



Province of Alberta

## FRANCHISES ACT

# FRANCHISES REGULATION

### **Alberta Regulation 240/1995**

With amendments up to and including Alberta Regulation 147/2015

### Office Consolidation

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(Consolidated up to 147/2015)

**ALBERTA REGULATION 240/95**

**Franchises Act**

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*Table of Contents*

- 1 Definitions
- 2 Disclosure document
- 3 Financial statements
- 4 Fractional franchise
- 5 Fully-refundable deposit
- 6 Total annual investment
- 7 Notice of misrepresentation
- 8 Repeal
- 9 Expiry
- 10 Coming into force

Schedules

**Definitions**

**1(1)** In this Regulation,

- (a) “Act” means the *Franchises Act*, chapter F-17.1 of the Statutes of Alberta, 1995;
- (b) “franchisor outlet” means an outlet owned
  - (i) by the franchisor,
  - (ii) by a corporation that controls the franchisor,
  - (iii) by a corporation that is controlled by the franchisor,  
or
  - (iv) by a corporation in common control with the franchisor.

**(2)** Words and expressions defined in the Act have corresponding meanings in this Regulation.

**Disclosure document**

- 2(1)** A disclosure document must contain all material facts including material facts relating to the matters set out in Schedule 1.
- (2)** A franchisor may use a document authorized under the franchise law of a jurisdiction outside Alberta 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 this Regulation.
- (3)** A disclosure document, including any material changes made in respect of a disclosure document, must include a certificate set out in Schedule 2 that must be dated and must be signed
- (a) by at least 2 officers or directors of the franchisor, or a combination of them totaling at least 2, if the franchisor has 2 or more directors or officers,
  - (b) if the franchisor has only one director or officer, by that person, or
  - (c) if the franchisor is not a corporation, by the franchisor.
- (4)** A disclosure document is properly given for the purposes of section 13 of the Act if the document is substantially complete.
- (5)** The date of a disclosure document is the date set out in the certificate referred to in subsection (3).

**Financial statements**

- 3(1)** Financial statements of the franchisor must be prepared in accordance with generally accepted accounting principles for the jurisdiction in which the franchisor is based.
- (2)** Financial statements must be either
- (a) audited in accordance with Canadian generally accepted auditing standards, including the Canadian Standards on Quality Control and the Canadian Auditing Standards as set out in the CPA Canada Handbook published by the Chartered Professional Accountants of Canada, as amended from time to time, or
  - (b) reviewed in accordance with Canadian generally accepted standards for review engagements, including the Canadian Standards on Quality Control and the Other Canadian Standards applicable to review engagement set out in the CPA Canada Handbook published by the Chartered

Professional Accountants of Canada, as amended from time to time.

(3) The auditing standards and the review standards and reporting standards of other jurisdictions that are at least equivalent to subsection (2) are acceptable.

(4) The financial statements must be for the most recently completed fiscal year.

(5) 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 financial statements for the previous fiscal year may be included.

(6) If

(a) the franchisor has not completed one fiscal year of operation, or

(b) 180 days has not yet passed since the end of the first fiscal year of operation and financial statements have not been prepared and reported on for that fiscal year,

the disclosure document must include the franchisor's opening balance sheet.

AR 240/95 s3;317/2000;146/2015

#### **Fractional franchise**

4 The percentage, for the purposes of the definition of "fractional franchise" in the Act, is 20%.

#### **Fully-refundable deposit**

5 The maximum amount of a fully-refundable deposit referred to in section 4(8) of the Act is 20% of the initial franchise fee.

AR 240/95 s5;317/2000

#### **Total annual investment**

6(1) The maximum total annual investment for the purposes of section 5(1)(e) of the Act is \$5000.

(2) In calculating the total annual investment, the cost of acquiring pre-sold inventory or of purchasing reasonable quantities of inventory, if there is a reasonable buy-back policy for unsold inventory, is not to be included.

**Notice of misrepresentation**

- 7(1)** A notice under section 10 of the Act must be given to the franchisee and the franchisor.
- (2)** The person giving the notice must make all reasonable efforts to ensure that the notice is received by the franchisor and franchisee.
- (3)** The notice must be published in a daily newspaper having general circulation in Edmonton and in a daily newspaper having general circulation in Calgary.
- (4)** The notice must,
- (a) for the purpose of section 10(2)(a) of the Act, include a statement that the disclosure document was given without that person's consent, or
  - (b) for the purpose of section 10(2)(b) of the Act, include a statement that the person has withdrawn his consent to the disclosure document and the reasons for doing so.

**Repeal**

- 8** The *Franchises Regulation* (Alta. Reg. 201/72) is repealed.

**Expiry**

- 9** For the purpose of ensuring that this Regulation is reviewed for ongoing relevancy and necessity, with the option that it may be re-passed in its present or amended form following a review, this Regulation expires on November 30, 2020.

AR 240/95 s9;317/2000;54/2005;147/2015

**Coming into force**

- 10** This Regulation comes into force on November 1, 1995.

**Schedule 1****1 Franchisor Information**

Provide the following in a summary form:

- (a) the name and address of the franchisor;
- (b) the name under which the franchisor does or intends to do business;

- (c) the principal business address of the franchisor and, if the franchisor has an attorney for service in Alberta, the name and address of that person;
- (d) the business form of the franchisor;
- (e) the length of time the franchisor has conducted a business of the type to be operated by the franchisee;
- (f) the length of time the franchisor has offered franchises for the same type of business as that to be operated by the franchisee;
- (g) whether the franchisor has offered franchises in other lines of business, including
  - (i) a description of each other line of business,
  - (ii) the number of franchises sold in the previous 5 years in each other line of business, and
  - (iii) the length of time the franchisor has offered franchises in other lines of business;
- (h) the names of the directors, general partners and officers of the franchisor who will have management responsibilities relating to the franchise. State each person's principal occupation and employers during the 5 years preceding the date of the disclosure document.

For the purposes of clause (h), the information need only be provided for those directors, general partners and officers of the franchisor who will have day to day management responsibilities relating to the franchise.

## **2 Previous Convictions and Pending Charges**

Provide details on convictions for the previous 10 years relating to the franchisor and its associates and any of the directors, general partners and officers of the franchisor who have management responsibilities relating to the franchise

- (a) for the commission of indictable offences (or equivalent in other jurisdictions, including pleading no contest to any offence) involving franchises or other businesses, and

- (b) for the commission of offences involving fraud, embezzlement, unfair or deceptive acts or practices or other comparable offences.

Provide details relating to the franchisor and its associates and any of the directors, general partners and officers of the franchisor who have management responsibilities relating to the franchise on currently pending

- (a) indictable offences involving franchises or other businesses, and
- (b) offences involving fraud, embezzlement, unfair or deceptive acts or practices or other comparable offences.

### **3 Civil Litigation and Liabilities**

Provide details relating to the franchisor and its associates and to any of the directors, general partners and officers of the franchisor who have management responsibilities relating to the franchise on any finding of liability in a civil action or on any pending actions involving franchises or other businesses, involving misrepresentation, unfair or deceptive acts or practices and comparable actions.

### **4 Administrative Proceedings and Existing Orders**

Provide details relating to the franchisor and its associates and to any of the directors, general partners and officers of the franchisor who have management responsibilities relating to the franchise on any currently effective injunctive or restrictive orders imposed by, or any pending administrative actions to be heard before, any public agency, whether in Alberta or outside Alberta, involving franchises or other businesses.

### **5 Bankruptcy**

Provide details of any bankruptcy or insolvency proceedings, voluntary or otherwise, in the previous 6 years

- (a) against the franchisor and its associates,
- (b) against a corporation, any of whose directors or officers are currently directors, general partners and officers of the franchisor who have management responsibilities relating to the franchise, and

- (c) against a partnership whose general partners are currently directors, general partners and officers of the franchisor who have management responsibilities relating to the franchise.

## **6 Nature of the Business**

Describe the franchisor's business and the franchises to be offered in Alberta.

## **7 Initial Franchise Fee and Other Fees**

Disclose the initial franchise fee and state the conditions when this fee is refundable.

Disclose other recurring or isolated fees or payments that the franchisee must pay to the franchisor or its associates or that the franchisor or its associates impose or collect in whole or in part on behalf of a third party. If any fee is refundable, state the conditions when each fee or payment is refundable.

## **8 Initial Investment Required**

Provide details of the initial investment required by the franchisee to start business operations.

## **9 Financing**

Disclose the terms and conditions of each financing arrangement that the franchisor offers directly or indirectly to the franchisee.

## **10 Working Capital**

If an estimate of working capital is provided, the information must

- (a) have a reasonable basis at the time it is made, and
- (b) include the material assumptions underlying its preparation and presentation.

If an estimate of working capital is not provided, the disclosure document must include a statement that additional funds will be required to finance operations until a positive cash flow is produced.

**11 Restrictions on Sources of Products and Services and on What Franchisees May Sell**

Disclose franchisee obligations to purchase or lease from the franchisor or its associates or from suppliers approved by the franchisor or its associates or under the franchisor's or associate's specifications.

Disclose restrictions or conditions imposed by the franchisor or its associates

- (a) on the goods or services that the franchisee may sell, or
- (b) that limit the customers to whom the franchisee may sell goods or services.

**12 Rebates or Other Benefits to the Franchisor**

State whether or not there are any rebates or other benefits that the franchisor or its associates may receive or are receiving as a result of the purchase of goods or services by franchisees. Indicate if any of these rebates or benefits are shared with franchisees, either directly or indirectly.

**13 Obligations to Participate in the Actual Operation of the Franchise Business**

State whether or not the franchisor requires the franchisee to participate personally in the direct operation of the franchise business.

**14 Existing Franchisee and Franchisor Outlets**

Provide the names, mailing addresses and phone numbers of all existing franchisees presently operating an outlet in Alberta under the same trade name as the franchise being offered and the addresses and phone numbers of those outlets.

Provide the addresses and phone numbers of all existing franchisor outlets presently operating in Alberta under the same trade name as the franchise being offered.

If, with respect to franchisees operating outlets under the same trade name as the franchise being offered, there are less than 20 franchisee outlets in operation in Alberta and there are franchisee outlets outside Alberta, provide information on additional outlets that are geographically

closest to Alberta until information on 20 outlets is provided. If the total number of franchisee outlets in operation in Alberta and outside Alberta is less than 20, information is only required for the total number of franchisee outlets in operation.

## **15 Franchise Closure**

Provide information about closures of franchisee outlets or franchisor outlets that operated under the same trade name as the franchise being offered, including the total number of franchises in the total operating territory of the franchisor within the previous 3 fiscal years that have

- (a) been terminated or cancelled by the franchisor,
- (b) not been renewed by the franchisor,
- (c) been reacquired by the franchisor, or
- (d) otherwise left the system.

Provide, with respect to any outlet operated under the same trade name as the franchise being offered, the name, last known address and telephone number of every former franchisee in the total operating territory of the franchisor whose franchise has been terminated, cancelled, not renewed, reacquired by the franchisor or otherwise left the system within the previous fiscal year.

## **16 Earnings Claims**

If information is given or is to be given, by or on behalf of the franchisor or its associate, to a prospective franchisee from which a specific level or range of actual or potential sales, costs, income or profit from franchisee outlets or franchisor outlets can be easily ascertained, the information must

- (a) have a reasonable basis at the time it is made,
- (b) include the material assumptions underlying its preparation and presentation, whether it is based on actual results of existing outlets and the percentage of outlets that meet or exceed each range of results, and
- (c) indicate the place where substantiating information is available for inspection by the franchisee.

If information is given in respect of a franchisor outlet, the franchisor must state that the information may differ in respect of a franchise outlet.

**17 Termination, Renewal and Transfer of the Franchise**

Disclose whether or not there are provisions in the franchise agreement that deal with renewal, termination and transfer of the franchise and, if so, where in the contract these provisions can be found.

**18 Territory**

Describe any exclusive territory granted the franchisee.

Disclose the franchisor's policy, if any, as to how proximate to an existing franchisee outlet

- (a) the franchisor may establish another franchise,
- (b) a franchisor outlet may be established,
- (c) the franchisor may establish other methods of distribution using the franchisor's trademark, service mark, trade name or logotype,
- (d) the franchisor may establish other franchises that distribute similar products or services under a different trademark, service mark, trade name or logotype, and
- (e) a franchisor outlet may be established that distributes similar products or services under a different trademark, service mark, trade name or logotype.

Disclose the franchisor's policy, if any, as to whether the continuation of the franchisee's territory depends on the achievement of a certain sales volume, market penetration or other contingency and under what circumstances the franchisee's territory may be altered.

**19 Notice of Rescission and Effect of Cancellation**

Quote sections 13 and 14 of the Act.

**20 Right of Action for Damages**

Quote section 9 of the Act.

## **21 Financial Statements**

Financial statements must be included in the disclosure document and must comply with sections 2 and 3 of the Regulation.

If the franchisor does not include its financial statements in the disclosure document on the basis that it qualifies under a Ministerial exemption, disclose this fact.

AR 240/95 Sched.1;317/2000

### **Schedule 2 Certificate**

The information provided in the disclosure document, or in any changes made in respect of the disclosure document,

- (a) contains no untrue information of a material fact,
- (b) does not omit to state a material fact that is required to be stated, and
- (c) does not omit to state a material fact that needs to be stated in order for the information not to be misleading.







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