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STUDY GROUP ON FRANCHISING

Model Law on Franchising

Text of the Preliminary Draft as adopted by the Drafting Committee at its  
First Session, held in Rome from 14 to 16 January 1999,  
with Comments prepared by the Unidroit Secretariat

Rome, November 1999

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The *Drafting Committee* of the *Study Group on Franchising* met from 14 to 16 January 1999 to prepare a first draft of the future model law on franchising.<sup>1</sup> The text arrived at by the Drafting Committee is reproduced in this document with brief comments. The Study Group in Plenary is called upon to examine the draft and to discuss the issues raised in the comments.

In addition to the points that relate specifically to one or other of the draft articles, the Study Group is called upon to discuss a number of general questions (see below).

The members of the Study Group are also requested to give consideration to the issues that they feel should be raised in the Explanatory Notes to the model law. In this connection, the members of the Group are requested to bear in mind that the Explanatory Notes are intended to illustrate the reasons for which the solutions proposed by the model law have been adopted. It should perhaps be noted that the first of these solutions is the decision to limit the model law to disclosure.

#### **GENERAL QUESTIONS**

The general questions to be examined include the following:

- the decision to prepare a model law (at the request of Mr Mendelsohn);
- the purpose of the model law;
- the exact scope of the model law (at present it is limited to pre-contractual disclosure). In this connection Mr Schulz has suggested that the Study Group consider the possibility of broadening the scope of the model law to cover disclosure also for other types of agreement, if and as needed, particularly in view of the imminent expiration of the European Block Exemption Regulation<sup>2</sup> with the thereupon consequent lapse of a definition of franchising and the possibility of the border-line between franchising and other types of agreement becoming more blurred;
- whether all types of franchising that the model law is intended to cover are adequately provided for (master franchising and development agreements in particular) and consequently whether it is sufficient to deal with them by inference, as at present, or whether more specific provisions are required;
- whether or not the provisions of the model law are sufficient, or sufficiently flexible, to cover the new types of hybrid franchise agreements that are developing;
- whether or not specific consideration needs to be given to international as against domestic franchising; and
- whether or not franchisees should be required to disclose under the model law.

Furthermore, the Group should consider:

- the consequences of the proposed new vertical restraints block exemption regulation, with a view to deciding whether or not the provisions of the model law should be modified or integrated in any way, and
- the possibility of including a provision on the use of electronic means for disclosure or contracting.

<sup>1</sup> See the Report of the meeting, Study LXVIII – Doc. 18.

<sup>2</sup> Commission Regulation (EEC) No 4087/88 of 30 November 1988 on the application of Article 85(3) of the Treaty to categories of franchise agreements.

It should be noted that the Drafting Committee agreed that the terminology used in international instruments such as the *United Nations Convention on Contracts for the International Sale of Goods* should be used to the greatest extent possible also in the model law.

Another general question that the Study Group should consider is drafting style. At present, the draft clearly reflects common law drafting, which, as is well known, is considerably more detailed than the drafting preferred in countries belonging to the civil law tradition. With a view to facilitating the acceptance of the model law in civil law jurisdictions, as well as to promote clarity, the Study Group is requested to consider whether it might not be possible to transfer the majority of the details presently contained in the text to the Explanatory Notes that will accompany the text.

**PREAMBLE**  
**(PURPOSE OF THE LAW)**

*The purpose of this law is to assist prospective franchisees in making an informed decision as to whether or not to enter into a franchise agreement by requiring the franchisor to provide timely disclosure of necessary and accurate information on the franchisor and the franchised business.*

The Drafting Committee feels that it is desirable for the model law to contain a statement of purpose. It should however be observed that it is not common practice for model laws to have preambles. Three that do, are the *Model Law on Cross-Border Insolvency*, the *Model Law on Procurement of Goods, Construction and Services* and the *Model Law on Procurement of Goods and Construction*, all three adopted by UNCITRAL. The Study Group should consider first of all whether or not it wishes to keep a statement of purpose, and secondly whether or not such a statement of purpose should be in the form of a preamble, or whether it should instead be one of the main provisions of the law. In this connection, the possible different weight attached to preambles and the main provisions of a law in the different legal systems should be considered.

It should be noted that the requirement that the franchisor provide "accurate" information is intended to make it clear that the information must be true and precise, but also up to date. Furthermore, the Drafting Committee decided that the Explanatory Notes should state clearly that the term "accurate" used in the English text and the terms "*nécessaires et précises*" used in the French text are intended to cover the same concept and that it is a matter of linguistic usage if they are rendered differently in the different languages.

**ARTICLE 1**  
**(DEFINITIONS)**

*For the purposes of this law:*

**affiliate of the franchisor** means a legal entity who directly or indirectly controls or is controlled by the

*franchisor, or is controlled by another party who controls the franchisor;*

**development agreement** means an agreement under which a franchisor in exchange for direct or indirect financial compensation grants to another party the right to enter into multiple franchise agreements with the franchisor to operate franchise businesses within a specified territory;

**disclosure document** means a document containing the information required under this law;

**franchise** means the rights granted by a franchisor to a franchisee under a franchise agreement and includes:

(a) the rights granted by a franchisor to a sub-franchisor under a master franchise agreement;

(b) the rights granted by a sub-franchisor to a sub-franchisee under a sub-franchise agreement;

(c) the rights granted by a franchisor to a party under a development agreement;

**franchisee** means the party to whom a franchise is granted;

**franchise agreement** means an agreement under which a party (the franchisor) in exchange for direct or indirect financial compensation authorises and requires another party (the franchisee) to engage in the business of selling, offering for sale or distributing goods or services under a system determined by the franchisor which in substantial part prescribes the manner in which the franchised business is to be operated, which includes significant and continuing operation controls by the franchisor, and which is associated with a trademark, service mark, trade name or logotype designated by the franchisor;

**franchised business** means the business run under a franchise agreement;

**franchisor** means a party who grants another party the right to engage in a business under a franchise agreement;

**master franchise** means the right granted by a franchisor to another party (the sub-franchisor) to grant franchises to third parties (the sub-franchisees);

**material fact** means any information that can reasonably be expected to have a significant effect on the value or price of the franchise to be granted or on the decision to acquire the franchise;

**misrepresentation** means a statement of fact that was known by the person making the statement to be untrue at the time the statement was made; and

**sub-franchise agreement** means a franchise agreement concluded by a sub-franchisor and a sub-franchisee pursuant to a master franchise.

In examining the above definitions, the Study Group should *inter alia* consider the following points:

- whether the definitions of a “franchise” and a “franchise agreement” read together cover what it is intended that the model law should cover;
- whether the proper distinction is drawn between franchise agreements and other agreements such as licence agreements;
- whether separate definitions of “sub-franchisor” and “sub-franchisee” are required, or whether the indirect definition presently contained in the model law is sufficient;
- whether omissions are included under the definition of “misrepresentation” and, if not, whether they should be included; as well as
- problems of terminology in relation to development agreements: the Drafting Committee decided not to include the term “developer” as it is impossible to translate it into French;

It should be noted that, as regards the trademarks, service marks, trade names or logotypes referred to in the definition of “franchise agreement”, the Drafting Committee decided to indicate that they should be “*designated*” by the franchisor, as they might not always be the property of the person granting the right to use them, e.g. in a master franchise situation.

Lastly, the Group should consider the order of presentation of the definitions (Mr Schulz has suggested that a logical order be followed rather than an alphabetical one), and whether it is necessary to add any definitions.

## **ARTICLE 2 (SCOPE OF APPLICATION)**

*This law applies to franchises granted for the operation of one or more franchised businesses.*

The Drafting Committee decided to omit any references to international or domestic franchises, as it felt that the model law should apply to all franchises, irrespective of whether the origin of the franchise is domestic or foreign. Furthermore, it included a reference to “one or more franchised businesses” as it felt that also development arrangements and master franchise arrangements should be covered by the law. Lastly, it decided not to include any indications of territorial delimitation.

## **ARTICLE 3 (EXEMPTIONS FROM OBLIGATION TO DISCLOSE)**

*No disclosure is required in case of:*

- (a) *the grant of a franchise to a person who has been an officer or director of the franchisor or of its affiliate for at least six months immediately before the delivery of the disclosure document;*

- (b) *the assignment or other transfer of a franchisee's rights and obligations under an existing franchise agreement, unless as a condition for the assignment or transfer the assignee or transferee is required to enter into a new franchise agreement;*
- (c) *the grant to a person of a franchise to sell goods or services within that person's existing business, if the sales of the franchise, as anticipated by the parties or as should reasonably be anticipated by the parties at the time the franchise agreement is entered into, will not exceed 20% of the total aggregate sales of the franchisee's combined business;*
- (d) *the grant of a franchise pursuant to which the franchisee commits to a total investment in excess of [X]; or*
- (e) *the grant of a franchise to a franchisee who has a net worth in excess of [Y].*

With reference to the exemptions from the duty to disclose, the Drafting Committee decided to exempt cases where the prospective franchisee is very large or makes a very large investment, as well as what in some countries are known as "fractional franchises", i.e. when the franchise represents only a minor part of the franchisee's business. In the first two of these cases the franchisee was considered not to need protection, as a franchisee who is either very large or makes a large investment is with few exceptions an experienced entrepreneur. In the third case it was felt that to place the burden of disclosure on the franchisor also in cases where the importance of the franchise to the franchisee is relative by reason of its smallness, would be excessive. The Study Group should consider whether this holds true in all cases, as very large sums may be involved despite the fact that the franchise represents only 20 % of the total aggregate sales of the franchisee's business. It was decided to leave the figures involved blank, and to indicate instead in the Explanatory Notes that the sum involved should be the equivalent of 1 – 2 million US dollars. This was to permit States to decide the amount and the currency as they deemed fit.

The Drafting Committee noted that the case of estates of deceased persons was intended to be included under (b).

The possibility of exempting trustees in bankruptcy from the duty to disclose should also be considered by the Study Group, bearing in mind that the franchisor may have a duty to disclose even if the trustee is exempted.

#### ***ARTICLE 4*** ***(FORMAT OF DISCLOSURE DOCUMENT)***

- (1) *Disclosure must be provided in writing.*
- (2) *The franchisor may use any format for the disclosure document, provided that the information contained therein meets the requirements imposed by this law.*

With reference to the requirement that the disclosure document be provided in writing, the Drafting Committee feels that, although oral franchise agreements have not been unknown in the past, for the protection of the parties, above all of the weaker party, this requirement is important and should be kept.

As regards the format of the disclosure document, the Drafting Committee feels that what is important is the information that the franchisor has to provide the franchisee with. In a number of countries (above all the US) there are formats the use of which is more or less prescribed, such as the *Uniform Franchise Offering Circular (UFOC)*. The Drafting Committee feels that it should be possible to use disclosure documents drawn up on the basis of such or any other formats. Clearly, whether or not it is always advisable to do so is a different matter, and has to be evaluated by the franchisor and the franchisor's lawyers.

#### ***ARTICLE 5*** ***(DELIVERY OF THE DISCLOSURE DOCUMENT)***

*A franchisor must give every prospective franchisee a disclosure document at least fourteen days before*

- (a) the signing by the prospective franchisee of any agreement relating to the franchise; or*
  - (b) the payment by the prospective franchisee of any fees relating to the franchise*
- whichever is earlier.*

The Drafting Committee feels that it is important for the franchisee to be given the possibility to examine the disclosure document before entering into the agreement, as the whole purpose of providing the document is to permit the prospective franchisee to make an informed decision. The Committee furthermore feels it to be important that the two alternatives specified in (a) and (b) be given, in that the franchisee should always have fourteen days available before making any commitment, whether in the form of the signing of the agreement, or in that of the payment of any fees. The Study Group should consider whether the two alternatives specified are necessary, or whether they should be substituted by others.

#### ***ARTICLE 6*** ***(INFORMATION TO BE DISCLOSED)***

- (1) The franchisor shall provide the following information in the disclosure document:*
  - (a) the business name and address of the franchisor;*
  - (b) the trade name under which the franchisor does or intends to do business;*
  - (c) the address of the principal place of business of the franchisor if different from that indicated in lit. (a);*
  - (d) the business form of the franchisor;*
  - (e) a description of the business experience of the franchisor, including:*

- (i) the length of time over which the franchisor has run a business of the type to be operated by the franchisee; and
- (ii) the length of time over which the franchisor has offered franchises for the same type of business as that to be operated by the franchisee;
- (f) the names, addresses, positions held, business experience and qualifications of any person who has senior management responsibilities for the franchisor's business operations in relation to the franchise;
- (g) relevant details relating to any finding of liability in a civil action involving franchises or other businesses relating to misrepresentation, unfair or deceptive acts or practices or comparable actions, as well as relating to any criminal convictions of:
  - (i) the franchisor;
  - (ii) any affiliate of the franchisor; and
  - (iii) any of the persons indicated in lit. (f)
- for the previous five years, as well as the relevant details relating to any pending actions;
- (h) relevant details concerning any bankruptcy, insolvency or comparable proceeding involving the franchisor and/or the legal entities and persons indicated in lit. (f) for the previous five years;
- (i) the total number of franchisees in the network;
- (j) the names, addresses and phone numbers of the franchisees whose outlets are located nearest to the proposed outlet of the prospective franchisee, but in any event of not more than 50 franchisees;
- (k) information about the franchisees that have ceased to be members of the network during the three years before the one during which the franchise agreement is entered into, with an indication of the reasons for which the franchisees have ceased to be members of the network;
- (l) a description of the franchise to be operated by the franchisee;
- (m) goods and/or services which the franchisee is required to purchase or lease, indicating
  - (i) which, if any, have to be purchased or leased from the franchisor, its affiliates or from a supplier designated by the franchisor; and
  - (ii) those for which the franchisee has the right to recommend other suppliers for approval by the franchisor;
- (n) information on pricing practices with regard to the goods and/or services indicated in lit. (m), including information as to the treatment of revenue or other benefits that may be received by the franchisor or any of its associates from any supplier of goods and/or services to the franchisee;

- (o) a brief description of the initial training programme;
- (p) exclusive rights granted, if any, including exclusive rights relating to territory and/or to customers;
- (q) limitations imposed on the franchisee, if any, in relation to territory and/or to customers;
- (r) any reservation by the franchisor of the right
  - (i) to use the trademarks covered by the franchise agreement;
  - (ii) to sell or distribute the goods and/or services authorised for sale by the franchisee directly or indirectly through the same or any other channel of distribution, whether under the trademarks covered by the agreement or any other trademark;
- (s) information regarding
  - (i) the registration, if any, and
  - (ii) litigation or other legal proceedings, if any, in the national territory or territories in which the franchised business is to be run concerning the franchisor's intellectual property relevant for the franchise, in particular trademarks, patents, copyright and software;
- (t) the initial franchise fee;
- (u) other fees and payments, including any gross-up of royalties imposed by the franchisor in order to offset withholding tax;
- (v) other financial matters, including:
  - (i) (aa) estimates of the franchisee's total initial investment and of the minimum working capital required for the first year of operation;
  - (bb) financing offered or arranged by the franchisor, if any;
  - (cc) audited financial statements of the franchisor, including balance sheets and statements of profit and loss, for the previous three years. If the most recent audited financial statements are as of a date more than 180 days before the date of delivery of the disclosure document, then unaudited financial statements as of a date within 90 days of the date of delivery of the disclosure document;
  - (ii) (aa) If information is provided to the prospective franchisee by or on behalf of the franchisor concerning the historical or projected financial performance of outlets owned by the franchisor, its affiliates or franchisees, the information must:
    - have a reasonable basis at the time it is made;
    - include the material assumptions underlying its preparation and presentation;
    - state whether it is based on actual results of existing outlets;
    - state whether it is based on franchisor-owned and/or franchisee-owned outlets; and

*- indicate the percentage of those outlets that meet or exceed each range or result.*

*(bb) If the financial information referred to in the preceding sub-paragraph is provided, the franchisor must state that the levels of performance of the proposed franchisee's outlet may differ from those contained in the information provided by the franchisor.*

*(w) restrictions or conditions imposed on the franchisee in relation to the goods and/or services that the franchisee may sell.*

*(2) Where the franchise is a master franchise, the sub-franchisor must in addition disclose to the prospective sub-franchisee the information on the franchisor that it has received under paragraph (1), lits. (a), (e), (h), (p), (q) and (r) of this article, as well as to inform the prospective sub-franchisee of the situation of the sub-franchise agreements in case of termination of the master franchise agreement and of the content of the master franchise agreement.*

In the course of the discussions of the Drafting Committee, it became clear that it would be difficult to shorten the list of items to be disclosed contained in the preliminary draft. The members of the Committee examined the list from the point of view of the information that they would consider to be important in the evaluation of a franchise.

As regards the items listed in **paragraph (1)**, the following may be observed:

- lit. (e):** the difference between (i) and (ii) is that in (i) reference is to the general trade (e.g. hamburgers) whereas in (ii) reference is to the specific trade (e.g. McDonald's hamburgers);
- lit. (f):** it was decided that a general reference to persons with management responsibilities was to be preferred to an enumeration of the different officials and other persons to whom reference was being made, as different officials/persons might carry management responsibilities in different countries;
- lit. (g):** the words "finding of liability" are intended to cover not only convictions or judgments against the persons listed, but also injunctions. The list of persons includes those that the Committee felt it would be important to know the record of, considering their importance in the franchise system. A period of five years was chosen as it was considered to be reasonable: all litigation that has ever occurred risked being too much, whereas less than five years was considered to be too short a period of time for the prospective franchisee to draw any conclusions from the information. The Study Group should consider whether or not to introduce a geographic limitation – the Drafting Committee felt that a geographic limitation would severely curtail the utility of the information provided;
- lit. (k):** the Drafting Committee feels that it is important for a prospective franchisee to be informed not only of the number of franchisees in the network, but also of the turnover, as the total number of franchisees might be reasonably constant even if

the turnover is considerable. Furthermore, it is important for them to know if the turnover is due to the franchisees spontaneously leaving the network, to termination of the agreements on the part of the franchisor, or to any other reason. This information is intended to permit the prospective franchisees to evaluate the quality of the relations of the franchisor with the franchisees;

- lit. (m):** the Committee feels that it is important for the prospective franchisee to know what leeway he will have in the selection of suppliers and products. This is to avoid the franchisee being forced to purchase products from suppliers that charge more than necessary as, being the only authorised suppliers, they can permit themselves to charge what they like. By indicating to the prospective franchisee the products which he has to acquire from the franchisor or from suppliers indicated by the franchisor, it will be possible for the prospective franchisee to evaluate the degree to which he will be bound to the franchisor and the franchisor's affiliates;
- lit. (n):** a corollary of the provision in lit. (m), the information in lit. (n) is important for the prospective franchisee to become aware of the connection between the franchisor and the suppliers, and of the economic interests that link them;
- lit. (p):** in connection with the territorial exclusivity, the Drafting Committee considered the difference between the exclusive territory, which is the territory entrusted exclusively to the franchisee to develop, and the exclusive sales territory, which might cover a larger area. It decided that any information on these two categories of territory should be specified, with appropriate indications;
- lits. (r) and (s):** these two sub-paragraphs should be read together, as they concern intellectual property rights. With reference to (r), (i) refers to cases where the franchisor reserves the right to use the trade mark for products other than those franchised, even where these products have no connection with the franchised products, and (ii) refers to cases where the franchisor reserves the right to distribute the products that are the subject of the franchise through other channels of distribution, for example the warehouse around the corner. The Drafting Committee feels that it is important for the franchisee to have information on both these items, so as to enable it to evaluate the effects of any such retention of rights on its own future business. With reference to (s), the Drafting Committee feels that information on litigation that relates to intellectual property is so important that it has to be specified separately, that it is not sufficient for such litigation to be provided under the general request for information on litigation in (g). Furthermore, the Drafting Committee decided that the Explanatory Notes should stress the importance of information on the registration of intellectual property rights. It also feels that those listed are so important that they have to be specified separately, that a general reference to intellectual property rights is not sufficient;
- lit. (v):** (ii)(aa) relates to what in some countries are known as "earnings claims", as well as to what are known as "market studies". The Drafting Committee decided that it is preferable not to require, and not to prohibit, the practice of providing such information. Instead, it decided to formulate the provision in such a manner that the essence of the practices, i.e. the providing of statistical information on the performance of the outlets of the network, is regulated. It also decided not to refer to concepts of such difficult definition as "market" or the "relevant market". The Drafting Committee further considered it important to specify in (bb) that the franchisor must

indicate that the results of the prospective franchisee might differ from those reflected in the statistical information provided.

A general question relating to the items to disclose concerns the case where the franchisor creates a company specifically for the purpose of franchising abroad. Considering that in many cases the new company will have very little information to give prospective franchisees, the Study Group may wish to consider whether any special provision covering this case should be inserted in the model law, or whether also this situation is adequately covered by the provisions already contained in it.

As regards **paragraph (2)**, the Drafting Committee feels that in the case of master franchising it is important for the sub-franchisor to receive information not only on the sub-franchisor, but also on the franchisor. The problem is how much information has to be transmitted to the sub-franchisee. This paragraph lists the items on which the Committee felt that the sub-franchisee should receive information relating to the franchisor. Questions to be examined and determined by the Study Group in relation thereto include:

- who should be responsible for the giving of this information to the sub-franchisee (the directors of the franchisor and/or others);
- what the liability of the person who delivers the information is, i.e. is there any personal liability of the directors and other officials of the franchisor, and, if so, whether this should be specified in the model law or whether it should be left to national law.

#### **ARTICLE 7 (CONFIDENTIALITY)**

*The franchisor may require the prospective franchisee to sign a statement acknowledging the confidentiality of the information contained in the disclosure document.*

The Drafting Committee feels that, in order to protect the information contained in the disclosure document, the franchisor should have the right to require the prospective franchisee to acknowledge the confidentiality of the information. The Study Group may wish to consider whether a similar requirement should be introduced for information provided orally by the franchisor during the negotiations.

#### **ARTICLE 8 (ACKNOWLEDGEMENT OF RECEIPT OF DISCLOSURE DOCUMENT)**

*As a condition for its signing the franchise agreement, the franchisor may require the prospective franchisee to acknowledge in writing the receipt of the disclosure document.*

The purpose of this provision is not only to provide clear evidence of when the disclosure document was actually handed over to the franchisee, but also to draw the

attention of the franchisee to the importance of the disclosure document: if the franchisee is required to sign a receipt for the document, he is also more likely to read it.

**ARTICLE 9**  
**(LANGUAGE OF DISCLOSURE DOCUMENT)**

*The disclosure document must be written in a clear and comprehensible manner in the official language of the jurisdiction within which the prospective franchise is to be located.*

With reference to the language of the disclosure document, the discussion of the Drafting Committee brought to light the difficulties in deciding the language in which the document should be presented, particularly in the case of an international franchise. The different situations that were considered included:

- where the franchise is to be operated in a jurisdiction that has more than one official language;
- where the franchisee is a national of a jurisdiction different from the one in which the franchise is to be operated and with the language of which he might not be fully familiar;
- where the sub-franchisor has rights to more than one country and would therefore be required to provide translations into a number of languages; and
- where the franchisor, sub-franchisor and sub-franchisee are from different countries, in which case there is more than one level of translation involved.

The Study Group should consider whether all the above-mentioned cases should be covered and, if so, in what manner. It should be noted that in many, if not most, countries where documents have to be filed or registered with a public office they have to be translated into the official language of that country.

**ARTICLE 10**  
**(REMEDIES)**

*(1) If a franchisor fails to give a prospective franchisee the disclosure document within the period of time established in Article 5, the franchisee is entitled to terminate the franchise agreement, unless the franchisor can prove that at the time of the conclusion of the franchise agreement the franchisee had the information necessary to make an informed decision.*

*(2) If the disclosure document contains a misrepresentation of a material fact, the franchisee is entitled to terminate the franchise agreement unless the franchisor can prove that the franchisee did not rely on this misrepresentation.*

(3) *The right to terminate the franchise agreement in accordance with paragraphs (1) and (2) of this article must be exercised within:*

- (a) *two years of the act or omission constituting the breach upon which the right to terminate is based; or*
- (b) *one year of the franchisee becoming aware of facts or circumstances that reasonably indicate that a breach entitling the franchisee to terminate has occurred; or*
- (c) *within 90 days of the delivery to the franchisee of a written notice providing details of the breach.*

(4) *A written notice providing details of the breach giving the franchisee the right to terminate in accordance with paragraphs (1) and (2) of this article must be accompanied by the franchisor's then current disclosure document.*

(5) *The right to terminate in accordance with paragraphs (1) and (2) of this article does not derogate from any other right the franchisee may have under the applicable law.*

In its deliberations, the Drafting Committee decided to limit the remedies specified in the model law to termination and to include only a generic reference in paragraph (5) to the rights the franchisee may have under the applicable law. When it examined the draft in the course of its 78<sup>th</sup> session in April 1999, the Governing Council of Unidroit however expressed its hesitations as regards this approach. The Study Group is consequently invited to consider whether also other remedies, in particular damages, should be expressly included in the model law, or whether remedies should be left to the applicable law.

The Study Group should also consider the question of the burden of proof, and whether also this should be left to the applicable law, or whether the model law should state anything different from what is presently stated in paragraphs (1) and (2).

With reference to paragraph (1), the present formulation refers to the disclosure document not being handed over to the franchisee within the period of time established in Article 5, but does not expressly refer to the case where the document is not delivered at all. The Study Group should consider whether an explicit reference is necessary.

The three categories of paragraph (3) are inspired *inter alia* by Section 13 of the Alberta Franchises Act. The Study Group should consider whether all three categories are necessary.

The provision contained in paragraph (4) is intended to permit the franchisee to evaluate whether or not to continue in the franchise.

A question that the Study Group should examine in relation to the termination of the agreement is whether or not this termination should be automatic, or whether the intervention of a court should be required. In view of the differences that exist between the different legal systems, the Group might wish to consider whether it is a question that is best left to national law.

## ANNEX

### TEXT OF THE DRAFT MODEL LAW AS ADOPTED BY THE DRAFTING COMMITTEE

#### *PREAMBLE (PURPOSE OF THE LAW)*

The purpose of this law is to assist prospective franchisees in making an informed decision as to whether or not to enter into a franchise agreement by requiring the franchisor to provide timely disclosure of necessary and accurate information on the franchisor and the franchised business.

#### *ARTICLE 1 (DEFINITIONS)*

For the purposes of this law:

**affiliate of the franchisor** means a legal entity who directly or indirectly controls or is controlled by the franchisor, or is controlled by another party who controls the franchisor;

**development agreement** means an agreement under which a franchisor in exchange for direct or indirect financial compensation grants to another party the right to enter into multiple franchise agreements with the franchisor to operate franchise businesses within a specified territory;

**disclosure document** means a document containing the information required under this law;

**franchise** means the rights granted by a franchisor to a franchisee under a franchise agreement and includes:

- the rights granted by a franchisor to a sub-franchisor under a master franchise agreement;
- the rights granted by a sub-franchisor to a sub-franchisee under a sub-franchise agreement;
- the rights granted by a franchisor to a party under a development agreement;

**franchisee** means the party to whom a franchise is granted;

**franchise agreement** means an agreement under which a party (the franchisor) in exchange for direct or indirect financial compensation authorises and requires another party (the franchisee) to engage in the business of selling, offering for sale or distributing goods or services under a system

#### *PRÉAMBULE (OBJET DE LA LOI)*

La présente loi a pour objet de permettre aux éventuels franchisés de décider en connaissance de cause de s'engager ou non dans un contrat de franchise, en exigeant que le franchiseur fournisse, en temps utile, des informations nécessaires et précises sur lui-même et sur son activité commerciale franchisée.

#### *ARTICLE 1 (DÉFINITIONS)*

Aux fins de la présente loi :

est considéré comme **un affilié** du franchiseur, une entité légale contrôlée directement ou indirectement par celui-ci ou exerçant un contrôle direct ou indirect sur celui-ci ou se trouvant sous le contrôle d'une tierce partie qui contrôle le franchiseur ;

**un contrat de développement** désigne la convention aux termes de laquelle un franchiseur concède à une autre partie, en échange de contreparties financières directes ou indirectes, le droit de contracter différents contrats de franchise avec lui dans le but de développer une activité commerciale franchisée, dans un territoire spécifique;

**un document d'information** est un document contenant les renseignements exigés par la présente loi;

**une franchise** signifie les droits concédés par un franchiseur à un franchisé dans le cadre d'un contrat de franchise y inclus:

- les droits concédés par un franchiseur à un sous-franchiseur dans le cadre d'un contrat de franchise principale,
- les droits concédés par un sous-franchiseur à un sous-franchisé dans le cadre d'un contrat de sous-franchise
- les droits concédés par un franchiseur à une partie, dans le cadre d'un contrat de développement;

**un franchisé** est une personne physique ou morale à qui est concédée une franchise.

**un contrat de franchise** s'entend de tout accord par lequel une partie (le franchiseur) autorise et engage une autre partie (le franchisé), en échange de contreparties financières directes ou indirectes, à se livrer à une activité commerciale de vente, d'offre de vente, ou de distribution de marchandises ou

determined by the franchisor which in substantial part prescribes the manner in which the franchised business is to be operated, which includes significant and continuing operation controls by the franchisor, and which is associated with a trademark, service mark, trade name or logotype designated by the franchisor;

**franchised business** means the business run under a franchise agreement;

**franchisor** means a party who grants another party the right to engage in a business under a franchise agreement;

**master franchise** means the right granted by a franchisor to another party (the sub-franchisor) to grant franchises to third parties (the sub-franchisees);

**material fact** means any information that can reasonably be expected to have a significant effect on the value or price of the franchise to be granted or on the decision to acquire the franchise;

**misrepresentation** means a statement of fact that was known by the person making the statement to be untrue at the time the statement was made; and

**sub-franchise agreement** means a franchise agreement concluded by a sub-franchisor and a sub-franchisee pursuant to a master franchise.

## **ARTICLE 2 (SCOPE OF APPLICATION)**

This law applies to franchises granted for the operation of one or more franchised businesses.

## **ARTICLE 3 (EXEMPTIONS FROM OBLIGATION TO DISCLOSE)**

No disclosure is required in case of:

- (a) the grant of a franchise to a person who has been an officer or director of the franchisor or of its affiliate for at least six months immediately before the delivery of the disclosure document;
- (b) the assignment or other transfer of a franchisee's rights and obligations under an existing franchise agreement, unless as a condition for the assignment or transfer the assignee or transferee is

de services, dans le cadre d'un système établi par le franchiseur qui décrit de façon substantielle les modes d'exploitation de l'activité franchisée, et qui est associé à une marque de commerce, d'une marque de service, d'une appellation commerciale ou d'un logo prescrit par le franchiseur ;

**une activité commerciale franchisée** est une activité commerciale entreprise dans le cadre d'un contrat de franchise ;

**un franchiseur** désigne toute partie qui concède à une autre partie le droit de se livrer à une activité commerciale dans le cadre d'un contrat de franchise ;

**une franchise principale** s'entend du droit accordé par un franchiseur à une autre partie (le sous-franchiseur), de concéder des franchises à de tierces parties (les sous-franchisés) ;

**un fait important** s'entend de tout renseignement qui peut raisonnablement être considéré comme ayant une incidence significative sur la valeur ou le prix de la franchise concédée, ou sur la décision d'acquérir une franchise ;

**une représentation inexacte des faits** s'entend d'une déclaration dont l'auteur savait qu'elle était erronée lorsqu'elle a été faite ; et

**un contrat de sous-franchise** s'entend d'un contrat de franchise conclu entre un sous-franchiseur et un sous-franchisé conformément à une franchise principale.

## **ARTICLE 2 (CHAMPS D'APPLICATION)**

La présente loi s'applique aux franchises concédées pour l'exploitation d'une ou plusieurs activités commerciales franchisées.

## **ARTICLE 3 (DISPENSES DE L'OBLIGATION DE DIVULGATION D'INFORMATION)**

Aucune délivrance d'information n'est requise dans les hypothèses suivantes :

- a) la concession d'une franchise à une personne qui a été un dirigeant ou un administrateur du franchiseur ou de l'un de ses affiliés pendant les six mois immédiatement précédant la délivrance du document d'information ;
- b) la cession ou toute autre forme de transfert des droits et obligations du franchisé dans le cadre d'un contrat de franchise en cours, à moins que le cessionnaire se soit vu imposer, comme

required to enter into a new franchise agreement;

- (c) the grant to a person of a franchise to sell goods or services within that person's existing business, if the sales of the franchise, as anticipated by the parties or as should reasonably be anticipated by the parties at the time the franchise agreement is entered into, will not exceed 20% of the total aggregate sales of the franchisee's combined business;
  
- (d) the grant of a franchise pursuant to which the franchisee commits to a total investment in excess of [X]; or
  
- (e) the grant of a franchise to a franchisee who has a net worth in excess of [Y].

**ARTICLE 4**  
**(FORMAT OF DISCLOSURE DOCUMENT)**

- (1) Disclosure must be provided in writing.
  
- (2) The franchisor may use any format for the disclosure document, provided that the information contained therein meets the requirements imposed by this law.

**ARTICLE 5**  
**(DELIVERY OF THE DISCLOSURE DOCUMENT)**

A franchisor must give every prospective franchisee a disclosure document at least fourteen days before

- (a) the signing by the prospective franchisee of any agreement relating to the franchise; or
  
- (b) the payment by the prospective franchisee of any fees relating to the franchise whichever is earlier.

**ARTICLE 6**  
**(INFORMATION TO BE DISCLOSED)**

- (1) The franchisor shall provide the following information in the disclosure document:

condition de la cession, de souscrire un nouveau contrat de franchise ;

- c) la concession d'une franchise à une personne qui lui permette de vendre des marchandises ou services dans le cadre de son exploitation commerciale déjà existante, dans la mesure où le chiffre d'affaires réalisé sur les ventes dans le cadre de cette franchise, ne dépasse pas 20 % du total cumulé de toutes les ventes de l'ensemble des activités commerciales de cette personne, pour autant que la proportion des ventes dans le cadre de la franchise ait pu être anticipée par les parties ou aurait dû raisonnablement être anticipée par les parties au moment où le contrat de franchise a été souscrit ;
  
- d) la concession d'une franchise conformément à laquelle le franchisé s'engage à réaliser un investissement total excédant le montant de [x] ; ou
  
- e) la concession d'une franchise à un franchisé dont la valeur nette dépasse [Y]

**ARTICLE 4**  
**(PRÉSENTATION DU DOCUMENT D'INFORMATION)**

- 1) L'information doit être fournie par écrit.
  
- 2) Le franchiseur peut établir le document d'information dans la forme de son choix, à condition que les renseignements qu'il contient soient conformes aux prescriptions imposées par la présente loi.

**ARTICLE 5**  
**(REMISE DU DOCUMENT D'INFORMATION)**

Un franchiseur doit délivrer à tout franchisé éventuel le document d'information au moins quatorze jours avant la survenance du premier des deux événements suivants :

- a) la signature par le franchisé éventuel de tout contrat ayant trait à la franchise ;
  
- b) le paiement par le franchisé éventuel de toute somme, compensation, indemnité de crédit ou de toute sorte d'honoraires en relation avec la franchise.

**ARTICLE 6**  
**(CONTENU DES INFORMATIONS FOURNIES)**

- 1) Le franchiseur doit fournir, dans le document d'information, les renseignements suivants :

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| <ul style="list-style-type: none"> <li>(a) the business name and address of the franchisor;</li> <li>(b) the trade name under which the franchisor does or intends to do business;</li> <li>(c) the address of the principal place of business of the franchisor if different from that indicated in lit. (a);</li> <li>(d) the business form of the franchisor;</li> <li>(e) a description of the business experience of the franchisor, including:           <ul style="list-style-type: none"> <li>(i) the length of time over which the franchisor has run a business of the type to be operated by the franchisee; and</li> <li>(ii) the length of time over which the franchisor has offered franchises for the same type of business as that to be operated by the franchisee;</li> </ul> </li> <li>(f) the names, addresses, positions held, business experience and qualifications of any person who has senior management responsibilities for the franchisor's business operations in relation to the franchise;</li> <li>(g) relevant details relating to any finding of liability in a civil action involving franchises or other businesses relating to misrepresentation, unfair or deceptive acts or practices or comparable actions, as well as relating to any criminal convictions of:           <ul style="list-style-type: none"> <li>(i) the franchisor;</li> <li>(ii) any affiliate of the franchisor; and</li> <li>(iii) any of the persons indicated in lit. (f)</li> </ul>           for the previous five years, as well as the relevant details relating to any pending actions;</li> <li>(h) relevant details concerning any bankruptcy, insolvency or comparable proceeding involving the franchisor and/or the legal entities and persons indicated in lit. (f) for the previous five years;</li> <li>(i) the total number of franchisees in the network;</li> <li>(j) the names, addresses and phone numbers of the franchisees whose outlets are located nearest to the proposed outlet of the prospective</li> </ul> | <ul style="list-style-type: none"> <li>a) la raison sociale et l'adresse du franchiseur ;</li> <li>b) le nom commercial sous lequel le franchiseur exerce ou a l'intention d'exercer son activité ;</li> <li>c) l'adresse de localisation principale de l'activité du franchiseur si elle est différente de celle indiquée à l'alinéa a) ci-dessus ;</li> <li>d) l'identification de l'activité commerciale du franchiseur ;</li> <li>e) une description de l'expérience commerciale du franchiseur, incluant notamment :           <ul style="list-style-type: none"> <li>i) l'ancienneté du franchiseur dans la conduite d'opérations de franchise du type de celles devant être exploitées par le franchisé et,</li> <li>ii) l'ancienneté du franchiseur dans l'offre de franchises dans le même type d'activités que celles prévues comme devant être exploitées par le franchisé ;</li> </ul> </li> <li>f) les noms, adresses, positions tenues, expérience commerciale et qualifications de toute personne qui a des hautes responsabilités de direction dans la conduite des activités commerciales du franchiseur en relation avec la franchise ;</li> <li>g) tout détail utile au sujet de condamnations pénales et de procédures judiciaires ayant trait à une représentation inexacte des faits, un comportement malhonnête ou une pratique déloyale ou toute action analogue impliquant la franchise ou d'autres activités commerciales dans lesquels se sont trouvés concernés,           <ul style="list-style-type: none"> <li>i) le franchiseur ;</li> <li>ii) tout affilié du franchiseur ; et</li> <li>iii) toute personne mentionnée à l'alinéa f) ci-dessus</li> </ul>           et ce dans les cinq dernières années, ainsi que tout détail utile relatif à toute action encore pendante.</li> <li>h) tout détail utile concernant toute procédure de faillite, d'insolvabilité, ou tout autre procédure comparable intervenue pendant les cinq dernières années ayant impliqué le franchiseur et/ou les entités légales ou les personnes mentionnées à l'alinéa f) ci-dessus ;</li> <li>i) le nombre total de franchisés appartenant au réseau ;</li> <li>j) les noms, adresses, et numéros de téléphones des franchisés dont les unités exploitées sont situées le plus près possible de l'unité d'exploitation proposée au franchisé éventuel, sans</li> </ul> |
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- franchisee, but in any event of not more than 50 franchisees;
- (k) information about the franchisees that have ceased to be members of the network during the three years before the one during which the franchise agreement is entered into, with an indication of the reasons for which the franchisees have ceased to be members of the network;
- (l) a description of the franchise to be operated by the franchisee;
- (m) goods and/or services which the franchisee is required to purchase or lease, indicating
- (i) which, if any, have to be purchased or leased from the franchisor, its affiliates or from a supplier designated by the franchisor; and
  - (ii) those for which the franchisee has the right to recommend other suppliers for approval by the franchisor;
- (n) information on pricing practices with regard to the goods and/or services indicated in lit. (m), including information as to the treatment of revenue or other benefits that may be received by the franchisor or any of its associates from any supplier of goods and/or services to the franchisee;
- (o) a brief description of the initial training programme;
- (p) exclusive rights granted, if any, including exclusive rights relating to territory and/or to customers;
- (q) limitations imposed on the franchisee, if any, in relation to territory and/or to customers;
- (r) any reservation by the franchisor of the right
- i) to use the trademarks covered by the franchise agreement;
  - ii) to sell or distribute the goods and/or services authorised for sale by the franchisee directly or indirectly through the same or any other channel of distribution, whether under the trademarks covered by the agreement or any other trademark;
- que les coordonnées ne doivent être données, en toute hypothèse, pour plus de 50 franchisés environnants ;
- k) tout renseignement concernant les franchisés qui ont cessé d'être membres du réseau, au cours des trois années précédant la conclusion du contrat, en précisant les motifs pour lesquels les franchisés ont cessé d'être membres du réseau ;
- l) une description de la franchise susceptible d'être exploitée par le franchisé ;
- m) les marchandises et/ou les services que le franchisé est tenu d'acheter ou louer, en indiquant :
- i) lesquels, le cas échéant, doivent être achetés ou loués auprès du franchiseur, de ses affiliés, ou auprès d'un fournisseur désigné par le franchiseur ; et,
  - ii) ceux pour lesquels le franchisé a le droit de soumettre d'autres fournisseurs de son choix à l'agrément du franchiseur ;
- n) toute information concernant les pratiques de prix, au regard des marchandises et/ou des services mentionnés à l'alinéa m) ci-dessus, incluant tout renseignement concernant le traitement de toute source de revenus que le franchiseur ou ses associés peuvent recevoir en provenance de tout fournisseur de marchandises et/ou de services à destination du franchisé ;
- o) une brève description des programmes de formation initiale ;
- p) tout droit d'exclusivité accordé, le cas échéant, en incluant les droits d'exclusivité relatifs au territoire et/ou à la clientèle ;
- q) toute restriction relative au territoire et/ou à la clientèle imposée le cas échéant au franchisé, ;
- r) tout droit réservé que le franchiseur peut s'accorder à lui même
- i) d'utiliser les marques couvertes par le contrat de franchise
  - ii) de vendre ou de distribuer les marchandises et/ou les services autorisés à la vente par le franchisé, directement ou indirectement à travers le même réseau de distribution ou tout autre, que ce soit sous le couvert des marques prévues dans le contrat de franchise ou toute autre marque ;

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| <p>(s) information regarding</p> <ul style="list-style-type: none"> <li>(i) the registration, if any, and</li> <li>(ii) litigation or other legal proceedings, if any,</li> </ul> <p>in the national territory or territories in which the franchised business is to be run concerning the franchisor's intellectual property relevant for the franchise, in particular trademarks, patents, copyright and software;</p> <p>(t) the initial franchise fee;</p> <p>(u) other fees and payments, including any gross-up of royalties imposed by the franchisor in order to offset withholding tax;</p> <p>(v) other financial matters, including:</p> <ul style="list-style-type: none"> <li>(i) (aa) estimates of the franchisee's total initial investment and of the minimum working capital required for the first year of operation;</li> <li>(bb) financing offered or arranged by the franchisor, if any;</li> <li>(cc) audited financial statements of the franchisor, including balance sheets and statements of profit and loss, for the previous three years. If the most recent audited financial statements are as of a date more than 180 days before the date of delivery of the disclosure document, then unaudited financial statements as of a date within 90 days of the date of delivery of the disclosure document;</li> <li>(ii) (aa) If information is provided to the prospective franchisee by or on behalf of the franchisor concerning the historical or projected financial performance of outlets owned by the franchisor, its affiliates or franchisees, the information must: <ul style="list-style-type: none"> <li>- have a reasonable basis at the time it is made;</li> <li>- include the material assumptions underlying its preparation and presentation;</li> <li>- state whether it is based on actual results of existing outlets;</li> </ul> </li> </ul> | <p>s) toute information concernant :</p> <ul style="list-style-type: none"> <li>i) l'enregistrement le cas échéant et,</li> <li>ii) les procédures judiciaires ou toute autre procédure légale engagées le cas échéant</li> </ul> <p>sur le ou les territoires nationaux dans lesquels l'activité commerciale franchisée doit être entreprise ayant trait aux droits de propriété intellectuelle du franchiseur en relation avec la franchise, et en particulier aux marques, brevets, droits d'auteurs, et droit de protection logicielle ;</p> <p>t) la redevance initiale de franchise ;</p> <p>u) toute autre rémunération ou tout autre règlement incluant toute majoration de redevances imposé par le franchiseur comme compensation pour l'impôt retenu à la source</p> <p>v) tout autre élément d'information financière incluant :</p> <ul style="list-style-type: none"> <li>i) aa) le montant total prévisionnel de l'investissement initial du franchisé et du fonds de roulement minimum requis pour la première année d'exploitation,</li> <li>bb) les modes de financements offerts ou organisés par le franchiseur le cas échéant,</li> <li>cc) les rapports financiers audités du franchiseur, et notamment les bilans, comptes d'exploitation et de pertes et profits pour les trois années précédentes. Si le plus récent rapport financier audité est antérieur de plus de 180 jours à la date de délivrance du document d'information, une situation financière non audite devrait être fournie, datant de moins de 90 jours au moment de la délivrance du document d'information ;</li> <li>ii) aa) si l'information est délivrée au franchisé éventuel, par le franchiseur ou en son nom, concernant les résultats financiers historiques ou les projections financières prévisionnelles d'unités exploitées en propre par le franchiseur, ses affiliés ou ses franchisés, cette information doit : <ul style="list-style-type: none"> <li>- reposer sur une base raisonnable au moment où elle est établie,</li> <li>- inclure les hypothèses importantes ayant donné lieu à sa préparation et sa présentation,</li> <li>- stipuler si elle est basée sur des résultats actuels d'unités existantes;</li> </ul> </li> </ul> |
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- state whether it is based on franchisor-owned and/or franchisee-owned outlets; and
- indicate the percentage of those outlets that meet or exceed each range or result.

(bb) If the financial information referred to in the preceding subparagraph is provided, the franchisor must state that the levels of performance of the proposed franchisee's outlet may differ from those contained in the information provided by the franchisor.

(w) restrictions or conditions imposed on the franchisee in relation to the goods and/or services that the franchisee may sell.

(2) Where the franchise is a master franchise, the sub-franchisor must in addition disclose to the prospective sub-franchisee the information on the franchisor that it has received under paragraph (1), lits. (a), (e), (h), (p), (q) and (r) of this article, as well as to inform the prospective sub-franchisee of the situation of the sub-franchise agreements in case of termination of the master franchise agreement and of the content of the master franchise agreement.

#### **ARTICLE 7 (CONFIDENTIALITY)**

The franchisor may require the prospective franchisee to sign a statement acknowledging the confidentiality of the information contained in the disclosure document.

#### **ARTICLE 8 (ACKNOWLEDGEMENT OF RECEIPT OF DISCLOSURE DOCUMENT)**

As a condition for its signing the franchise agreement, the franchisor may require the prospective franchisee to acknowledge in writing the receipt of the disclosure document.

#### **ARTICLE 9 (LANGUAGE OF DISCLOSURE DOCUMENT)**

The disclosure document must be written in a clear and comprehensible manner in the official language of the jurisdiction within which the prospective franchise is to be located.

- spécifier si elle est basée sur des unités appartenant au franchiseur et/ou aux franchisés, et,
- indiquer le pourcentage d'unités d'exploitation correspondant à chaque éventail de chiffres ou à chaque résultat affiché, ou qui les dépasse.

bb) Si l'information financière à laquelle il est fait allusion dans le précédent paragraphe aa) est fourni, le franchiseur doit déclarer que les niveaux de performance de l'unité d'exploitation proposée au franchisé éventuel peuvent être différents des informations fournies par le franchiseur ;

w) les restrictions ou conditions imposées au franchisé au sujet des marchandises et ou des services que le franchisé a le droit de vendre.

2) Si la franchise est une franchise principale, le sous-franchiseur doit en outre délivrer au franchisé éventuel l'information concernant le franchiseur requise aux alinéas a), e), h), p), q) et r) du paragraphe 1) du présent article, de même qu'il devra informer le sous-franchisé éventuel du contenu du contrat de franchise principale et du sort de tous les contrats de sous-franchise dans l'hypothèse où le contrat de franchise principal viendrait à se terminer.

#### **ARTICLE 7 (CLAUSE DE CONFIDENTIALITÉ )**

Le franchiseur peut exiger du franchisé éventuel la signature d'un engagement par lequel ce dernier s'engage à préserver la confidentialité de l'information qu'il recevra, contenu dans le document d'information.

#### **ARTICLE 8 (ACCUSE DE RECEPTION DU DOCUMENT D'INFORMATION)**

Le franchiseur peut exiger du franchisé éventuel, comme condition déterminante de la signature du contrat de franchise, que ce dernier lui accuse réception par écrit de la bonne réception du document d'information.

#### **ARTICLE 9 (LANGUE UTILISÉE DANS LE DOCUMENT D'INFORMATION)**

Le document d'information doit être écrit d'une manière claire et compréhensible, dans la langue officielle de la juridiction dans laquelle le franchisé éventuel sera situé.

**ARTICLE 10**  
**(REMEDIES)**

(1) If a franchisor fails to give a prospective franchisee the disclosure document within the period of time established in Article 5, the franchisee is entitled to terminate the franchise agreement, unless the franchisor can prove that at the time of the conclusion of the franchise agreement the franchisee had the information necessary to make an informed decision.

(2) If the disclosure document contains a misrepresentation of a material fact, the franchisee is entitled to terminate the franchise agreement unless the franchisor can prove that the franchisee did not rely on this misrepresentation.

(3) The right to terminate the franchise agreement in accordance with paragraphs (1) and (2) of this article must be exercised within:

(a) two years of the act or omission constituting the breach upon which the right to terminate is based; or

(b) one year of the franchisee becoming aware of facts or circumstances that reasonably indicate that a breach entitling the franchisee to terminate has occurred; or

(c) within 90 days of the delivery to the franchisee of a written notice providing details of the breach.

(4) A written notice providing details of the breach giving the franchisee the right to terminate in accordance with paragraphs (1) and (2) of this article must be accompanied by the franchisor's then current disclosure document.

(5) The right to terminate in accordance with paragraphs (1) and (2) of this article does not derogate from any other right the franchisee may have under the applicable law.

**ARTICLE 10**  
**(VOIES DE RECOURS)**

1) Si un franchiseur manque à son obligation de délivrer au franchisé éventuel un document d'information dans les temps requis par l'article 5 de la présente loi, le franchisé aura le droit de mettre fin au contrat de franchise, à moins que le franchiseur n'apporte la preuve qu'au moment de la conclusion du contrat de franchise, le franchisé disposait de toutes les informations nécessaires pour lui permettre de s'engager en connaissance de cause.

2) Si le document d'information contient une représentation inexacte d'un fait essentiel, le franchisé a le droit de mettre fin au contrat de franchise, à moins que le franchiseur n'apporte la preuve que le franchisé n'avait pas pris en considération cette représentation inexacte des faits.

3) Le droit de mettre un terme à un contrat de franchise en application des paragraphes 1) et 2) du présent article, doit être exercé :

a) dans le délai de deux ans de l'acte ou de l'omission constitutive de la violation sur laquelle le droit de mettre un terme au contrat est basé ; ou  
 b) dans le délai d'un an à compter du moment où le franchisé est supposé avoir conscience de faits ou de circonstances qui conduisent raisonnablement à une violation autorisant le franchisé à mettre un terme au contrat de franchise ; ou

c) dans les 90 jours qui suivent la délivrance au franchisé d'un avis écrit indiquant les détails de la violation.

4) Un avis écrit indiquant les détails de la violation donnant droit au franchisé de mettre un terme au contrat en application des paragraphes 1) et 2) du présent article doit être accompagné du document d'information du franchiseur tel qu'il existe alors.

5) Le droit de mettre un terme au contrat de franchise en application des paragraphes 1) et 2) du présent article n'est pas exclusif de l'exercice par le franchisé de tout autre droit aux termes de la loi applicable.