

FRANCHISE LEGISLATION HAS ARRIVED IN BRITISH COLUMBIA

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British Columbia's new *Franchises Act* (the "**Franchises Act**") and accompanying Regulations will come into force on February 1, 2017, giving franchisors only four months to ensure their disclosure and business practices comply with the new requirements.

In our [November 2015 bulletin](#), we discussed how British Columbia would soon be joining Alberta, Manitoba, Ontario, New Brunswick and Prince Edward Island by adopting franchise-specific legislation aimed at ensuring that franchisors and franchisees deal fairly with one another in a more transparent regulatory environment.

Similar to the franchise-specific legislation in other provinces, the Franchises Act:

- requires franchisors to provide prospective franchisees with a disclosure document containing detailed information about the franchisor and franchise system at least 14 days before a franchise agreement is signed or any consideration is paid to the franchisor;
- permits franchisors to deliver a disclosure document electronically;
- permits franchisees to rescind their franchise agreement in certain circumstances where the franchisor failed to provide adequate disclosure;
- provides statutory remedies to franchisees in the event of misrepresentations by franchisors; provides franchisees with a statutory right to associate with each other, free from franchisor interference; and
- voids any purported waiver or release given by a franchisee of the rights conferred by the legislation.

Alongside these similarities, the franchise regime in British Columbia differs slightly from other provinces in certain respects. For example, in British Columbia:

- defects in a disclosure document's form and other technical irregularities will not affect its validity, so long as such errors do not affect the document's substance and the document otherwise substantially complies with the legislation;
- notwithstanding the general provision making waivers and releases void, releases given by franchisees in connection with the settlement of a specific action, claim, or dispute are not rendered void;
- certain types of confidentiality and site selection agreements may be signed prior to the franchisor's delivery of a disclosure document; and

- franchisors may accept deposits from prospective franchisees at any time, provided the deposit:
 - i. is not greater than 20% of the initial franchise fee;
 - ii. is returnable if the prospective franchisee does not enter into a franchise agreement; and
 - iii. does not oblige the prospective franchisee to enter into a franchise agreement.

Franchisors should consult with their counsel now to ensure their existing disclosure documents are updated to comply with the new requirements in British Columbia. Although franchisors who already provide disclosure documents in accordance with franchise legislation in other provinces will only need to make relatively minor changes to meet the specific requirements of the Franchises Act, it is critical that such changes be made. Successful rescission claims by franchisees, based on inadequate disclosure, can be extremely costly to franchisors.

by W. Brad Hanna, Michael E. Reid and Bill Olaguera Articled Student

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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