-operative association is defined as,
- (a) an organization operated on a co-operative basis by and for independent retailers that,
 - (i) purchases or arranges the purchase of, on a non-exclusive basis, wholesale goods or services primarily for resale by its member retailers, and
 - (ii) does not grant representational rights or exercise significant operational control over its member retailers;
 - (b) a “cooperative corporation” as defined under subsection 136 (2) of the *Income Tax Act* (Canada) or would be a cooperative corporation as defined in that subsection, but for paragraph 136 (2) (c);
 - (c) an organization incorporated under the *Canada Cooperative Association Act*;
or
 - (d) an organization incorporated under the *Co-operative Corporations Act*.

**PART II
DISCLOSURE DOCUMENTS**

2. Every disclosure document shall include the following information:
- 1. The business background of the franchisor, including,
 - i. the name and address of the franchisor,
 - ii. the name under which the franchisor engages in or intends to engage in business,

- iii. the principal business address of the franchisor and, if the franchisor's principal address is outside Ontario, the name and address of a person authorized to accept service in Ontario on the franchisor's behalf,
 - iv. the business form of the franchisor, including whether the franchisor is a sole proprietorship, partnership or corporation and, if incorporated, the jurisdiction where the franchisor is incorporated,
 - v. if the franchisor is a subsidiary, the name and principal address of the parent,
 - vi. the length of time the franchisor has engaged in the line of business associated with the franchise,
 - vii. the length of time the franchisor has offered franchises in the line of business associated with the franchise, and
 - viii. if the franchisor has offered a franchise in another line of business, a description of every franchise in each line of business, including for each franchise,
 - A. the length of time the franchisor has offered the franchise to prospective franchisees, and
 - B. the number of franchises sold in the five years immediately preceding the date of the disclosure document.
2. The business background of the directors, the general partners and the officers of the franchisor, including,
- i. the name and current position of each person,
 - ii. a brief description of the prior relevant business experience of each person,
 - iii. the length of time each person has engaged in the line of business associated with the franchise, and
 - iv. the principal occupation and the employers of each person during the five years immediately preceding the date of the disclosure document.

3. A statement, including a description of details, indicating whether, during the ten years immediately preceding the date of the disclosure document, the franchisor, the franchisor's associate or a director, general partner or officer of the franchisor has been convicted of fraud, unfair or deceptive business practices, or a violation of a law that regulates franchises or business or if there is a charge pending against the person involving such a matter.
 4. A statement, including a description of details, indicating whether the franchisor, the franchisor's associate or a director, general partner or officer of the franchisor has been subject to an administrative order or penalty imposed under a law of any jurisdiction regulating franchises or business or if the person is the subject of any pending administrative actions to be heard under such a law.
 5. A statement, including a description of details, indicating whether the franchisor, the franchisor's associate or a director, general partner or officer of the franchisor has been found liable in a civil action of misrepresentation, unfair or deceptive business practices or violating a law that regulates franchises or businesses, including a failure to provide proper disclosure to a franchisee, or if a civil action involving such allegations is pending against the person.
 6. Details of any bankruptcy or insolvency proceedings, voluntary or otherwise, in the six years immediately preceding the date of the disclosure document,
 - i. against the franchisor or the franchisor's associate,
 - ii. against a corporation whose directors or officers include or included a current director, officer or general partner of the franchisor,
 - iii. against a partnership whose general partners include or included a current director, officer or general partner of the franchisor, and
 - iv. against a director, general partner, or officer of the franchisor in their personal capacity.
3. (1) Every disclosure document shall include,
- (a) an audited financial statement for the most recently completed fiscal year of the franchisor's operations;
 - (b) a financial statement for the most recently completed year of the franchisor's operations, prepared in accordance with generally accepted accounting

principles and which complies with the review and reporting standards applicable to review engagements set out in the *Canadian Institute of Chartered Accountants Handbook*; or

- (c) if a regulation has been made under subsection 13 (1) or (2) of the Act in respect of the franchisor, a declaration that the franchisor is exempt from the requirement to provide the financial statement described in clause (a) or (b), and that the franchisor meets the criteria prescribed for the purpose of that exemption.

(2) Despite subsection (1), if 180 days have not yet passed since the end of the most recently completed fiscal year and a financial statement has not been prepared and reported for that year, the disclosure document shall include a financial statement for the previous fiscal year that is prepared in accordance with the requirements in clause (1) (a) or (b).

(3) Despite subsection (1), if a franchisor has operated for less than one fiscal year or if 180 days have not yet passed since the end of the first fiscal year of operations and a financial statement for that year has not been prepared in accordance with the requirements in clause (1) (a) or (b), the disclosure document shall include the opening balance sheet for the franchisor.

4. For the purpose of clause 5 (4) (d) of the Act, every disclosure document shall include the following statements together in one section at the beginning of the document:

1. A commercial credit report is a report which may include information on the franchisor's business background, banking information, credit history and trade references. Such reports may be obtained from private credit reporting companies and may provide information useful in making an investment decision.
2. Independent legal and financial advice in relation to the franchise agreement should be sought prior to entering into the franchise agreement.
3. A prospective franchisee is strongly encouraged to contact any current or previous franchisees prior to entering into the franchise agreement.
4. The cost of goods and services acquired under the franchise agreement may not correspond to the lowest cost of the goods and services available in the marketplace.

5. (1) If an internal or external mediation or other alternative dispute resolution process is used by a franchisor in disputes with a franchisee, a disclosure document shall include, together with the statement referred to in subsection (2), a description of the mediation or other alternative dispute resolution process, and the circumstances when the process may be invoked.

(2) Every disclosure document shall include the following statement:

Mediation is a voluntary process to resolve disputes with the assistance of an independent third party. Any party may propose mediation or other dispute resolution process in regard to a dispute under the franchise agreement, and the process may be used to resolve the dispute if agreed to by all parties.

6. (1) For the purposes of clause 5 (4) (a) of the Act, every disclosure document shall include the following presented together in one part of the document:

1. A list of all of the franchisee's costs associated with the establishment and operation of the franchise, including,
 - i. the amount of any deposits or franchise fees, whether the deposits or fees are refundable, and if so, under what conditions,
 - ii. an estimate of the costs for inventory, leasehold improvements, equipment, leases, rentals and all other things necessary to establish the franchise and an explanation of any assumptions underlying the estimate, and
 - iii. any other costs associated with the franchise not listed in subparagraph i or ii, including any payment to the franchisor, whether direct or indirect, required by the franchise agreement, the nature and amount of the payment, and when the payment is due.
2. If an estimate of annual operating costs for the franchise is provided, a statement specifying the basis for the estimate, the assumptions underlying the estimate and a location where information is available for inspection that substantiates the estimate.
3. If an earnings projection for the franchise is provided, a statement specifying the reasonable basis for the projection, the assumptions underlying the projection and a location where information is available for inspection that substantiates the projection.

4. The terms and conditions of the financing arrangements that the franchisor or the franchisor's associate offers directly or indirectly to franchisees.
5. A description of any training or other assistance offered to franchisees by the franchisor or the franchisor's associate, including whether the training is mandatory or optional, and if the training is mandatory, a statement specifying who bears the costs of the training.
6. If the franchisee, as a condition of the franchise agreement, is required to contribute to an advertising fund,
 - i. a statement describing,
 - A. the percentage of the fund that has been spent on national campaigns and local advertising in the two years immediately preceding the date of the disclosure document, and
 - B. the percentage of the fund, other than the percentage described in sub-subparagraph A, that has been retained by the franchisor, the franchisor's parent or the franchisor's associate in the two years immediately preceding the date of the disclosure document,
 - ii. another statement describing,
 - A. the projected amount of the contribution,
 - B. a projection of the percentage of the fund to be spent on national or local advertising campaigns for the current fiscal year, and
 - C. a projection of the percentage of the fund to be retained by the franchisor, the franchisor's parent or the franchisor's associate in the current fiscal year, and
 - iii. an indication of whether reports on advertising activities financed by the fund will be made available to the franchisee.
7. A description of any restrictions or requirements imposed by the franchise agreement with respect to,

- i. obligations to purchase or lease from the franchisor, the franchisor's associate or suppliers approved by the franchisor or the franchisor's associate,
 - ii. the goods and services the franchisee may sell, and
 - iii. whom the franchisee may sell goods or services.
8. A description of the franchisor's policy, if any, regarding volume rebates, and whether or not the franchisor or the franchisor's associate receives a rebate, commission, payment or other benefit as a result of purchases of goods and services by a franchisee and, if so, whether rebates, commissions, payments or other benefits are shared with franchisees, either directly or indirectly.
9. A description of the rights the franchisor or the franchisor's associate has to the trade-mark, service mark, trade name, logo or advertising or other commercial symbol associated with the franchise.
10. A description of every licence, registration, authorization or other permission the franchisee is required to obtain, under any applicable federal or provincial law or municipal by-law, to operate the franchise.
11. A statement indicating whether the franchisee is required to participate personally and directly in the operation of the franchise or, if the franchisee is a corporation, whether the principals of the corporation are so required.
12. A description of any exclusive territory granted to the franchisee.
13. If the franchise agreement grants the franchisee rights to exclusive territory, a description of the franchisor's policy, if any, as to whether the continuation of the franchisee's rights to exclusive territory depends on the franchisee achieving a specific level of sales, market penetration, or other condition, and under what circumstances these rights may be altered.
14. A description of the franchisor's policy, if any, on the proximity between an existing franchise and,
 - i. another franchise,
 - ii. any other distributor using the franchisor's trade-mark, service mark, trade name or logo or advertising or other commercial symbol,

- iii. a franchise owned or operated by the franchisor that distributes similar products or services under a different trade-mark, service mark, trade name or logo, and
 - iv. a franchise granted by the franchisor that distributes similar products or services under a different trade-mark, service mark, trade name or logo.
15. The name, last known address and telephone number of each franchisee in Ontario who operated a franchise of the type being offered that has 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.
16. For each closure of a franchise of the type being offered within the previous three years immediately preceding the date of the disclosure document, the reasons for the closure, including whether,
- i. the franchisor or franchisor's associate terminated or cancelled the franchise agreement,
 - ii. the franchisor or franchisor's associate refused to renew the franchise agreement, or
 - iii. the franchisee refused to renew the franchise agreement or otherwise left the franchise system.
17. A list of the locations of all franchises in Ontario of the type being offered, including the business address, telephone number and name of the franchisee who operates the franchise and, if there are less than 20 franchises in Ontario, the list shall include those franchises which are geographically closest to Ontario, until information on 20 franchises is provided.
18. A description of all restrictions or conditions in the franchise agreement related to,
- i. the termination or renewal of the agreement, and
 - ii. the transfer of the franchise.
- 7. (1)** Every disclosure document shall include a certificate certifying that the document,

- (a) contains no untrue information, representations or statements; and
 - (b) includes every material fact, financial statement, statement and other information required by the Act and this Regulation.
- (2) A certificate referred to in subsection (1) shall be signed and dated by,
- (a) in the case of a franchisor that is not incorporated, the franchisor;
 - (b) in the case of a franchisor that is incorporated and has only one director or officer, by that person;
 - (c) in the case of a franchisor that is incorporated and has more than one officer or director, by at least two persons who are officers or directors.

PART III EXEMPTIONS

8. For the purposes of clause 5 (7) (e) of the Act, the prescribed percentage is 20 per cent.

9. For the purposes of subclause 5 (7) (g) (i) of the Act, the prescribed amount is \$5,000.

10. For the purposes of clause 5 (7) (h) of the Act, the prescribed period is one year and the prescribed amount is \$5,000,000.

11. The following are the criteria for the purpose of making a regulation under subsection 13 (1) of the Act to exempt a franchisor from the requirement to include specified financial information in a disclosure document:

- 1. The net worth of the franchisor is at least five million dollars on a consolidated basis according to its most recent financial statements that have been audited or for which a review engagement report has been prepared.
- 2. In the five years immediately preceding the date of the application, the franchisor,
 - i. has at least 25 franchisees engaging in business at all times in Canada, or

- ii. has fewer than 25 franchisees engaging in business at all times in Canada and has at least 25 franchisees engaging in business at all times in a single jurisdiction other than Canada.
- 3. The franchisor has engaged in the line of business associated with the franchise continuously for not less than five years immediately preceding the date of the application.
- 4. During the ten years immediately preceding the date of the application, the franchisor, the franchisor's associate and directors, general partners and officers of the franchisor,
 - i. in the case of a franchisor described in subparagraph 2 i, has not been subject to any judgment, order or award in Canada relating to a franchise agreement, fraud, unfair or deceptive practices, or a law regulating franchises, or
 - ii. in the case of a franchisor described in subparagraph 2 ii, has not been subject to any judgment, order or award in Canada or in the jurisdiction referred to in subparagraph 2 ii relating to a franchise agreement, fraud, unfair or deceptive practices, or a law regulating franchises.

12. This Regulation comes into force on January 31, 2001.