

22. The English version of section 76 of the Code is replaced by the following:

“76. Where a notary uses the graphic symbol or coat of arms of the Order for advertising purposes, he must ensure that they are associated with his name or the name of his partnership or company and that they are identical to the original held by the secretary of the Order.”

23. Section 77 of the Code is amended by deletion of the word “the” before “coat of arms” in the English version.

24. This Regulation comes into force on the fifteenth day following its publication in the *Gazette officielle du Québec*.

7262

Gouvernement du Québec

O.C. 1094-2005, 16 November 2005

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

Certified general accountancy profession — Practice within a partnership or joint-stock company

Regulation respecting the practice of the certified general accountancy profession within a partnership or joint-stock company

WHEREAS, under paragraph *p* of section 94 of the Professional Code (R.S.Q., c. C-26), the Bureau of the Ordre des comptables généraux licenciés du Québec may make a regulation respecting the practice of the certified general accountancy profession within a partnership or joint-stock 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 Order;

WHEREAS the Bureau of the Ordre des comptables généraux licenciés du Québec made the Regulation respecting the practice of the certified general accountant profession within a partnership or joint-stock company at its meeting of 6 June 2004;

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

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 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 respecting the practice of the certified general accountant profession within a partnership or joint-stock company was published in Part 2 of the *Gazette officielle du Québec* of 3 March 2004 with a notice that it could be submitted to the Government for approval on the expiry of 45 days following that publication;

WHEREAS the Office 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 certified general accountancy profession within a partnership or joint-stock company, attached to this Order in Council, be approved.

ANDRÉ DICAIRE,
Clerk of the Conseil exécutif

Regulation respecting the practice of the certified general accountancy profession within a partnership or joint-stock company

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

CHAPTER I GENERAL

1. Members of the Ordre des comptables généraux licenciés du Québec are authorized to practise within a limited liability partnership or joint-stock company within

the meaning of Chapter VI.3 of the Professional Code (R.S.Q., c. C-26) that holds itself out to be exclusively a partnership or joint-stock company of certified general accountants if

(1) more than 50% of the voting rights attached to the shares or units of the partnership or joint-stock company are held

(a) by members of the Order or members of the Certified General Accountants Association of Canada practising within the partnership or joint-stock company;

(b) by a legal person, trust or enterprise whose voting rights or units are held exclusively by at least one member of the Order or by members of the Certified General Accountants Association of Canada practising within the partnership or joint-stock company; or

(c) by a combination of persons, trusts or enterprises referred to in subparagraphs *a* and *b*;

(2) a majority of the directors of the board of directors of the joint-stock company, the partners or, where applicable, the directors appointed by the partners to manage the affairs of the limited liability partnership are members of the Order or the Certified General Accountants Association of Canada practising within the partnership or joint-stock company;

(3) to constitute a quorum of the board of directors of a partnership or joint-stock company, the majority of the members present are members of the Order or the Certified General Accountants Association of Canada;

(4) at least one member of the Order practising within the partnership or joint-stock company holds a voting unit or share;

(5) the chair of the board of directors of the joint-stock company or the person who performs similar duties within a limited liability partnership is a voting partner or shareholder and a member of the Order or the Certified General Accountants Association of Canada; and

(6) only one member of the Order or the Certified General Accountants Association of Canada practising within the partnership or joint-stock company is granted, by voting agreement or proxy, the voting rights attached to a share or unit held by a member of the Order or the Certified General Accountants Association of Canada or by a legal person, trust or enterprise referred to in subparagraph *b* of subparagraph 1 of the first paragraph.

Members of the Order must ensure that those conditions appear in the articles of incorporation of the joint-stock company or in the contract constituting the limited liability

partnership and that the documents stipulate that the partnership or joint-stock company is constituted for the purposes of the carrying on of professional activities.

2. In all other cases, members of the Order are authorized to practise within a limited liability partnership or joint-stock company if

(1) more than 50% of the voting rights attached to the shares or units of the partnership or joint-stock company are held

(a) by the following persons practising within the partnership or joint-stock company:

i. professionals governed by the Professional Code;

ii. members in good standing of the Certified General Accountants Association of Canada;

iii. members in good standing of the Association des courtiers et agents immobiliers du Québec;

iv. members in good standing of the Canadian Institute of Actuaries;

v. representatives registered in a sector governed by the Autorité des marchés financiers;

vi. securities dealers or advisers, if they are duly certified by a competent authority; or

vii. any person carrying on an activity similar to those mentioned above and governed by legislation of another province of Canada recognizing them and subjecting them to similar rules;

(b) by a legal person, trust or enterprise whose voting rights or units are held exclusively by at least one person referred to in subparagraph *a*; or

(c) by a combination of persons, trusts or enterprises referred to in subparagraphs *a* and *b*;

(2) a majority of the directors of the board of directors of the joint-stock company, and the partners or directors appointed by the partners to manage the affairs of the limited liability partnership are persons referred to in subparagraph *a* of subparagraph 1 of the first paragraph; and

(3) to constitute a quorum of the board of directors of a partnership or joint-stock company, the majority of members present are persons referred to in subparagraph *a* of subparagraph 1 of the first paragraph.

Members of the Order must ensure that those conditions appear in the articles of incorporation of the joint-stock company or in the contract constituting the limited liability partnership and that the documents stipulate that the partnership or joint-stock company is constituted for the primary purposes of the carrying on of professional activities.

CHAPTER II OTHER TERMS AND CONDITIONS

DIVISION I TERMS

3. A member of the Order may practise within a partnership or joint-stock company if the member

(1) provides the Order with a written document from a person or company from whom the member obtained professional liability coverage for the partnership or joint-stock company certifying that the coverage meets the requirements of Division II of this Chapter;

(2) provides the Order, where the member practises within a joint-stock company, with a written document from a competent authority certifying the existence of the joint-stock company;

(3) provides the Order, where applicable, with a certified true copy of the declaration from a competent authority stating that the general partnership has been constituted as a limited liability partnership;

(4) provides the Order with a written document certifying that the partnership or joint-stock company is duly registered in Québec;

(5) provides the Order with a written document certifying that the partnership or joint-stock company has an establishment in Québec;

(6) provides the Order with an irrevocable written undertaking from the partnership or joint-stock company to the Order that it will make available to a person, committee, disciplinary body or tribunal referred to in section 192 of the Professional Code any document listed in section 14 and provide to the Order all information or documents required in connection with a professional inspection or inquiry by the syndic and an assistant syndic of the Order;

(7) provides the Order with a written undertaking from the partnership or joint-stock company that its shareholders having voting rights, its partners, directors and officers, as well as the members of its staff who are

not members of the Order are aware of and comply with the Code of ethics of certified general accountants (R.R.Q., 1981, c. C-26, r.30); and

(8) pays a fee of \$150.

4. In addition, the member must send to the Order a sworn declaration, duly completed on the form provided by the Order, containing

(1) the partnership or joint-stock company name and any names used in Québec by every partnership or joint-stock company within which the member practises and the registration number assigned to them by a competent authority;

(2) the legal form of the partnership or joint-stock company;

(3) the address of the head office of the partnership or joint-stock company and the addresses of its establishments in Québec;

(4) the professional activities carried on by the member within the partnership or joint-stock company;

(5) the member's name, home and professional address and the member's status within the partnership or joint-stock company;

(6) where the member practises within a joint-stock company, the names and home addresses of the directors of the joint-stock company and, where applicable, the order, association or professional group to which they belong;

(7) where the member practises within a limited liability partnership, the names and home addresses of all the partners domiciled in Québec and, where applicable, the names and home addresses of the directors appointed to manage the affairs of the partnership, whether or not they are domiciled in Québec, as well as the order, association or professional group to which they belong;

(8) a written document provided by the member certifying that the shares or units held and the rules of administration of the partnership or joint-stock company comply with the conditions set out in this Regulation;

(9) the names of the holders of shares or units referred to in subparagraph 1 of the first paragraph of section 1 with the percentage of voting rights held by each shareholder; and

(10) in the case of holders of shares or units referred to in subparagraph *b* of subparagraph 1 of the first paragraph of section 1, a written document certifying that the conditions of that subparagraph are met.

5. In the case of a partnership or joint-stock company within which more than one member of the Order practises, there must be a representative who, on behalf of the members of the partnership or joint-stock company, satisfies the conditions set out in sections 3 and 4. The representative must be mandated by those members to reply to requests made by the syndic, the assistant syndic, an inspector, an investigator or any other representative of the Order and to provide, where applicable, the documents that the members of the Order are required to submit.

The representative must be a member of the Order and a voting partner or shareholder.

The representative must ensure the accuracy of the information given in the declaration.

6. A member is exempt from satisfying the conditions set out in sections 3 and 4 if a representative of the partnership or joint-stock company within which the member practises has already satisfied the conditions.

7. The documents referred to in paragraphs 1, 4 and 5 of section 3 must be updated every year by the member or the representative by 31 March at the latest.

Any change to the other documents and to the declaration referred to in section 4 must be sent to the Order within 30 days of the date of the change.

8. A member who does not satisfy the conditions set out in this Regulation or in Chapter VI.3 of the Professional Code before practising within a partnership or joint-stock company is not authorized to practise within the partnership or joint-stock company. A member immediately ceases to be so authorized to practise if at any time the member no longer satisfies the conditions.

9. A member or the member's representative must immediately inform the Order of any change to the insurance coverage referred to in paragraph 1 of section 3, the striking off, dissolution, assignment of property, bankruptcy, voluntary or forced liquidation of the partnership or joint-stock company or any other cause likely to prevent the partnership or joint-stock company from carrying on its activities and any change in the information given in the declaration which contravenes the conditions set out in section 1 or 2.

DIVISION II PROFESSIONAL LIABILITY COVERAGE

10. To be authorized to practise in accordance with this Regulation, a member of the Order practising within a partnership or joint-stock company must furnish and maintain security on behalf of the partnership or joint-stock company by means of an insurance or suretyship contract or by joining a group plan contract entered into by the Order, or by contributing to a professional liability insurance fund established in accordance with section 86.1 of the Professional Code, against liabilities of the partnership or joint-stock company arising from fault or negligence on the part of the member in the practice of the profession within the partnership or joint-stock company.

11. The following minimum conditions for the security must be set out in a specific rider or contract :

(1) an undertaking by the insurer or surety to pay in lieu of the partnership or joint-stock company, over and above the amount of the security to be furnished by the member pursuant to the Regulation respecting professional liability insurance for certified general accountants, approved by Order in Council 1645-92 dated 11 November 1992 or the coverage taken out by a member if it is greater, up to the amount of the security, any sum that the partnership or joint-stock company may be legally bound to pay to an injured third person on a claim filed during the coverage period and arising from fault or negligence on the part of the member in the practice of the profession ;

(2) an undertaking by the insurer or surety to take up the cause of the partnership or joint-stock company and defend it in any action against it and to pay, in addition to the amounts covered by the security, all legal costs of actions against the partnership or joint-stock company, including the costs of the inquiry and defence and interest on the amount of the security ;

(3) an undertaking that the security extends to all claims submitted in the 3 years following the coverage period during which a member of the partnership or joint-stock company has died, withdrawn from the partnership or joint-stock company or ceased to be a member of the Order, in order to maintain coverage for the partnership or joint-stock company for fault or negligence on the part of the member in the practice of the profession within the partnership or joint-stock company ;

(4) an amount of at least \$1,000,000 per claim for all claims filed against the partnership or joint-stock company during a 12-month coverage period ;

(5) where a member is a sole practitioner, as the sole shareholder of a joint-stock company in which no other member of the Order is an employee, the coverage must be at least \$500,000 per claim for all claims filed against the joint-stock company during a 12-month coverage period;

(6) an undertaking by the insurer or surety to provide the secretary of the Order with a 30-day notice of intent to cancel the insurance or suretyship contract, to amend a condition of this section or not to renew the contract; and

(7) an undertaking by the insurer or surety to provide the secretary of the Order with a notice that the insurance or suretyship contract has not been renewed; the notice must be sent within 15 days following the expiry of the contract.

12. The suretyship must be with a bank, savings and credit union, trust or insurance company domiciled in Canada and having and maintaining sufficient property in Québec to meet the coverage required under this Division.

The institution referred to in the first paragraph must undertake to provide the coverage in accordance with the conditions of this Division and must waive the benefit of division and discussion.

DIVISION III ADDITIONAL INFORMATION

13. On a general partnership being continued as a limited liability partnership or a joint-stock company being constituted, the member of the Order must send a notice to his or her clients informing them of the nature and effects of the change of status of the partnership or joint-stock company, in particular with respect to the member's professional liability and that of the partnership or joint-stock company.

14. The documents to which paragraph 6 of section 3 refers in relation to the undertaking to be obtained by a member of the Order from the partnership or joint-stock company are the following:

(1) if the member practises within a joint-stock company,

(a) an up-to-date register of articles and by-laws of the joint-stock company;

(b) an up-to-date register of shares of the joint-stock company;

(c) an up-to-date register of the directors of the joint-stock company;

(d) any shareholders' agreement and voting agreement and amendments;

(e) the declaration of registration of the joint-stock company and any update; and

(f) the names and home addresses of the company's principal officers;

(2) if the member practises within a limited liability partnership,

(a) the declaration of registration of the partnership and any update;

(b) the partnership agreement and amendments;

(c) an up-to-date register of the partners;

(d) where applicable, an up-to-date register of the directors; and

(e) the names and home addresses of the partnership's principal officers.

CHAPTER III INCOME

15. Where a member carries on professional activities within a joint-stock company, the income derived from the professional services rendered within and on behalf of the company belongs to the company, unless it has been agreed otherwise.

The determination, billing and payment of fees is subject to the conditions set out in the Code of ethics of certified general accountants and the member is personally responsible for seeing to their application.

CHAPTER IV TRANSITIONAL AND FINAL

16. A member of the Order who practises within a joint-stock company constituted for the purposes of the practice before the date of coming into force of this Regulation must comply with this Regulation no later than one year following that date.

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