

Regulations and other acts

Gouvernement du Québec

O.C. 1092-2005, 16 November 2005

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

Notarial profession — Practice within a partnership or company

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

WHEREAS, under paragraph *p* of section 94 of the Professional Code (R.S.Q., c. C-26), the Bureau of the Chambre des notaires du Québec may make a regulation respecting the practice of the notarial profession within a partnership or company and, under paragraphs *g* and *h* of section 93 of the Code, it must, by regulation, impose on its members the obligation to furnish and maintain security, on behalf of the partnership or company, against liabilities of the partnership or company arising from fault or negligence in the practice of their profession and fix the conditions and procedure and any fees applicable to a declaration made to the Chambre des notaires;

WHEREAS the Bureau of the Chambre des notaires du Québec has made the Regulation respecting the practice of the notarial profession within a partnership or company;

WHEREAS, under section 95.3 of the Code, a draft of the Regulation was sent to every member of the Order at least 30 days before being made by the Bureau of the Chambre des notaires du Québec;

WHEREAS, under section 95 of the Professional Code, subject to sections 95.1 and 95.2 of the Code, every regulation made by the Bureau of a professional order under the Code or an Act constituting a professional order shall be transmitted to the Office des professions du Québec for examination and be submitted, with the recommendation of the Office, to the Government which may approve it with or without amendment;

WHEREAS, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), a draft of the Regulation was published in Part 2 of the *Gazette officielle du Québec* of 8 October 2003 with a notice that it could be submitted to the Government for approval on the expiry of 45 days following that publication;

WHEREAS, in accordance with section 95 of the Professional Code, the Office des professions du Québec has examined the Regulation and made its recommendation;

WHEREAS it is expedient to approve the Regulation with amendments;

IT IS ORDERED, therefore, on the recommendation of the Minister responsible for the administration of legislation respecting the professions:

THAT the Regulation respecting the practice of the notarial profession within a partnership or company, attached to this Order in Council, be approved.

ANDRÉ DICAIRE,
Clerk of the Conseil exécutif

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

Professional Code
(R.S.Q., c. C-26, s. 93 pars. *g* and *h*, and s. 94 par. *p*)

DIVISION I GENERAL

1. A notary may, subject to the terms and conditions provided for herein, 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-2), 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 if the following conditions are respected at all times:

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

(a) at least one member 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 90% of the voting shares are held and cast by at least one person contemplated in subparagraph *a*;

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

(2) the majority of the directors, partners, or managers 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 be 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 these conditions, 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 the partnership agreement.

3. A notary may practice his profession within a partnership or company 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 company or partnership shares must be held and cast by the following persons or trust patrimonies, or a combination thereof:

(a) at least one notary;

(b) a joint-stock company where at least 90% of the voting shares are held and cast by at least one notary 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, partners, or managers 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 be 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 these conditions, 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 the partnership agreement.

4. A notary who wishes to carry on his professional activities within a partnership or company 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 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 11, 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 the registration number given by the Enterprise Registrar, of the partnership or company 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 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 partnership, the names and domiciles of all partners domiciled in Quebec, as well as the names and domiciles 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. To be authorized to practise his profession in accordance with this regulation, a notary who carries on professional activities within a partnership or company must furnish and maintain, for the partnership or company, security against the professional liability of the partnership or company that may arise from fault or negligence on the part of the notary in the practice of his profession within the partnership or company, by contributing to the Professional Liability Insurance Fund of the *Chambre des notaires du Québec*.

10. The security must include the following undertakings :

(1) an undertaking by the insurer 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 Insurance Fund of the *Chambre des notaires du Québec*, approved by Order in Council 1730-90 dated December 12, 1990, any amount, up 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 be not less than one million dollars per incident and will be for all claims against the partnership or company in the course of a secured period of not more than 12 months, regardless of the number of members in the partnership or company ;

(4) where a notary carries on alone all professional activities within a company, an undertaking that the security will not be less than \$500,000 per incident and will be for all claims against the company in the course of a secured period of not more than 12 months.

DIVISION III DOCUMENT ACCESSIBILITY

11. 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 domiciles of the principal officers;

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

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

ANNEXE A

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

— Any order of accountants governed by the law of another Canadian province or a territory;

— Association des courtiers et agents immobiliers du Québec;

— Autorité des marchés financiers;

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

— Canadian Institute of Actuaries.

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Gouvernement du Québec

O.C. 1093-2005, 19 November 2005

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

Notaries

— Code of ethics

— Amendments

Regulation to amend the Code of ethics of notaries

WHEREAS, under section 87 of the Professional Code (R.S.Q., c. C-26), the Bureau of the Chambre des notaires du Québec must make, by regulation, a code of ethics governing the general and special duties of members of the Order towards the public, clients and the profession;

WHEREAS the Bureau of the Chambre des notaires du Québec made a Code of ethics of notaries, approved by Order in Council 921-2002 dated 21 August 2002;

WHEREAS, at its meeting of 10 April 2003, the Bureau of the Chambre des notaires du Québec under the abovementioned section made the Regulation to amend the Code of ethics of notaries;

WHEREAS, under section 95.3 of the Professional Code, a draft of the Regulation was sent to every member of the Order at least 30 days before being made by the Bureau of the Chambre des notaires du Québec;

WHEREAS, under section 95 of the Professional Code, subject to sections 95.1 and 95.2 of the Code, every regulation made by the Bureau of a professional order under the Code or an Act constituting a professional order must be transmitted to the Office des professions du Québec for examination and be submitted, with the recommendation of the Office, to the Government which may approve it with or without amendment;