



FOREIGN FRANCHISOR DISCLOSURE DOCUMENT AND ONTARIO LAW

Section 5(4) of the Arthur Wishart Act (Franchise Disclosure), 2000 (the “Act”) provides that a disclosure document is required to contain all material facts, including those prescribed by regulation, copies of all proposed agreements relating to the franchise, statements as prescribed by regulation to assist the prospective franchisee in making an informed investment decision, and other information and copies of documents as prescribed by regulation. All such information must be set-out accurately, clearly and concisely.

Pursuant to the Act (section 10), any provision in a franchise agreement purporting to restrict the application of the law of Ontario, or to restrict jurisdiction or venue to a forum outside Ontario is void if a claim would be otherwise enforceable under the Act in Ontario. In addition, a prospective franchisee cannot opt out of the Act (section 11), provides that any waiver or release by a franchisee of a right given under the Act, or of an obligation or requirement imposed on a franchisor by or under the Act, is void.

The Act does not disallow the use of a foreign disclosure document, but for practical reasons, it is recommended that the form of the disclosure document follow the specific form set out in the Ontario Regulations (the “Regulations”). First, the Regulations require that certain statements dealing with risk disclosure be provided together in one section at the beginning of the disclosure document (section 4). If a foreign form of disclosure document were used, a wrap-around or addendum would need to be used to comply with this requirement. Second, the Ontario Regulations require that every disclosure document include specific disclosure items together in one part of the document (section 6). If there is deviation from the prescribed order of these items, or if the items are not grouped together, it is possible that the requirements of the Regulations will not have been satisfied. In this case, the use of a wrap-around or addendum may not be possible to comply with the Regulations. Third, the Act requires that all information set out in the disclosure document be accurately, clearly and concisely set out (section 5(6)).

If a foreign disclosure document is used, and it contains information that is not prescribed by the Act and the Regulations, it is possible that the franchisor may not be in compliance with the Act. Failure to strictly comply with the Act and the Regulations allows a franchisee to rescind the franchise agreement without penalty or obligation within two years after entering into the agreement. Incorrect disclosure is equal to no disclosure at all. Additionally, unlike the Alberta Act that provides for the use of a foreign disclosure document with a wrap-around or addendum, neither the Act nor the Regulations provide specifically for the right of a franchisor to use a foreign offering document prepared in another jurisdiction with a wrap-around or addendum. This could facilitate an argument by a franchisee that disclosure in Ontario was intended to follow the specific requirements of the Act and the Regulations.