


PROVINCE OF BRITISH COLUMBIA
ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. **686**, Approved and Ordered **October 03, 2016**


Lieutenant Governor

Executive Council Chambers, Victoria

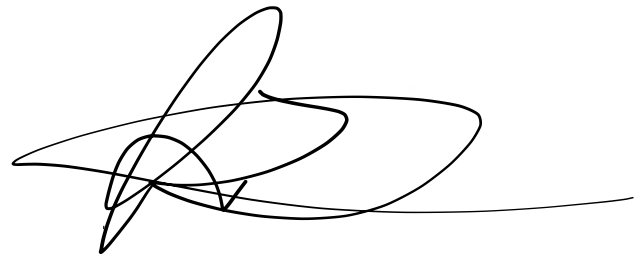
On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that, effective February 1, 2017,

- (a) the *Franchises Act*, S.B.C. 2015, c. 35, is brought into force, and
- (b) the attached Franchises Regulation is made.

DEPOSITED
October 4, 2016
B.C. REG. **238/2016**



*Minister of Small Business and Red Tape
Reduction and Minister Responsible for the
Liquor Distribution Branch*



Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section: *Franchises Act*, S.B.C. 2015, c. 35, ss. 16 and 17

Other: _____

August 22, 2016

R/716/2016/96

FRANCHISES REGULATION

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SCHEDULE – DISCLOSURE DOCUMENT REQUIREMENTS

PART 1 – REQUIRED INFORMATION ABOUT THE FRANCHISOR

PART 2 – REQUIRED INFORMATION ABOUT THE FRANCHISE

PART 3 – LISTS OF FRANCHISEES, BUSINESSES AND CLOSURES

Interpretation

- 1 (1) In this regulation:
 - “**Act**” means the *Franchises Act*;
 - “**affiliate**” has the same meaning as in the *Canada Business Corporations Act*;
 - “**earnings projection**” includes information given by or on behalf of the franchisor, directly or indirectly, from which a specific level or range of actual or potential sales, costs, income, revenue or profits from franchises or businesses of the franchisor or of the franchisor’s affiliate of the same type as the franchise being offered can easily be ascertained;
 - “**officer**” means
 - (a) in relation to a corporation, a chief executive officer, president, vice-president, secretary, controller, treasurer or any other individual designated as an officer of the corporation by by-law or by resolution of the directors of the corporation,
 - (b) in relation to any other entity, any individual designated as an officer of the entity by by-law, resolution of the members of the entity or otherwise, or
 - (c) any individual who performs functions or acts in a capacity similar to the functions or capacities referred to in paragraph (a) or (b).
- (2) For the purposes of this regulation, a franchise or business is the same type as the franchise being offered if the franchise or business is operated or to be operated under the same trademark, trade name, logo or advertising or other commercial symbol as the franchise being offered.

Contents of disclosure document

- 2 (1) A disclosure document required under section 5 [*disclosure*] of the Act must contain the following:
 - (a) the risk warning statements required under section 3 of this regulation;
 - (b) the dispute resolution description required under section 4 of this regulation;
 - (c) the financial statements required under section 5 of this regulation;
 - (d) the required information about the franchisor specified in Part 1 of the Schedule to this regulation;
 - (e) the required information about the franchise specified in Part 2 of the Schedule to this regulation;
 - (f) the lists of franchisees, businesses and closures specified in Part 3 of the Schedule to this regulation.
- (2) A certificate of franchisor required under section 7 (1) of this regulation must be attached to the disclosure document.
- (3) A franchisor may use a document that is prepared to comply with the disclosure requirements under the laws of another jurisdiction as a disclosure document for the purposes of the Act and this regulation if the franchisor includes such additional information with that document as is necessary to comply with the disclosure requirements of the Act and this regulation.

Risk warnings

- 3 A disclosure document must contain, presented together at the beginning of the document, the following statements:

A prospective franchisee should seek information on the franchisor and on the franchisor's business background, banking affairs, credit history and trade references.

A prospective franchisee should seek expert independent legal and financial advice in relation to franchising and the franchise agreement before entering into the franchise agreement.

A prospective franchisee should contact current and previous franchisees before entering into the franchise agreement.

Lists of current and previous franchisees and their contact information can be found in this disclosure document.

Dispute resolution

- 4 Without limiting section 12 [*attempt to affect jurisdiction void*] of the Act, a disclosure document must contain a description of restrictions or requirements imposed by the franchise agreement with respect to arbitration, mediation or other alternative dispute resolution processes, including requirements relating to the location or venue of such a process.

Financial statements

- 5** (1) Subject to section 6, every disclosure document must contain financial statements of the franchisor that are prepared in accordance with the generally accepted accounting principles of the jurisdiction in which the franchisor is based and that meet the other requirements of this section.
- (2) The financial statements of the franchisor must be either
- (a) audited in accordance with the generally accepted auditing standards, as
 - (i) determined with reference to the CPA Canada Handbooks, as amended from time to time, or
 - (ii) set by the International Auditing and Assurance Standards Board, as amended from time to time, or
 - (b) reviewed in accordance with the generally accepted standards that are applicable to review engagements, as
 - (i) determined with reference to the CPA Canada Handbooks, as amended from time to time, or
 - (ii) set by the International Auditing and Assurance Standards Board, as amended from time to time.
- (3) The financial statements may be audited or reviewed in accordance with the standards of the jurisdiction in which the franchisor is based if those standards are at least equivalent to those referred to in subsection (2).
- (4) Subject to subsections (5) and (6), the financial statements must be for the most recently completed fiscal year.
- (5) If 180 days have not passed since the end of the most recently completed fiscal year and the financial statements for that fiscal year have not been prepared and reported on, the disclosure document must contain the financial statements for the previous fiscal year, prepared and reported on in accordance with subsection (1), (2) or (3), as applicable.
- (6) If a franchisor has operated for less than one fiscal year or if 180 days have not passed since the end of the first fiscal year and the financial statements for that fiscal year have not been prepared and reported on, the disclosure document must contain the opening balance sheet for the franchisor, prepared and reported on in the same manner as the financial statements that are prepared and reported on in accordance with subsection (1), (2) or (3), as applicable.
- (7) If a franchisor does not provide financial statements in accordance with the exemption under section 6, the franchisor must include a statement in the disclosure document that the franchisor meets the conditions of section 6 and is not required to provide financial statements in the disclosure document.

Exemption from requirement to disclose financial statements

- 6** A franchisor is not required to include financial statements in a disclosure document under section 5 if all of the following conditions are met:

- (a) the franchisor has a net worth on a consolidated basis according to its most recent financial statements, which have been audited or for which a review engagement report has been prepared, which
 - (i) is at least \$5 million, or
 - (ii) is at least \$1 million, if the franchisor is controlled by a corporation whose net worth on a consolidated basis according to its most recent financial statements, which have been audited or for which a review engagement report has been prepared, is at least \$5 million;
- (b) the franchisor
 - (i) has had at least 25 franchisees engaged in business in Canada at all times during the 5-year period immediately preceding the date of the disclosure document,
 - (ii) has had at least 25 franchisees engaged in business in a single jurisdiction other than Canada at all times during the 5-year period immediately preceding the date of the disclosure document,
 - (iii) is controlled by a corporation that meets the requirements of subparagraph (i),
 - (iv) is controlled by a corporation that meets the requirements of subparagraph (ii),
 - (v) has had at least 25 franchisees engaged in business in Canada at all times during a portion of the 5-year period immediately preceding the date of the disclosure document and is controlled by a corporation that had at least 25 franchisees engaged in business in Canada at all times during the remainder of that 5-year period, or
 - (vi) has had at least 25 franchisees engaged in business in a single jurisdiction other than Canada at all times during a portion of the 5-year period immediately preceding the date of the disclosure document and is controlled by a corporation that had at least 25 franchisees engaged in business in that jurisdiction at all times during the remainder of that 5-year period;
- (c) the franchisor or a corporation controlling the franchisor
 - (i) has engaged in the line of business associated with the franchise continuously during the 5-year period immediately preceding the date of the disclosure document,
 - (ii) is controlled by a corporation that meets the requirements of subparagraph (i), or
 - (iii) has engaged in the line of business associated with the franchise continuously during a portion of the 5-year period immediately preceding the date of the disclosure document and is controlled by a corporation that engaged continuously in that line of business during the remainder of that 5-year period;
- (d) during the 5-year period immediately preceding the date of the disclosure document,
 - (i) in the case of a franchisor described in paragraph (b) (i), (iii) or (v), the franchisor, the franchisor's associates and the directors, officers

and general partners of the franchisor have not had a conviction, judgment, order or award relating to fraud or unfair or deceptive business practices made against any of them in Canada, and

- (ii) in the case of a franchisor described in paragraph (b) (ii), (iv) or (vi), the franchisor, the franchisor's associates and the directors, officers and general partners of the franchisor have not had a conviction, judgment, order or award relating to fraud or unfair or deceptive business practices made against any of them in Canada or in the jurisdiction referred to in paragraph (b) (ii) or (vi).

Certificate of franchisor

- 7 (1) A certificate must be attached to the disclosure document that certifies that the disclosure document
 - (a) contains no untrue information, representation or statement, whether of a material fact or otherwise, and
 - (b) contains every material fact, financial statement, statement and other information required to be contained by the Act and this regulation.
- (2) A certificate must be attached to the statement of material change that certifies that the statement of material change
 - (a) contains no untrue information, representation or statement, whether of a material change or otherwise, and
 - (b) contains every material change that is required to be contained by the Act and this regulation.
- (3) The certificate referred to in subsection (1) or (2) must be signed and dated
 - (a) in the case of a franchisor that is not incorporated, by the franchisor,
 - (b) in the case of a franchisor that is incorporated and has only one director or officer, by that person, or
 - (c) in the case of a franchisor that is incorporated and has more than one director or officer, by at least 2 persons who are directors or officers.

Delivery of disclosure document and statement of material change

- 8 (1) For the purposes of section 5 (2) [*disclosure*] of the Act, a franchisor may deliver a disclosure document by
 - (a) prepaid courier or an equivalent that permits delivery by a prepaid method, with tracking and confirmation of receipt of the delivery, or
 - (b) electronic means, including email, if
 - (i) the disclosure document is delivered in a form that enables the prospective franchisee to view and print the disclosure document,
 - (ii) all the information that must be contained in the disclosure document is available without accessing external documents or content, and
 - (iii) the franchisor receives a written acknowledgement of receipt of the disclosure document from the prospective franchisee.
- (2) A statement of material change may be delivered by any method set out in

- (a) subsection (1), or
- (b) section 5 (2) of the Act.

Delivery of notice of rescission

- 9** (1) For the purposes of section 6 (4) (b) [*right of rescission*] of the Act, a franchisee may deliver a notice of rescission in respect of a franchise agreement by prepaid courier or an equivalent that permits delivery by a prepaid method, with tracking and confirmation of receipt of the delivery.
- (2) If the notice of rescission is delivered by prepaid courier or an equivalent, as described in subsection (1), the notice of rescission is effective on the day the notice of rescission is delivered to the franchisor.

Investment – prescribed amount

- 10** For the purposes of section 5 (8) (i) of the Act, the prescribed amount is \$5 million.

Deposit – prescribed amount

- 11** For the purposes of section 5 (13) (a) of the Act, the prescribed amount is 20% of the initial franchise fee.

SCHEDULE – DISCLOSURE DOCUMENT REQUIREMENTS

PART 1 – REQUIRED INFORMATION ABOUT THE FRANCHISOR

Business background of franchisor

- 1** A disclosure document must include the following information about the business background of the franchisor:
- (a) the name of the franchisor;
 - (b) the name under which the franchisor is doing or intends to do business;
 - (c) the franchisor’s principal business address;
 - (d) if the franchisor’s principal business address is outside British Columbia and the franchisor has an attorney for service in British Columbia, the name and address of that person;
 - (e) the business form of the franchisor, whether corporate, partnership or otherwise and, if incorporated, the jurisdiction in which the franchisor is incorporated;
 - (f) if the franchisor is a subsidiary, the name and principal business address of the parent;
 - (g) the length of time the franchisor has, as applicable,
 - (i) operated a business of the same type as the franchise being offered,
 - (ii) granted franchises of the same type as the franchise being offered, and
 - (iii) granted any other type of franchise;

- (h) if the franchisor has offered a franchise of a different type from that being offered, a description of every such type of franchise, including for each type of franchise,
 - (i) the length of time the franchisor has offered the franchise to prospective franchisees, and
 - (ii) the number of franchises granted by the franchisor to franchisees during the 5-year period immediately preceding the date of the disclosure document.

Business background of directors, officers and general partners

- 2 A disclosure document must include the following information about the business background of the directors, the officers and the general partners of the franchisor:
 - (a) the name and current position of each person;
 - (b) a brief description of the prior relevant business experience of each person;
 - (c) the principal occupation and the employers of each person during the 5-year period immediately preceding the date of the disclosure document.

Previous convictions and pending charges

- 3 A disclosure document must include a statement indicating whether, during the 10-year period immediately preceding the date of the disclosure document, the franchisor, the franchisor's associate or a director, an officer or a general partner of the franchisor was 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, and the details of that conviction or charge.

Administrative orders and proceedings

- 4 A disclosure document must include a statement indicating whether, during the 10-year period immediately preceding the date of the disclosure document, the franchisor, the franchisor's associate or a director, an officer or a general partner of the franchisor was subject to an administrative order or penalty under a law that regulates franchises or business, or if the person is the subject of any pending administrative actions to be heard under such a law, and the details of that order, penalty or pending action.

Civil proceedings

- 5 A disclosure document must include a statement indicating whether, during the 10-year period immediately preceding the date of the disclosure document, the franchisor, the franchisor's associate or a director, an officer or a general partner of the franchisor was found liable in a civil action for misrepresentation, engaging in unfair or deceptive business practices or violating a law that regulates franchises or business, including a failure to provide proper disclosure to a franchisee, or if a civil action involving such allegations is pending against the person, and the details of that action or pending action.

Bankruptcy

- 6 A disclosure document must include details of any bankruptcy or insolvency proceedings, voluntary or otherwise, any part of which took place during the 6-year

period immediately preceding the date of the disclosure document, in which the debtor was

- (a) the franchisor or the franchisor's associate,
- (b) a corporation whose directors or officers include a current director, officer or general partner of the franchisor, or included such a person at a time when the bankruptcy or insolvency proceeding was taking place,
- (c) a partnership whose general partners include a current director, officer or general partner of the franchisor, or included such a person at a time when the bankruptcy or insolvency proceeding was taking place, or
- (d) a director, an officer or a general partner of the franchisor in his or her personal capacity.

PART 2 – REQUIRED INFORMATION ABOUT THE FRANCHISE

Costs of establishing the franchise

- 7 A disclosure document must include a list of all of the franchisee's costs associated with the establishment of the franchise, including
- (a) the amount of any deposits or initial franchise fees, or the formula for determining that amount, whether the deposits or fees are refundable and, if so, under what conditions,
 - (b) an estimate of the costs for inventory, supplies, leasehold improvements, fixtures, furnishings, equipment, signs, vehicles, leases, rentals, prepaid expenses and all other tangible or intangible property and an explanation of any assumptions underlying the estimate, and
 - (c) any other costs associated with the establishment of the franchise not listed in paragraph (a) or (b), including any payment to the franchisor or the franchisor's affiliate, whether direct or indirect, required by the franchise agreement, the nature and amount of the payment, and when the payment is due.

Other fees

- 8 A disclosure document must include the nature and amount of any recurring or isolated fees or payments, other than those listed in section 7 of this Schedule, that, whether directly or indirectly,
- (a) the franchisee must pay to the franchisor or the franchisor's affiliate, or
 - (b) the franchisor or the franchisor's affiliate imposes or collects in whole or in part on behalf of a third party, except for payments required to be collected by law on behalf of a municipal, provincial or federal government or governmental agency.

Guarantees and security interests

- 9 A disclosure document must include a description of the franchisor's policies and practices, if any, regarding guarantees and security interests required of franchisees.

Estimate of operating costs

- 10** (1) If an estimate of annual operating costs for the franchise, or of operating costs for the franchise for another regular period, is provided, whether directly or indirectly, a disclosure document must include a statement specifying
- (a) the assumptions and bases underlying the estimate, and
 - (b) where information that substantiates the estimate is available for inspection.
- (2) If an estimate of annual operating costs for the franchise, or of operating costs for the franchise for another regular period, is not provided, the disclosure document must include a statement to that effect.

Earnings projection

- 11** (1) If an earnings projection for the franchise is provided, a disclosure document must include a statement specifying
- (a) the assumptions and bases underlying the earnings projection, its preparation and its presentation,
 - (b) whether the earnings projection is based on actual results of franchises or of businesses of the franchisor or of the franchisor's affiliate of the same type as the franchise being offered and, if so, the locations, areas, territories or markets of such franchises and businesses,
 - (c) if the earnings projection is based on a business operated by the franchisor or the franchisor's affiliate, that the information may differ in respect of a franchise operated by a franchisee, and
 - (d) where information that substantiates the earnings projection is available for inspection.
- (2) If an earnings projection for the franchise is not provided, the disclosure document must include a statement to that effect.

Financing

- 12** A disclosure document must include the terms and conditions of any financing arrangements that the franchisor offers, whether directly or indirectly, to the franchisee.

Training

- 13** (1) A disclosure document must include a description of any training offered to the franchisee by or on behalf of the franchisor, including where the training will take place if known at the date of disclosure, whether the training is mandatory or optional and a statement specifying who bears the costs of the training.
- (2) If training is not offered to the franchisee by or on behalf of the franchisor, the disclosure document must include a statement to that effect.

Manuals

- 14** (1) If the franchisee will be required to operate in accordance with manuals provided by the franchisor, a disclosure document must include the table of contents of each manual or a statement specifying where the manuals are available for inspection.

- (2) If no manuals are provided to the franchisee, the disclosure document must include a statement to that effect.

Advertising

- 15** If the franchisee will be required to contribute to an advertising, marketing, promotion or similar fund, a disclosure document must include a statement describing the fund and specifying
- (a) the amount or the basis of calculating the amount of the franchisee's required contribution to the fund,
 - (b) the frequency of the franchisee's required contribution to the fund,
 - (c) the administration of the fund, including the percentage or portion of the fund, if any, that is or may be spent primarily for the administration of the fund and the persons who administer the fund, and
 - (d) whether reports on advertising activities financed by the fund will be made available to the franchisee.

Purchase and sale restrictions

- 16** A disclosure document must include a description of any restrictions or requirements imposed by the franchise agreement with respect to
- (a) obligations to purchase or lease from the franchisor or the franchisor's affiliate or from suppliers approved by the franchisor or the franchisor's affiliate,
 - (b) the goods and services the franchisee may sell, and
 - (c) to whom or by what means the franchisee may sell goods or services.

Rebates, commissions, payments or other benefits

- 17** A disclosure document must include a description of the franchisor's policies and practices regarding rebates, commissions, payments or other benefits, including
- (a) the receipt, if any, by the franchisor or the franchisor's affiliate of a rebate, commission, payment or other benefit as a result of purchases of goods and services by franchisees, and
 - (b) whether rebates, commissions, payments or other benefits are shared with franchisees either directly or indirectly.

Territory

- 18** (1) A disclosure document must include the following:
- (a) if territorial rights are granted to the franchisee under the franchise agreement, a description of the franchisee's rights to the territory, including
 - (i) a description of the manner in which and the person by whom the franchisee's rights to the territory will be determined,
 - (ii) a description of the franchisor's policy, if any, as to whether the continuation of the franchisee's rights to the territory depends on the franchisee achieving a specific level of sales, market penetration or other condition, and

- (iii) a description of the circumstances under which the franchisee's rights to the territory may be altered;
 - (b) a description of any reservation of rights by the franchisor
 - (i) to market goods or services of the same kind as are to be sold or distributed under the franchise being offered, whether under the same or a different trademark, trade name, logo or advertising or other commercial symbol, or
 - (ii) to distribute goods or services described in subparagraph (i) by internet sales, telephone sales, catalogue sales or sales by other means.
- (2) If no territorial rights are granted to the franchisee, the disclosure document must include a statement to that effect.

Trademarks and other proprietary rights

- 19** A disclosure document must include a description of the rights the franchisor has to the trademark, trade name, logo or advertising or other commercial symbol associated with the franchise.

Licences, registrations, authorizations and other permissions

- 20** (1) A disclosure document must include a list of every licence, registration, authorization or other permission the franchisee will be required to obtain under federal or provincial laws to operate the franchise.
- (2) A disclosure document must include a statement that, in addition to those identified in subsection (1), the franchisee may be required under other federal or provincial laws or under the by-laws of a municipal or other local authority to obtain licences, registrations, authorizations or other permissions to operate the franchise and that the franchisee should make inquiries to determine whether such licences, registrations, authorizations or other permissions are required.

Personal participation

- 21** A disclosure document must include a description of the extent to which the franchisee will be required to participate personally and directly in the operation of the franchise or, if the franchisee is a corporation, partnership or other entity, the extent to which the principals of the corporation, partnership or other entity are so required.

Termination, renewal and transfer of the franchise

- 22** A disclosure document must include a list of all the provisions in the franchise agreement that deal with the termination of the franchise agreement, the renewal of the franchise agreement and the transfer of the franchise.

PART 3 – LISTS OF FRANCHISEES, BUSINESSES AND CLOSURES

List of current franchisees

- 23** (1) A disclosure document must include a list of all franchisees of the franchisor or of the franchisor's affiliates that currently operate franchises in Canada of the

same type as the franchise being offered, including the name, business address and telephone number of each franchisee.

- (2) If there are fewer than 20 franchisees that are listed as described in subsection (1), the list referred to in subsection (1) must also include the name, business address and telephone number of the franchisees of the franchisor or of the franchisor's affiliates that currently operate franchises of the same type as the franchise being offered, that are in the foreign jurisdiction closest to British Columbia, until 20 or all the franchisees are listed, whichever is the lesser number.
- (3) For the purposes of subsection (2), "**foreign jurisdiction**" means,
 - (a) in the case of franchisees located in the United States of America, a state of that country, or
 - (b) in any other case, a country.

List of current businesses

- 24** A disclosure document must include a list of all businesses of the same type as the franchise being offered that the franchisor or the franchisor's affiliates currently operate in Canada, including the name and business address of each business.

List of former franchisees

- 25** A disclosure document must include a list of all former franchisees of the franchisor or of the franchisor's affiliates that previously operated, in Canada and, if applicable, in any foreign jurisdiction from which the franchisor obtains the list of current franchisees required under section 23 of this Schedule, a franchise of the same type as the franchise being offered that has been terminated, cancelled, reacquired or not renewed by the franchisor or the franchisor's affiliate or has otherwise left the franchise system within the fiscal year immediately preceding the date of the disclosure document, including the name, last known address and telephone number of each former franchisee.

Franchise closures

- 26** A disclosure document must include the total number of franchises in Canada of the franchisor or of the franchisor's affiliates of the same type as the franchise being offered within the previous 3 fiscal years that have
 - (a) been terminated or cancelled by the franchisor or the franchisor's affiliates,
 - (b) not been renewed by the franchisor or the franchisor's affiliates,
 - (c) been reacquired by the franchisor or the franchisor's affiliates, or
 - (d) not been renewed by the franchisee or otherwise left the franchise system.