

# FRANCHISE LAW PRACTICE GROUP

## FRANCHISE ARTICLE SERIES: FRANCHISE DISCLOSURE DOCUMENT

As of February 1, 2019, two years will have passed since the B.C. *Franchises Act* came into force (the "Act"). Since the enactment of this legislation, the Franchise Law Practice Group at Pushor Mitchell LLP has helped franchisors and franchisees navigate the Act, ensuring that those interested in operating a franchise business are compliant with the legislation's many requirements so that they can focus on what is most important: running a successful business!

This article is part of a series of articles that document some key considerations about franchising including some of the pitfalls and the opportunities which our firm has seen and advised upon over the past two years.



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# FRANCHISE DISCLOSURE DOCUMENT

## The Franchise Disclosure Document

A fundamental part of the Act is the requirement placed on franchisors to produce and maintain a Franchise Disclosure Document (the "**FDD**"). The FDD is intended to summarize all "material facts" regarding the franchise. A "material fact" is defined as any information about the business, operations, capital or control of the franchisor or franchisor's associate, or about the franchise that would reasonably be expected to have a significant effect on the value or price of the franchise to be granted or on the decision to acquire the franchise.

The *Franchises Regulation*, a piece of legislation which supports the Act, specifically sets out the requirements of the type of information that must be included in a Franchise Disclosure Document. This includes, but is not limited to:

- financial statements of the franchisor;
- business information about the franchisor and its directors; and
- a summary of the franchisee's costs and obligations.

## The Importance of Full and Proper Disclosure

The rationale behind a FDD is to ensure a prospective franchisee has all the information deemed necessary to make a fully informed decision on whether to proceed with the purchase of the franchise.

The FDD must be provided by a franchisor to a franchisee at least 14 days before the parties enter into a franchise agreement and can be delivered personally or by email.

It is important to emphasize however that a FDD **must be delivered as one complete document and delivered at one time**. Legally, it is not adequate for a franchisor to provide the FDD to a prospective franchisee and then follow up with attachments and additional information at a later time. This is a common pitfall for franchisors, who may provide the FDD to a prospective franchisee and then follow up (sometimes days later) with the financial statements or other schedules that should have originally been included. The failure of a franchisor to provide disclosure in compliance with the Act may permit franchisees to rescind their franchise agreements at a later date which can be extremely stressful and costly for franchisors.

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More specifically, the Act provides that the failure to provide a complete FDD may grant franchisees a right to rescind the franchise agreement within 60 days after receiving a FDD if the contents do not meet the requirements under the Act.

If a franchisor never provided the franchisee with a FDD at all, then the franchisee has the ability to rescind the franchise agreement within two years.

At Pushor Mitchell, our Franchise Law Practice Group is happy to help franchisors prepare their FDD to ensure that the document meets the requirements under the relevant Act and supporting Regulation. We can also assist prospective franchisees in reviewing a FDD to determine if the document contains the appropriate information to allow the franchisee to make a fully informed decision about the franchise.

*This article is provided as information only and should not be construed as legal advice. Always consult with a lawyer to provide you with advice specific to your own situation. For more information, please contact any member of the Franchise Law Practice Group at Pushor Mitchell LLP by calling (250) 762 – 2108 or visiting our website at [www.pushormitchell.com](http://www.pushormitchell.com).*