

Franchise Law 101: What You Need To Know

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The success of franchising in Canada can be seen in the many nationwide and international chains that have used franchising as a method of expanding their business. However, there are a number of important facts and considerations for you to take into account as you begin the process of complying with franchise laws in Canada.

The Statutory Framework

While Canada has no franchise legislation at the federal level, six out of the 13 Canadian provinces and territories have enacted standalone franchise legislation (the “franchise statutes”). These provinces are Alberta, British Columbia, Manitoba, New Brunswick, Ontario, and Prince Edward Island. There are four key common features to all of these statutes, namely:

- (1) requiring that franchisors provide pre-sale franchise disclosure to prospective franchisees through a franchise disclosure document (or FDD) that is compliant with that province’s franchise law;
- (2) imposing on all parties to a franchise agreement a duty to act in good faith;
- (3) providing to franchisees a right to associate; and
- (4) mandating that a small number of legal requirements will apply to all franchise agreements, such as venue and the governing law of the contract.

Providing Pre-Sale Disclosure

The franchise statutes require that every person who is to sign a franchise agreement must receive pre-sale disclosure, including any guarantor or similar person. Specifically, with limited exception, an FDD must be delivered where the franchise is to be wholly or partly operated in any of the provinces with a franchise law. A franchisor must provide a prospective franchisee with an FDD no less than 14 days before the payment of

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any monies or the signing of the franchise agreement, or any agreement relating to the franchise. This disclosure obligation exists in the case of most renewals, extensions or transfers of a franchise agreement and, in most cases, the transfer or sale of the assets or ownership of a franchised business.

Failure to Comply With Disclosure Obligations

Careful attention must be given to the assembly, delivery and maintenance of an FDD, as courts have found that a “materially deficient” FDD can amount to no disclosure at all in some cases. In particular, an FDD prepared in accordance with U.S. laws is not a compliant Canadian FDD. The consequences for failing to comply with these disclosure requirements can be drastic. A franchisee may rescind the franchise agreement without obligation or penalty:

- (a) no later than 60 days after receiving the FDD, if the franchisor fails to provide the FDD within the statutory time requirements or if the contents do not meet the requirements of the franchise statutes; and
- (b) within 2 years after entering into the agreement if the franchisor never provided a FDD.

If a franchisee has a right of rescission, then it is effectively entitled to receive back from the franchisor, the franchisor’s associate, and other specific persons, all of the monies it paid for the franchise, plus compensation for any losses incurred while owning and operating the franchise.

Updating Your FDD Regularly

At least annually, if not more often, franchisors should perform a thorough review of the generic FDD to ensure that its contents are accurate and up to date. As the law requires that the FDD contain all material facts, any new material facts that occur in the operation of the franchise or the franchise system should be immediately reflected in an updated FDD as changes occur.

Ongoing Disclosure Obligations – Statement of Material Change

Franchisors ought to be mindful that they have the ongoing obligation to provide FDD recipients with notice of any material changes that arise. That is done with a prescribed form of "statement of material change" disclosing any "material changes" that occur after the FDD has been given to the prospective franchisee but

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prior to the signing of a franchise agreement.

These considerations are only a high level and general overview of the requirements for franchising in Canada. However, with the assistance of professionals that regularly operate within this area, franchising can be a quick and effective way to expand your business and enter new markets. If you would like to learn more or are seeking assistance with franchising related matters in Canada, please contact a member of our Franchise Law Group.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.