

Under the Act, Franchisor is required to deliver (reference Section 5(2) of the Act for how delivery may be effected) to each prospective Franchisee a Disclosure Document, which meets the detailed requirements set out in the regulations made under the Act (the “**Regulations**”), not later than 14¹ days prior to the earlier of Franchisee:

- signing the franchise agreement or any other agreement relating to the franchise. This includes the signing of an offer to purchase, a letter of intent, a deposit agreement, or even a confidentiality agreement and may even include a franchise application form if elements of the form attempt to bind the prospective franchisee; or
- paying any consideration relating to the franchise, regardless of whether or not it is non-refundable.

Pursuant to Section 5(5) of the Act, Franchisor is also required to provide the prospective Franchisee with a written statement of any “material change” that occurs after the Disclosure Document is delivered but before the franchise agreement or any agreement relating to the franchise is signed, or any consideration is paid, by Franchisee. Under section 1(1) of the Act, “material change” is defined to mean:

“a change in the business, operations, capital or control of Franchisor [...], a change in the franchise system or a prescribed change, that would reasonably be expected to have a significant adverse effect on the value or price of the franchise to be granted or on the decision to acquire the franchise and includes a decision to implement such a change made by the board of directors of Franchisor [...] or by senior management of Franchisor [...] who believe that confirmation of the decision by the board of directors is probable”.

It is important to note that while “material facts” 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, only *adverse* changes are considered “material changes” – this distinction can be critical in considering whether updated disclosure is required in the context of changes that occur during the 14-day waiting period, [as well as in determining whether an exemption is available in the case of a renewal or extension of an existing franchise agreement.] Under Section 1(1) of the Act, a “material fact” is defined as follows:

“material fact” includes any information about the business, operations, capital or control of Franchisor or Franchisor’s associate, 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 the franchise;

¹ See 4287975 Canada Inc. v. Imvescor Restaurants Inc. et al. (Ont. C.A.) whereby the Court dismissed the appellant franchisee’s appeal denying the appellant franchisee with a right to rescind the franchise agreement whereby the appellant franchisee paid a deposit 2 months before receiving a disclosure document but signed a franchise agreement 6 months after receiving the disclosure document.