

Draft Regulation

Professional Code
(R.S.Q., c. C-26)

Notaries

— Practice of the notarial profession within a partnership or company

Notice is hereby given in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1) that the “Regulation respecting the practice of the notarial profession within a partnership or company”, adopted by the Bureau of the Chambre des notaires du Québec, may be submitted to the Government, which may approve it with or without amendment upon the expiry of 45 days following this publication.

The draft regulation contains provisions specifically intended to govern the terms and conditions under which notaries are authorized to practise within partnerships or companies, in particular, the administration of the partnership or company and the holding of shares. There are specific rules for partnerships or companies that present themselves exclusively as a notarial partnerships or companies.

In accordance with chapter VI.3 of the Professional Code, the conditions include the obligation to subscribe to insurance covering partnership or company liability that may arise from fault or negligence on the part of members practising their profession within a partnership or company. Members are also obliged to furnish the Order with, and update, the required information on the partnership or company.

The draft regulation has no impact on the economic burden of enterprises.

Further information may be obtained by contacting Mre Claude Laurent, notary, Director, Développement de la profession de la Chambre des notaires du Québec, tour de la Bourse, 800, Place-Victoria, case postale 162, Montréal (Québec) H4Z 1L8 : Telephone No. : (514) 879-1793 or 1 800 668-2473 : Fax No. : (514) 879-1923.

Any interested person having comments to make is requested to send them, before the expiry of the 45-day period, to the President of the Office des professions du Québec, 800, place D’Youville, 10^e étage, Québec (Québec) G1R 5Z3. The comments will be forwarded by

the Office to the minister responsible for the administration of legislation governing the professions. They may also be forwarded to the professional order that has adopted the regulation, as well as to the persons, departments, and agencies concerned.

JEAN-K. SAMSON,
*Chairman of the Office des
professions du Québec*

Regulation respecting the practice of the notarial profession within a partnership or company

Professional Code
(R.S.Q., c. C-26, Ss. 93 g, 93 h, and 94 p)

DIVISION I GENERAL

1. A notary may carry on his professional activities within a joint-stock company or limited liability partnership within the meaning of chapter VI.3 of the Professional Code (R.S.Q., c. C-26). The notary must at all times ensure that the company or partnership permits him to respect the Notaries Act (R.S.Q., c. N-3) and regulations made pursuant thereto, in particular where professional secrecy is concerned, and, where he acts in his capacity as public officer, permits him to carry on his professional activities while respecting the principle of impartiality inherent to this role.

2. A notary may practice his profession within a partnership or company contemplated in section 1 if the following conditions are respected at all times :

(1) the majority of votes attached to the joint-stock company shares, to the status of partner, or to the limited liability partnership shares must be held and cast by the following persons or trust patrimonies, or a combination thereof :

(a) one or more members of a professional order governed by the Professional Code, or of a professional association that exercises the same control as a professional order and is listed in Schedule A ;

(b) a joint-stock company where at least ninety percent (90%) of the voting shares are held and cast by one or more persons contemplated in subparagraph a ;

(c) a trust where all the trustees are persons contemplated in subparagraph *a*;

(2) the majority of the directors of a joint-stock company or of the partners or managers of a limited liability partnership must be persons contemplated in subparagraph *a* of paragraph 1. To constitute a quorum at a meeting of the managers or board of a partnership or company, the majority of members present must comprise the persons contemplated in subparagraph *a* of paragraph 1 if they are to commit the partnership or company.

A notary who is a partner, director, manager, officer, or shareholder of the partnership or company shall ensure that the conditions set out in this section, as well as a stipulation to the effect that the partnership or company is constituted for the purpose of carrying on chiefly professional activities, are included in the articles of incorporation or in the partnership agreement.

3. A notary may practice his profession within a partnership or company contemplated in section 1 that presents itself exclusively as a notarial partnership or company if the following conditions are respected at all times:

(1) the majority of votes attached to the joint-stock company shares, to the status of partner, or to the limited liability partnership shares must be held and cast by the following persons or trust patrimonies, or a combination thereof:

(a) one or more notaries;

(b) a joint-stock company where at least ninety percent (90%) of the voting shares are held and cast by one or more notaries who carry on professional activities within the company;

(c) a trust where all the trustees are notaries who carry on professional activities within the partnership or company;

(2) the majority of the directors of a joint-stock company or of the partners or managers of a limited liability partnership are notaries who carry on professional activities within the partnership or company. To constitute a quorum at a meeting of the managers or board of a partnership or company, the majority of members present must comprise notaries if they are to commit the partnership or company.

A notary who is a partner, director, manager, officer, or shareholder of the partnership or company shall ensure that the conditions set out in this article, as well as a stipulation to the effect that the partnership or company is constituted for the purpose of carrying on professional activities, are included in the articles of incorporation or in the partnership agreement.

4. A notary who wishes to carry on his professional activities within a partnership or company contemplated in section 1 must pay a fee of \$175, and, before the start of activities, provide the secretary of the Order with

(1) the declaration prescribed in section 5;

(2) written confirmation by a competent authority that the partnership or company is secured in compliance with division II;

(3) in the case of a joint-stock company, a copy of the incorporating instrument, issued by a competent authority, certifying that the company exists;

(4) written confirmation by a competent authority that the partnership or company is duly registered in Quebec;

(5) an undertaking by the partnership or company within which he practises his profession to allow the persons, committees, or tribunal mentioned in section 192 of the Professional Code to require any person to produce a document mentioned in section 13, or a true copy thereof;

(6) if applicable, a true copy of the declaration required under the Act respecting the legal publicity of sole partnerships, partnerships and legal personal (R.S.Q., c. P-45), indicating that the general partnership has become a limited liability partnership.

5. The notary must make a declaration under professional oath, on a form provided exclusively by the secretary, containing the following information:

(1) the notary's name and notarial code and his status within the partnership or company;

(2) the principal names, all other names used in Quebec, and Inspector General of Financial Institutions registration numbers, of all partnerships or companies within which the notary carries on professional activities;

(3) the legal form of the partnership or company and the fact that the partnership or company meets the conditions set out in section 1 and, as applicable, section 2 or 3;

(4) the head office address of the partnership or company and the addresses of its establishments in Quebec;

(5) in the case of a joint-stock company, the names and domiciles of the directors and officers of the company, and of the orders or professional associations to which they belong;

(6) in the case of a limited liability partnership, the names and domiciles of all partners domiciled in Quebec, as well as the names and residences of managers appointed by the partners to manage the partnership, whether the managers are domiciled in Quebec or not, and, in all cases, the orders or professional associations to which they belong;

(7) if applicable, the date on which the general partnership became a limited liability partnership.

6. Where more than one notary carries on professional activities within a partnership or company, one respondent may make a declaration for all the notaries in the partnership or company.

The respondent's declaration is deemed to be each notary's declaration and each notary remains fully responsible for the accuracy of information supplied pursuant to paragraphs 1 and 2 of section 5.

The respondent must be a notary who is a partner, director, manager, officer, or shareholder of the partnership or company.

7. To retain his right to carry on professional activities within a partnership or company, a notary or respondent must

(1) update and provide, before March 31 of each year, the declaration prescribed in section 5;

(2) promptly notify the secretary of the Order of any change in the security prescribed in division II or in the information given in the declaration prescribed in section 5 that might violate the conditions set out in sections 2 and 3.

8. Where a notary notices that a condition set out in this regulation or in chapter VI.3 of the Professional Code is no longer met, he shall, within 15 days, take the necessary measures to comply, failing which, he shall no longer be authorized to carry on activities within the partnership or company.

DIVISION II SECURITY AGAINST THE PROFESSIONAL FAULT OF PARTNERSHIP OR COMPANY MEMBERS

9. A notary who carries on professional activities within a partnership or company contemplated in section 1 must, to practise his profession in compliance with this regulation, ensure that the partnership or company furnishes and maintains, by means of an insurance or suretyship contract, or by joining a group plan contract entered into by the Order or contributing to a professional liability insurance fund, security against the liability of the partnership or company that may arise from fault or negligence on the part of notaries in the practice of their profession in Quebec within the partnership or company.

10. The security must include the following undertakings:

(1) an undertaking by the insurer or the surety to pay in the place and stead of the partnership or company, in addition to the amount of coverage that must be supplied by the notary under the Regulation respecting subscription to the Professional Liability Fund of the *Chambre des notaires du Québec* (R.R.Q., 1981, c. C-26, r.19.3), any amount, up to or equal to the amount of the security, that the partnership or company may be legally held to pay to third parties in respect of a claim during the period covered by the security and resulting from fault or negligence on the part of the notary in the practice of his profession within the partnership or company;

(2) an undertaking by the insurer or the surety to indemnify and hold the partnership or company harmless in any legal action against the partnership or company, and to pay, in addition to the amounts covered by the security, all the costs and expenses of actions brought against the partnership or company, including the costs and expenses of investigation and defence, and interest on the amount of the security;

(3) an undertaking that the security will extend to all claims during the five-year period following the date on which a notary who is a member of the partnership or company dies, withdraws, or ceases to be a member of the Order, covering, in favour of the partnership or company, fault or negligence on the part of the notary in the practice of his profession;

(4) an undertaking that the security will be not less than one million dollars per incident and for all claims against the partnership or company in the course of a secured twelve-month period;

(5) where a notary carries on alone all professional activities within a joint-stock company, an undertaking that the security will not be less than five hundred thousand dollars per incident and for all claims against the company in the course of a secured twelve-month period;

(6) an undertaking by the insurer or the surety to give the secretary of the Order thirty days' prior notice where the insurer or the surety intends to resiliate or not renew the insurance or suretyship or to amend it in respect of one of the conditions set out in this section.

11. A suretyship pursuant to this division must be obtained from a bank, credit union, trust company, or insurance company that undertakes to furnish the security prescribed in section 10 and to renounce the benefits of division and discussion, is domiciled in Canada, and maintains sufficient property in Quebec to meet the required security.

DIVISION III CONTINUANCE AS A LIMITED LIABILITY PARTNERSHIP

12. A notary who is already carrying on professional activities when the company or partnership contemplated in section 1 is constituted or formed, or who is within a general partnership that becomes a limited liability partnership, must give written notice to the clients whose files were in progress on the date of constitution, formation, or continuance, informing them of the nature and effects of the change of status, in particular with respect to his professional liability and that of the partnership or company.

DIVISION IV DOCUMENT ACCESSIBILITY

13. The documents that may be required from a partnership or company pursuant to paragraph 5 of section 4 are as follows:

(1) where a notary practises within a joint-stock company:

(a) the complete and up-to-date register of articles and by-laws;

(b) the complete and up-to-date register of securities;

(c) the complete and up-to-date register of shareholders;

(d) the complete and up-to-date register of directors;

(e) all partnership agreements and voting agreements, and amendments thereto;

(f) any agreement concerning a stock option with voting or other rights, even if they are conditional;

(g) the registration certificate of the company, and updates;

(h) the names and domiciles of the principal officers;

(2) where a notary practises within a limited liability partnership:

(a) the partnership agreement and amendments thereto;

(b) the partnership registration and updates thereof;

(c) the names and residences of the principal officers;

(d) the complete and up-to-date register of partners.

DIVISION V CORPORATE NAME

14. A notary who carries on professional activities within a joint-stock company must ensure that the corporate name includes, failing any professional titles, or abbreviations thereof, of members of the company, the expression "Authorized Company" or the abbreviation "A.C."

DIVISION VI FINAL PROVISION

15. This regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec*.

SCHEDULE A

LIST OF PROFESSIONAL ORGANIZATIONS THAT EXERCISE THE SAME CONTROL AS A PROFESSIONAL ORDER

— An order of accountants governed by the law of another Canadian province or territory

— L'association des courtiers et agents immobiliers du Québec

— Bureau des services financiers

— A law society governed by the law of another Canadian province or territory

— Canadian Institute of Actuaries