



Office of the  
Attorney General

# **Franchises Act Regulations Discussion Paper**

October 19, 2005

The Office of the Attorney General is releasing for comment draft regulations under the *Franchises Act* S.P.E.I. 2005, Cap. 36. The Act received Royal Assent on June 7, 2005 but has not been proclaimed in force pending development of these regulations. The Act is available at: <http://www.assembly.pe.ca/bills/>. The proposed regulations are attached as Appendix A.

The PEI *Franchises Act* is modelled closely on the *Uniform Franchises Act* of the Uniform Law Conference of Canada (ULCC). The ULCC has also now issued a set of regulations for adoption under the model legislation. The ULCC Act and regulations are available at: <http://www.ulcc.ca/en/us/>.

While the draft PEI regulations have taken advantage of the work of the ULCC on the model regulations, they also differ substantially from the ULCC regulations on a number of points. The ULCC model regulations were developed on the assumption that there would be highly harmonized franchise law in place throughout the jurisdictions of Canada before the law would come into force. This is very different from the situation in which Prince Edward Island finds itself as it moves to bring into force its new legislation. In Canada, franchise law is only in force in two of the largest provinces, Alberta and Ontario. The draft PEI regulations take this into account.

#### **Use of disclosure document from another jurisdiction:**

The PEI regulations, for example, include a provision similar to Alberta's regulations which permit a franchisor to use a PEI "wrapper" on a franchise disclosure document that is in accordance with the laws of another jurisdiction that has franchise legislation.

#### **Substantial compliance:**

The PEI regulations also include a section similar to an Alberta provision which makes substantial compliance with the disclosure document requirements sufficient for the purposes of determining whether a franchisee can rescind the franchise agreement.

#### **Listed areas of disclosure:**

The ULCC and PEI *Franchises Acts* require that a franchisor disclose all "material facts" and such other statements or information as prescribed. The ULCC regulations have been drafted to require extensive disclosure in all the listed areas whether or not the matter would be "material" to the franchisee in making the decision to sign the franchise agreement. The extensive list gives comfort to a franchisor that if they complete the document fully and honestly they have almost certainly met the material fact disclosure requirement even though much of the disclosed information might not be material in a given situation.

The PEI regulations have not fully adopted this approach. The PEI regulations have been drafted with an eye to the minimum standards which exist at present in the Canadian marketplace, i.e. the laws of Ontario and Alberta. Generally, matters which are not required to be disclosed or not required to be disclosed in the detail required by the ULCC regulations have not been included in

the PEI regulations. These matters would only need to be included if they are “material”. At the same time, there is nothing in the PEI regulations which would restrict a franchisor from providing the full disclosure in the form of the ULCC regulations if they chose to do so.

**Financial Statements:**

The ULCC regulations require all franchisors to give financial statements to prospective franchisors. The PEI regulations adopt the blanket exemption for larger franchisors of the Ontario and Alberta regulations. The PEI Act also gives the Minister discretionary power to exempt franchisors that do not fall within the blanket exemption from the requirement to disclose financial statements.

**Lists of current and former franchisees:**

Given the administrative burden this would place on franchisors, the PEI regulations have not adopted the broad schedules of the ULCC for disclosure of franchisees, businesses and franchise outlets. Regional data on current and former franchisees is required.

Comments should be submitted by November 25, 2005 to:

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## APPENDIX A

October 11, 2005

**DRAFT**  
**EC2005-**  
**FRANCHISES ACT**  
**REGULATIONS**

Pursuant to section 14 of the *Franchises Act* R.S.P.E.I. 1988, Cap. F-14.1, Council made the following regulations:

- 1.** (1) In these regulations
- Definitions
- (a) “Act” means the *Franchises Act* R.S.P.E.I. 1988, Cap. F-14.1; Act
- (b) “affiliate” has the same meaning as in the *Canada Business Corporations Act* (Canada); affiliate
- (c) “earnings projection” includes any information given by or on behalf of the franchisor or franchisor’s associate, directly or indirectly, from which a specific level or range of actual or potential sales, costs, income, revenue or profits from franchises or businesses of the franchisor, franchisor’s associates or affiliates of the franchisor of the same type as the franchise being offered can easily be ascertained. earnings projection
- (2) In these regulations, a franchise or business is the same type as an existing franchise or as the franchise being offered if it is operated or to be operated under the same trade-mark, trade name, logo or advertising or other commercial symbol as that franchise. Interpretation
- 2.** For the purposes of subsection 5(2) of the Act, the prescribed method of delivery is any method which is agreed on in writing by the franchisor and the prospective franchisee. Method of delivery of disclosure document
- 3.** (1) Every disclosure document shall contain
- Contents of disclosure document
- (a) presented together at the beginning of the document, the risk warning statements set out in Part 1 of Schedule I;
- (b) the information pertaining to the franchisor described in Part 2 of Schedule I;
- (c) the information pertaining to the franchisee described in Part 3 of Schedule I; and
- (d) the lists of current and former franchisees described in Part 4 of Schedule I.

Document authorized under laws of other jurisdiction	(2) A franchisor may use a document that is authorized under the franchise law of a jurisdiction outside Prince Edward Island as its disclosure document to be given to a franchisee, if supplementary information is included that sets out any material changes to the document from that jurisdiction so that it complies with the requirements of the Act and these regulations.
Substantially complete document	(3) A disclosure document is properly given for the purposes of section 6 of the Act if the document is substantially complete.
Certificate of Franchisor - disclosure document	<b>4.</b> (1) A Certificate of Franchisor in Form 1 of Schedule II shall be completed and attached to every disclosure document provided by a franchisor to a prospective franchisee.
Certificate of Franchisor - statement of material change	(2) A Certificate of Franchisor in Form 2 of Schedule II shall be completed and attached to every statement of material change provided by a franchisor to a prospective franchisee.
Certificate signed and dated	(3) A Certificate of Franchisor shall be signed and dated, <ul style="list-style-type: none"> <li>(a) in the case of a franchisor that is not incorporated, by the franchisor;</li> <li>(b) in the case of a franchisor that is incorporated and has only one director or officer, by that person; or</li> <li>(c) in the case of a franchisor that is incorporated and has more than one officer or director, by at least two persons who are officers or directors.</li> </ul>
Financial statements	<b>5.</b> (1) Subject to section 6 and to an exemption order made under subsection 8(1) of the Act, every disclosure document shall contain financial statements prepared in accordance with the generally accepted accounting principles of the jurisdiction in which the franchisor is based.
Audits or reviews	(2) Financial statements must be either <ul style="list-style-type: none"> <li>(a) audited in accordance with the generally accepted auditing standards set out in the Canadian Institute of Chartered Accountants Handbook, or</li> <li>(b) reviewed in accordance with the review and reporting standards applicable to review engagements set out in the Canadian Institute of Chartered Accountants Handbook.</li> </ul>
Other jurisdictions auditing and review standards	(3) The auditing standards and the review and reporting standards of other jurisdictions that are at least equivalent to subsection (2) are acceptable.
Fiscal year	(4) The financial statements must be for the most recently completed fiscal year.

(5) Despite subsection (4), if 180 days have not yet passed since the end of the most recently completed fiscal year and financial statements have not been prepared and reported on for that fiscal year, the disclosure document shall contain the financial statements for the last completed fiscal year.

Previous fiscal year

(6) Despite subsection (4), if a franchisor has operated for less than one fiscal year or if 180 days have not yet passed since the end of the first fiscal year of operations and financial statements for that year have not been prepared and reported on for that fiscal year, the disclosure document shall contain the opening balance sheet for the franchisor.

Balance sheet

**6.** A franchisor is exempt from the requirement in clause 5(4)(b) of the Act and section 5 of the Regulations to include financial statements in a disclosure document if

Exemption from requirement to include financial statements

- (a) the franchisor has a net worth on a consolidated basis according to its most recent financial statements, which have been audited or for which a review engagement report has been prepared, which
  - (i) is at least \$5,000,000, or
  - (ii) is at least \$1,000,000, if the franchisor is controlled by a corporation whose net worth on a consolidated basis according to its most recent financial statements that have been audited or for which a review engagement report has been prepared is at least \$5,000,000;
- (b) the franchisor
  - (i) has at least 25 franchisees engaging in business at all times in Canada in the five years immediately preceding the date of the disclosure document,
  - (ii) has fewer than 25 franchisees engaging in business at all times in Canada and has at least 25 franchisees engaging in business at all times in a single jurisdiction other than Canada in the five years immediately preceding the date of the disclosure document,
  - (iii) does not meet the requirements of subclause (i) or (ii) but is controlled by a corporation that meets the requirements of subclause (i), or
  - (iv) does not meet the requirements of subclause (i) or (ii), but is controlled by a corporation that meets the requirements of subclause (ii);
- (c) the franchisor
  - (i) has engaged in the line of business associated with the franchise continuously for not less than five years immediately preceding the date of the disclosure document, or
  - (ii) is controlled by a corporation that meets the requirements of subclause (i); and

(d) the franchisor, the franchisor’s associates, and the directors, general partners and officers of the franchisor in the five years immediately preceding the date of the disclosure document,

(i) in the case of a franchisor described in subclause (b)(i) or (iii) have not had any judgment, order or award made in Canada against any of them relating to fraud, unfair or deceptive practices, or a law regulating franchises including the Act, or

(ii) in the case of a franchisor described in subclause (b)(ii) or (iv) have not had any judgment, order or award in Canada or in the jurisdiction referred to in subclause (b)(ii) against any of them relating to fraud, unfair or deceptive practices, or a law regulating franchises including the Act.

Amount of total annual investment

**7.** For the purposes of clause 5(7)(g) of the Act, the prescribed amount is \$5,000.

Exemption application fee

**8.** For the purposes of section 8, the prescribed fee is \$250.

Coming into force

**9.** These regulations come into force on .....



## SCHEDULE I

### DISCLOSURE DOCUMENT REQUIREMENTS

#### PART 1 RISK WARNINGS

1. A prospective franchisee should seek information on the franchisor and on the franchisor's business background, banking affairs, credit history and trade references.
2. A prospective franchisee should seek expert independent legal and financial advice in relation to franchising and the franchise agreement prior to entering into the franchise agreement.
3. A prospective franchisee should contact current and previous franchisees prior to entering into the franchise agreement.
4. Lists of current and previous franchisees and their contact information can be found in this disclosure document.

#### PART 2 REQUIRED INFORMATION ABOUT THE FRANCHISOR

1. The business background of the franchisor, including,
  - (a) the name of the franchisor,
  - (b) the name under which the franchisor is doing or intends to do business,
  - (c) the name of any associate of the franchisor that will engage in business transactions with the franchisee,
  - (d) the franchisor's principal business address and, if the franchisor has an attorney for service in Prince Edward Island, the name and address of that person,
  - (e) the business form of the franchisor, whether corporate, partnership or otherwise,
  - (f) if the franchisor is a subsidiary, the name and principal business address of the parent,
  - (g) the business experience of the franchisor, including the length of time the franchisor has operated a business of the same type as the franchise being offered, has granted franchises of that type or has granted any other type of franchise,
  - (h) if the franchisor has offered a different type of franchise from that being offered, a description of every such type of franchise, including for each type of franchise,
    - (i) the length of time the franchisor has offered the franchise to prospective franchisees, and
    - (ii) the number of franchises granted in the five years immediately before the date of the disclosure document.
2. The business background of the directors, the general partners and the officers of the franchisor, including,
  - (a) the name and current position of each person;
  - (b) a brief description of the prior relevant business experience of each person;
  - (c) the length of time each person has been engaged in business of the same type as the business of the franchise being offered; and
  - (d) the principal occupation and the employers of each person during the five years immediately before the date of the disclosure document.
3. A statement indicating whether, during the ten years immediately before the date of the disclosure document, the franchisor, the franchisor's associate or a director, general partner or officer of the franchisor has been convicted of fraud, unfair or deceptive business practices or a violation of a law that regulates franchises or business, or if there is a charge

Business  
background of  
franchisor

Business  
background of  
directors, general  
partners and  
officers

Previous  
convictions and  
pending charges

pending against the person involving such a matter, and the details of any such conviction or charge.

Administrative orders and proceedings

4. A statement indicating whether the franchisor, the franchisor's associate or a director, general partner or officer of the franchisor has been subject to an administrative order or penalty under a law that regulates franchises or business or if the person is the subject of any pending administrative actions to be heard under such a law, and the details of any such order, penalty or pending action.

Civil actions and liabilities

5. A statement indicating whether the franchisor, the franchisor's associate or a director, general partner or officer of the franchisor has been found liable in a civil action of misrepresentation, unfair or deceptive business practices or violating a law that regulates franchises or business, including a failure to provide proper disclosure to a franchisee, or if a civil action involving such allegations is pending against the person and the details of any such action or pending action.

Bankruptcy

6. Details of any bankruptcy or insolvency proceedings, voluntary or otherwise, any part of which took place during the six years immediately before the date of the disclosure document, in which the debtor is,  
 (a) the franchisor or the franchisor's associate;  
 (b) a corporation whose directors or officers include a current director, officer or general partner of the franchisor, or included such a person at a time when the bankruptcy or insolvency proceeding was taking place;  
 (c) a partnership whose general partners include a current director, officer or general partner of the franchisor, or included such a person at a time when the bankruptcy or insolvency proceeding was taking place; or  
 (d) a director, officer or general partner of the franchisor in his or her personal capacity.

### PART 3 REQUIRED INFORMATION ABOUT THE FRANCHISE

Costs of establishing the franchise

1. A list of all of the franchisee's costs associated with the establishment of the franchise, including  
 (a) the amount of any deposits or initial franchise fees, or the formula for determining the amount, whether the deposits or fees are refundable and if so, under what conditions;  
 (b) an estimate of the costs for inventory, supplies, leasehold improvements, fixtures, furnishings, equipment, signs, vehicles, leases, rentals, prepaid expenses and all other tangible or intangible property and an explanation of any assumptions underlying the estimate; and  
 (c) any other costs associated with the establishment of the franchise not listed in (a) or (b), including any payment to the franchisor or franchisor's associate, whether direct or indirect, required by the franchise agreement, the nature and amount of the payment and when the payment is due.

Other fees

2. The nature and amount of any recurring or isolated fees or payments, other than those listed in item 1, that the franchisee must pay to the franchisor or franchisor's associate, whether directly or indirectly, or that the franchisor or franchisor's associate imposes or collects in whole or in part on behalf of a third party, whether directly or indirectly.

Guarantees, security interests

3. A description of the franchisor's policies and practices, if any, regarding guarantees and security interests required of franchisees.

Estimate of operating costs

4. If an estimate of annual operating costs for the franchise or of operating costs for the franchise for another regular period, is provided directly or indirectly, a statement specifying,

- (a) the assumptions and bases underlying the estimate;
  - (b) that the assumptions and bases underlying the estimate are reasonable; and
  - (c) where information that substantiates the estimate is available for inspection.
- 5.** If an earnings projection for the franchise is provided directly or indirectly, a statement specifying,
- (a) the assumptions and bases underlying the projection, its preparation and presentation;
  - (b) that the assumptions and bases underlying the projection, its preparation and presentation are reasonable;
  - (c) the period covered by the projection;
  - (d) whether the projection is based on actual results of existing franchises or of existing businesses of the franchisor, franchisor's associates or affiliates of the franchisor of the same type as the franchise being offered and, if so, the locations, areas, territories or markets of such franchises and businesses;
  - (e) if the projection is based on a business operated by the franchisor, franchisor's associate or affiliate of the franchisor, that the information may differ in respect of a franchise operated by a franchisee; and
  - (f) where information that substantiates the projection is available for inspection.
- 6.** The terms and conditions of any financing arrangements that the franchisor or franchisor's associate offers or assists any person to offer, directly or indirectly, to the franchisee.
- 7.** A description of any training or other assistance offered to the franchisee by the franchisor or franchisor's associate, including where the training or other assistance will take place, whether the training or other assistance is mandatory or optional and, if it is mandatory, a statement specifying who bears the costs of the training or other assistance.
- 8.** If the franchisee is required to contribute to an advertising, marketing, promotion or similar fund, a description of the fund, and the amount of the franchisee's required contribution.
- 9.** A description of any restrictions or requirements imposed by the franchise agreement with respect to,
- (a) obligations to purchase or lease from the franchisor or franchisor's associate or from suppliers approved by the franchisor or franchisor's associate;
  - (b) the goods and services the franchisee may sell; and
  - (c) to whom the franchisee may sell goods or services.
- 10.** A description of the franchisor's policies and practices, if any, regarding rebates, commissions, payment or other benefits, including
- (a) the receipt, if any, by the franchisor or franchisor's associate of a rebate, commission, payment or other benefit as a result of purchases of goods and services by franchisees; and
  - (b) whether rebates, commissions, payments or other benefits are shared with franchisees either directly or indirectly.
- 11.** A description of any exclusive territory granted to the franchisee, and, if the franchise agreement grants the franchisee rights to exclusive territory, a description of the franchisor's policy, if any, as to whether the continuation of the franchisee's rights to exclusive territory depends on the franchisee achieving a specific level of sales, market penetration, or other condition, and under what circumstances these rights might be altered.
- 12.** A description of the franchisor's policies and practices, if any, on the proximity between an existing franchise and,
- (a) another franchise of the franchisor or franchisor's associate of the same type as the existing franchise;

Earnings  
projection

Financing

Training

Advertising

Purchase and sale  
restrictions

Rebates,  
commissions,  
payments or  
other benefits

Territory

Proximity

- (b) any distributor or licensee using the franchisor's trade-mark, trade name, logo or advertising or other commercial symbol;
- (c) a business operated by the franchisor, franchisor's associate or affiliate of the franchisor that distributes similar goods or services to those distributed by the existing franchise under a different trade-mark, trade name, logo or advertising or other commercial symbol; or
- (d) a franchise of the franchisor, franchisor's associate or affiliate of the franchisor that distributes similar goods or services to those distributed by the existing franchise under a different trade-mark, trade name, logo or advertising or other commercial symbol.

- |  |  |
|--|--|
| Trade-marks and other proprietary rights           | <b>13.</b> A description of the rights the franchisor or the franchisor's associate has to the trade-mark, trade name, logo or advertising or other commercial symbol associated with the franchise.   |
| Personal participation                             | <b>14.</b> A description of the extent to which the franchisee is required to participate personally and directly in the operation of the franchise or, if the franchisee is a corporation, partnership or other entity, the extent to which the principals of the corporation, partnership or other entity are so required. |
| Termination, renewal and transfer of the franchise | <b>15.</b> A description of all the provisions in the franchise agreement that deal with the termination of the agreement, the renewal of the agreement and the transfer of the franchise.   |

**PART 4**  
**LISTS OF FRANCHISEES**

- |                             |   |
|-----------------------------|---|
| List of current franchisees | <p><b>1.</b> (1) A list of all franchisees of the franchisor, franchisor's associates, or affiliates of the franchisor, that currently operate franchises of the same type as the franchise being offered in Prince Edward Island, New Brunswick and Nova Scotia, including the name, business address and telephone number of the franchisee and the business address and telephone number of the franchise.</p> <p>(2) If there are fewer than 20 franchisees in Prince Edward Island, New Brunswick and Nova Scotia, the list shall include information on franchisees that operate franchises that are geographically closest to Prince Edward Island until information on 20 or all franchisees is provided.</p> |
| List of former franchisees  | <p><b>2.</b> A list of all franchisees of the franchisor, franchisor's associates or affiliates of the franchisor that operated a franchise in Prince Edward Island, New Brunswick or Nova Scotia of the same type as the franchise being offered that has been terminated, cancelled, not renewed or reacquired by the franchisor or otherwise left the system within the last fiscal year immediately preceding the date of the disclosure document, including the name, last known address and telephone number of each franchisee.</p>  |

## **SCHEDULE II**

### **FORM 1**

#### **CERTIFICATE OF FRANCHISOR**

This Disclosure Document,

- (a) contains no untrue information, representation or statement, whether of a material fact or otherwise;
- (b) contains every material fact, financial statement, statement and other information that is required to be contained by the Act and the regulations made under it;
- (c) does not omit a material fact that is required to be contained by the Act and the regulations made under it; and
- (d) does not omit a material fact that needs to be contained in order for this Disclosure Document not to be misleading.

*A Certificate of Franchisor shall be signed and dated as required by section 4 of the Franchises Act Regulations.*

## FORM 2

**CERTIFICATE OF FRANCHISOR**

This Statement of Material Change,

- (a) contains no untrue information, representation or statement, whether of a material change or otherwise;
- (b) contains every material change that is required to be contained by the Act and the regulations made under it;
- (c) does not omit a material change that is required to be contained by the Act and the regulations made under it; and
- (d) does not omit a material change that needs to be contained in order for this Statement of Material Change not to be misleading.

*A Certificate of Franchisor shall be signed and dated as required by section 4 of the Franchises Act Regulations.*

## **EXPLANATORY NOTES**

**SECTION 1** is the definitions and interpretation provision.

**SECTION 2** allows the franchisor and franchisee to agree in writing on a method of delivery for the disclosure document.

**SECTION 3** provides for the required contents of a disclosure document.

**SECTION 4** sets the required form and contents of certificates of the franchisor.

**SECTION 5** establishes requirements for financial statements of franchisors to be provided to franchisees.

**SECTION 6** grants a blanket exemption from the requirement to include financial statements in a disclosure document for large, experienced franchisors.

**SECTION 7** establishes the maximum amount of the initial investment for the purposes of the exemption from the requirement to deliver a disclosure document for small franchises.

**SECTION 8** sets the fee for an application for a ministerial exemption from the financial statements requirement.

**SECTION 9** is the coming into force provision.