

There is a long list of information, set out in the Regulations, that must be included in the Disclosure Document, including the business background of Franchisor, its finances, its bankruptcy and insolvency history, Franchisee's expected costs associated with establishing the franchise, copies of all agreements relating to the franchise, and contact particulars for both current and former Franchisees. The overarching requirement is that the document must contain all "material facts", which are defined to include any information about the business, operations, capital or control of Franchisor or about the franchise system, that would reasonably be expected to have a significant effect on the value or price of the franchise to be granted or the decision to acquire it. Accordingly, the list set out in the Regulations should not be viewed as exhaustive.

In accordance with the Regulations, the Disclosure Document must be certified as true and complete by two officers or directors of Franchisor; at least one Canadian court has held that, if this is not done, no disclosure can be said to have been made, and Franchisee will have the right to rescind.<sup>1</sup>

There are also certain formal requirements that must be met. Subsection 5(3) of the Act provides that a Disclosure Document "must be one document, delivered [...] as one document at one time".<sup>2</sup> Subsection 5(6) further provides that the information in a Disclosure Document must be "accurately, clearly and concisely set out". Finally, there are certain statements and other information that must be presented together, in some cases in specific locations, within the Disclosure Document.

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<sup>1</sup> *Hi Hotel Limited Partnership v. Holiday Hospitality Franchising* (2008) ABCA 276.

<sup>2</sup> Although see *Chu v. Chowdhury (Liberty Car and Truck Rental)*, 2008 CANLII 23492 (Ont. S. C.) in which the plaintiff's motion for summary judgment was denied notwithstanding that the document presented to the plaintiff did not comply with the Act both in terms of the document being complete and in providing all of the information in one document. Leave to appeal denied, 2008, CANLII 36909 (Ont. S.C.D.C.). It may very well be that the plaintiff will ultimately succeed however at trial and Franchisors are cautioned to ensure that the documentation prepared is in strict compliance with the Act. See also the decision of the Court of Appeal in the Dollar It Limited decision referenced at note 11 below.