

Gouvernement du Québec

O.C. 160-2012, 29 February 2012

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

**Chartered appraiser
— Practice of the profession within a partnership
or a joint-stock company**

Regulation respecting the practice of the profession of chartered appraiser within a partnership or a joint-stock company

WHEREAS, under paragraph *p* of section 94 of the Professional Code (R.S.Q., c. C-26), the board of directors of a professional order may authorize the members of the Order to carry on their professional activities within a limited liability partnership or a joint-stock company constituted for that purpose and, as appropriate, determine the applicable terms and conditions and restrictions;

WHEREAS, under paragraphs *g* and *h* of section 93 of the Professional Code, the board of directors of a professional order must impose on its members who carry on their professional activities within a partnership or a joint-stock company the obligation to furnish and maintain coverage, on behalf of the partnership or company, against liabilities of the partnership or company arising from fault in the practice of their profession and fix the conditions and procedure applicable to a declaration made to the Order;

WHEREAS the board of directors of the Ordre des évaluateurs agréés du Québec made the Regulation respecting the practice of the profession of chartered appraiser within a partnership or a joint-stock company;

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 board of directors;

WHEREAS, pursuant to section 95 of the Professional Code and subject to sections 95.0.1 and 95.2, every regulation made by the board of directors 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;

WHEREAS, pursuant to the first paragraph of section 95.2 of the Professional Code, a regulation made by the board of directors of an order under paragraph *g* or *h* of section 93 must be transmitted for examination to the Office, which may approve it with or without amendment;

WHEREAS the first regulation made by the board of directors of an order under paragraph *p* of section 94 of the Professional Code must be submitted to the Government for approval;

WHEREAS in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), the draft Regulation respecting the practice of the profession of chartered appraiser within a partnership or a joint-stock company was published in Part 2 of the *Gazette officielle du Québec* of 22 June 2011 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 approved, with amendments, subparagraph 1 of the first paragraph of section 5 and section 6 relating to the declaration prior to the practice of the profession of chartered appraiser within a partnership or a joint-stock company and Division III of the Regulation concerning professional liability coverage;

WHEREAS the Office has examined the Regulation and submitted it to the Government with its recommendation;

WHEREAS it is expedient to approve, with amendments, Division I, sections 3 and 4, subparagraphs 2 to 4 of the first paragraph and the second paragraph of section 5, sections 7 and 8 and Divisions IV and V of the Regulation;

IT IS ORDERED, therefore, on the recommendation of the Minister of Justice:

THAT Division I, sections 3 and 4, subparagraphs 2 to 4 of the first paragraph and the second paragraph of section 5, sections 7 and 8 and Divisions IV and V of the Regulation respecting the practice of the profession of chartered appraiser within a partnership or a joint-stock company, attached to this Order in Council, be approved with amendments.

GILLES PAQUIN,
Clerk of the Conseil exécutif

Regulation respecting the practice of the profession of chartered appraiser within a partnership or a joint-stock company

Professional Code

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

DIVISION I GENERAL

1. Members of the Ordre des évaluateurs agréés du Québec are authorized, on the terms, conditions and restrictions established in this Regulation, to carry on their professional activities within a limited liability partnership or a joint-stock company within the meaning of Chapter VI.3 of the Professional Code (R.S.Q., c. C-26).

If members become aware that a condition set out in this Regulation or in Chapter VI.3 of the Professional Code is no longer met, they must, within 15 days, take the necessary measures to comply, failing which members are no longer authorized to carry on their professional activities within the partnership or joint-stock company.

2. Members who are struck off the roll for a period in excess of 3 months or whose permit has been revoked may not, during the period of the striking off or revocation, directly or indirectly hold any unit or share in the partnership or joint-stock company.

During that period, members may not hold the position of director, officer or representative of the partnership or joint-stock company.

DIVISION II TERMS AND CONDITIONS OF PRACTICE

3. Members may carry on their professional activities within a partnership or a joint-stock company that holds itself out to be a partnership or a joint-stock company of chartered appraisers 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 at least one member of the Order;

(b) by a legal person, trust or any other enterprise whose voting rights attached to the shares or units of the partnership or company, or other entitlements are held entirely by at least one member of the Order; or

(c) in any combination by a person, a trust or enterprise 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;

(3) the board of directors or, as the case may be, the internal management board is made up of a majority of the members of the Order who must, at all times, constitute the majority of the quorum of such boards; and

(4) the chair of the board of directors of the joint-stock company or the person performing similar functions in a limited liability partnership is a member of the Order and, as the case may be, a shareholder or partner with voting rights.

Members must ensure that the conditions set out in the first paragraph appear in the articles of the joint-stock company or in the contract of the limited liability partnership, in the unanimous shareholders' agreement or in any other document relating to the constitution and operation of the partnership or joint-stock company. Members must also ensure that those documents provide or stipulate that the partnership or joint-stock company is constituted for the purpose of carrying on professional activities.

4. Members may carry on professional activities within a partnership or a joint-stock company that does not hold itself out to be a partnership or a joint-stock company of chartered appraisers 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 professionals governed by the Professional Code;

(b) by members in good standing of the Appraisal Institute of Canada holding the "AACI" designation;

(c) by representatives who hold a certificate issued by the Autorité des marchés financiers under the Act respecting the distribution of financial products and services (R.S.Q., c. D-9.2);

(d) by a legal person, a trust or any other enterprise whose voting rights attached to the units or shares, or other rights are held entirely by one or more persons referred to in subparagraphs *a* and *b*; or

(e) by a combination of the persons referred to in subparagraphs *a* to *d*;

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

(3) the board of directors or, as the case may be, the internal management board is made up of a majority of persons referred to in subparagraphs *a* and *b* of subparagraph 1 who must, at all times, constitute the majority of the quorum of such boards.

Members must ensure that the conditions set out in the first paragraph appear in the articles of the joint-stock company or in the contract of the limited liability partnership, in the unanimous shareholders' agreement or in any other document relating to the constitution and operation of the partnership or joint-stock company and that those documents provide that the partnership or joint-stock company is constituted for the purpose of carrying on professional activities.

5. Members may carry on their professional activities within a partnership or joint-stock company if, before carrying on those activities, they provide the Order with the following documents:

(1) a declaration in compliance with section 6, accompanied by the fees payable prescribed by the board of directors of the Order;

(2) a written document from a competent authority certifying that the partnership or joint-stock company is covered by security in compliance with Division III;

(3) if applicable, a certified true copy of the declaration from the competent authority stating that the general partnership has been continued as a limited liability partnership; and

(4) an irrevocable written authorization from the partnership or joint-stock company within which members carry on professional activities allowing a person, committee, disciplinary body or tribunal referred to in section 192 of the Professional Code to require disclosure of and obtain any document listed in section 11 from any partner or shareholder or to obtain a copy of such a document.

Members are however exempt from complying with the conditions provided for in the first paragraph if a representative of the partnership or joint-stock company within which the representative carries on professional activities has already provided the Order with the documents concerned.

6. The declaration provided for in subparagraph 1 of the first paragraph of section 5 must be made using the form provided for that purpose by the Order and contain the following information:

(1) the name of the partnership or joint-stock company and any other names used in Québec by the partnership or joint-stock company, and the business number assigned to them by the competent authority for every partnership or joint-stock company;

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

(3) the names of the members of the Order who practise within the partnership or company;

(4) the name, membership number and status of the member making the declaration;

(5) in the case of a limited liability partnership, the address of its establishments in Québec, specifying the address of the principal establishment, names and home addresses of the partners and, if applicable, the names and home addresses of the directors appointed by the partners to manage the partnership, whether or not they reside in Québec, and the percentage of partnership units held by the appointed partners and directors;

(6) in the case of a joint-stock company, the address of the head office of the company and the address of its establishments in Québec, the names and home addresses of the shareholders, the percentage of shares they hold with or without voting rights, along with an indication of their functions as director and officer, as the case may be; and

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

7. Members must update and provide, before 1 April of each year, the declaration provided for in subparagraph 1 of the first paragraph of section 5, with the related fees.

Members must immediately inform the Order of any change to the coverage provided for in Division III of this Regulation or the cancellation of the coverage, 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 of any change to the information provided in the declaration that would violate the conditions set out in section 3 or 4.

8. If 2 or more members of the Order carry on professional activities within the same partnership or joint-stock company, a representative must be designated to act on behalf of the other members to meet the requirements of sections 5 to 7.

The representative must be a member of the Order, shareholder and director of the board of directors or partner and director appointed by the partners and carry on his or her professional activities in Québec within the partnership or joint-stock company.

The declaration is deemed to be the declaration of each member of the partnership or joint-stock company. The representative remains responsible for the accuracy of the information it contains with the exception of the information provided for in paragraphs 5 and 6 of section 6.

The representative is also mandated by members carrying on their professional activities within the partnership or joint-stock company to reply to requests made by the syndic, an inspector, an investigator or any other representative of the Order and provide, where applicable, documents the members are required to submit.

DIVISION III **PROFESSIONAL LIABILITY COVERAGE**

9. Members who carry on professional activities within a partnership or joint-stock company must furnish and maintain security on behalf of the partnership or joint-stock company 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 on the part of members carrying on professional activities within the partnership or joint-stock company.

10. The security must include

(1) an undertaking by the insurer to pay in lieu of the partnership or joint-stock company, over and above the amount of the security to be furnished by a member pursuant to the Règlement sur la souscription obligatoire au Fonds d'assurance de la responsabilité professionnelle de l'Ordre des évaluateurs agréés du Québec, approved by the Office des évaluateurs agréés on 15 September 2010, up to the amount of the security, any sum that the partnership or joint-stock company may be legally bound to pay to third persons on a claim filed during the coverage period and arising from fault on the part of a member in the practice of the profession within the partnership or joint-stock company;

(2) an undertaking by the insurer 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 by the insurer that any claim submitted in the 5 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 on the part of the member in the practice of the profession within the partnership or joint-stock company;

(4) an undertaking by the insurer to guarantee at least \$1,000,000 per claim and for all claims filed against the partnership or joint-stock company during a 12-month coverage period, regardless of the number of members in the partnership or joint-stock company;

(5) an undertaking by the insurer to give the Order a 30-day prior notice of intent to cancel or modify the insurance contract where the modification refers to a condition set out in this Regulation;

(6) an undertaking by the insurer to notify the Order that the insurance contract has not been renewed; the notice must be sent within 15 days following the expiry of the contract; and

(7) an undertaking by the insurer to notify the Order when it has paid a sum of money by reason of a fault on the part of a member setting out the name of the partnership or joint-stock company and of the member involved, the nature of the fault, the damage, and the sum paid.

DIVISION IV **DOCUMENT ACCESSIBILITY AND ADVERTISING**

11. The documents referred to in subparagraph 4 of the first paragraph of section 5 are the following:

(1) if the member carries on professional activities within a limited liability partnership,

(a) the partnership contract and amendments;

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

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

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

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

(2) if the member carries on professional activities within a joint-stock company,

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

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

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

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

(e) the up-to-date register of the directors of the joint-stock company; and

(f) the up-to-date list of the joint-stock company's principal officers and their home addresses.

12. Where a general partnership is continued as a limited liability partnership or where a joint-stock company is constituted, members must send to their clients, on the date of the continuation or constitution, a notice informing them of the nature and effects of the change of status of the partnership or joint-stock company, in particular with respect to their professional liability and the professional liability of the partnership or joint-stock company.

DIVISION V TRANSITIONAL AND FINAL

13. Members who carry on professional activities within a joint-stock company constituted for that purpose before the date of coming into force of this Regulation must comply with the requirements set out in this Regulation not later than within the year following that date.

14. Until the Order has received the authorization from the competent authorities allowing the professional liability insurance fund of the Order to furnish the security provided for in Division III of this Regulation, members must furnish and maintain, for the partnership or joint-stock company within which they carry on professional activities, by insurance contract, such a security that complies with the requirements of section 10.

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

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Gouvernement du Québec

O.C. 161-2012, 29 February 2012

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

Évaluateurs agréés

— Code of ethics of the members of the Ordre
— Amendment

Regulation to amend the Code of ethics of the members of the Ordre des évaluateurs agréés du Québec

WHEREAS, under section 87 of the Professional Code (R.S.Q., c. C-26), the board of directors of a professional order must make, by regulation, a code of ethics governing the general and special duties of the professional towards the public, clients and the profession, particularly the duty to discharge professional obligations with integrity;

WHEREAS the board of directors of the Ordre des évaluateurs agréés du Québec made the Regulation to amend the Code of ethics of the members of the Ordre des évaluateurs agréés du Québec;

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 board of directors;

WHEREAS, pursuant to section 95 of the Professional Code and subject to sections 95.0.1 and 95.2, every regulation made by the board of directors 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;

WHEREAS, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), the draft Regulation to amend the Code of ethics of the members of the Ordre des évaluateurs agréés du Québec was published in Part 2 of the *Gazette officielle du Québec* of 22 June 2011 with a notice that it could be submitted to the Government for approval on the expiry of 45 days following that publication;