

## Regulations and other Acts

Gouvernement du Québec

### O.C. 1728-2022, 16 November 2022

Act respecting the regulation of the financial sector (chapter E-6.1)

#### **Procedure for the recruitment and selection of persons qualified for appointment as members of the Financial Markets Administrative Tribunal and procedure for the renewal of their term of office**

Regulation respecting the procedure for the recruitment and selection of persons qualified for appointment as members of the Financial Markets Administrative Tribunal and the procedure for the renewal of their term of office

WHEREAS, under the first paragraph of section 115.15.10 of the Act respecting the regulation of the financial sector (chapter E-6.1), Tribunal members appointed by the Government under section 96 of that act are chosen from among persons declared qualified according to the recruiting and selection procedure established by government regulation;

WHEREAS, under the second paragraph of that section, that regulation must, in particular, determine the publicity to be made for recruitment purposes and its content, determine the application procedure to be followed by candidates, authorize the establishment of selection committees to assess the qualifications of candidates and formulate an opinion concerning them, determine the composition of the committees and the mode of appointment of committee members, ensuring, where applicable, adequate representation of the sectors concerned, determine the selection criteria to be taken into account by a committee and determine the information a committee may require from a candidate and the consultations it may hold;

WHEREAS, under section 115.15.12 of the Act, a certificate of qualification is valid for a period of 18 months or for any other period determined by government regulation;

WHEREAS, under the first paragraph of section 115.15.13 of the Act, the members of a selection committee receive no remuneration except in the cases, on the conditions and to the extent that may be determined by the Government;

WHEREAS, under the second paragraph of that section, the members of a selection committee are, however, entitled to the reimbursement of any expenses incurred in the exercise of their functions, on the conditions and to the extent determined by the Government;

WHEREAS, under the first paragraph of section 115.15.17 of the Act, the renewal of a Financial Markets Administrative Tribunal member's term must be examined according to the procedure established by government regulation and the regulation may, in particular, authorize the establishment of committees, determine the composition of the committees and the mode of appointment of committee members, who must not belong to the Administration within the meaning of the Public Administration Act (chapter A-6.01) or represent it, determine the criteria to be taken into account by a committee and determine the information a committee may require from a Tribunal member and the consultations it may hold;

WHEREAS, under the first paragraph of section 115.15.18 of the Act, the members of an examination committee receive no remuneration except in the cases and on the conditions that may be determined by the Government;

WHEREAS, under the second paragraph of that section, the members of an examination committee are, however, entitled to the reimbursement of any expenses incurred in the exercise of their functions, on the conditions determined by the Government;

WHEREAS, in accordance with sections 10 and 11 of the Regulations Act (chapter R-18.1), a draft Regulation respecting the procedure for the recruitment and selection of persons qualified for appointment as members of the Financial Markets Administrative Tribunal and the procedure for the renewal of their term of office was published in Part 2 of the *Gazette officielle du Québec* of 27 April 2022 with a notice that it could be made by the Government on the expiry of 45 days following that publication;

WHEREAS it is expedient to make the Regulation without amendment;

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

THAT the Regulation respecting the procedure for the recruitment and selection of persons qualified for appointment as members of the Financial Markets Administrative Tribunal and the procedure for the renewal of their term of office, attached to this Order in Council, be made.

YVES OUELLET

*Clerk of the Conseil exécutif*

## **Regulation respecting the procedure for the recruitment and selection of persons qualified for appointment as members of the Financial Markets Administrative Tribunal and the procedure for the renewal of their term of office**

Act respecting the regulation of the financial sector (chapter E-6.1, ss. 115.15.10, 115.15.12, 115.15.13, 115.10.17 and 115.15.18)

### **DIVISION I**

#### **NOTICE OF RECRUITMENT**

**1.** Where it is expedient to draw up a list of persons declared qualified for appointment as members of the Financial Markets Administrative Tribunal, the Associate Secretary General responsible for the Secrétariat aux emplois supérieurs of the Ministère du Conseil exécutif publishes a notice of recruitment published throughout Québec inviting interested persons to submit their candidacy for the position of member of the Tribunal.

**2.** The notice of recruitment gives

(1) a brief description of the duties of a member of the Tribunal;

(2) in substance, the eligibility requirements and selection criteria set out in the Act respecting the regulation of the financial sector (chapter E-6.1) and this Regulation and any professional qualifications, training or particular experience sought, given the Tribunal's needs;

(3) in substance, the system of confidentiality applicable to the selection procedure and an indication that the selection committee may hold consultations about the candidacies;

(4) in substance, the applicable conditions of employment; and

(5) the final date for submitting a candidacy and the procedure for entry.

**3.** A copy of the notice is sent to the Minister of Finance and to the president of the Tribunal.

### **DIVISION II**

#### **CANDIDACIES**

**4.** Persons who wish to submit their candidacy must, not later than the date indicated in the notice of recruitment, send their résumé and the following information and documents:

(1) name, home address, email address and personal telephone number and, where applicable, address and telephone number of their place of work;

(2) date of birth;

(3) the nature of the activities that they have carried out and through which they have acquired the relevant experience, and the period during which those activities were carried out;

(4) where applicable, the names of the candidate's employers, partners or immediate or line superiors in the last 10 years;

(5) where applicable, the name of any legal person, partnership or professional association of which the candidate is or was a member in the last 10 years;

(6) where applicable, proof that the requirements set out in this Regulation are met as well as those specified in the notice of recruitment;

(7) where applicable, the fact that the candidate has been convicted of a criminal or indictable offence or has been the subject of a disciplinary decision, along with the nature of the offence or fault and the sentence or disciplinary measure imposed;

(8) where applicable, the fact that the candidate has been convicted of a penal offence along with a description of the offence and the sentence imposed, if it is reasonable to believe that such an offence is likely to call into question the integrity or impartiality of the Tribunal or the candidate, to interfere with the candidate's ability to perform the duties as a member of the Tribunal, or to undermine the public's trust in the office holder; and

(9) a brief summary of the reasons for the interest in performing the duties of a member of the Tribunal.

The candidate must also submit a writing agreeing to a verification with, in particular, a disciplinary body or police authorities and, if required, to consultations with the persons, partnerships or professional associations referred to in subparagraphs 4 and 5 of the first paragraph.

### DIVISION III ESTABLISHMENT OF A SELECTION COMMITTEE

**5.** Following the publication of the notice of recruitment, the Associate Secretary General establishes a selection committee, designates the chair and appoints to the committee

- (1) the president of the Tribunal or, after consulting the president, another member of the Tribunal;
- (2) a member of the staff of the Ministère du Conseil exécutif or the Ministère des Finances;
- (3) a representative of the public who is either from the legal or financial community, or a retired person having exercised an adjudicative function within a body of the administrative branch.

The representative of the public selected in accordance with subparagraph 3 of the first paragraph must not belong to the Administration within the meaning of the Public Administration Act (chapter A-6.01), the Autorité des marchés financiers or any other body whose decisions may be contested before the Tribunal or represent them.

**6.** A committee member whose impartiality could be questioned must withdraw with respect to a candidate, particularly in the following situations:

- (1) the member is or was the candidate's spouse;
- (2) the member is related to the candidate by birth, marriage or civil union, to the degree of first cousin inclusively;
- (3) the member is or was a partner, employer or employee of the candidate in the last 10 years; despite the foregoing, a member employed in the public service must withdraw with respect to a candidate only if the member is or has been under the candidate's direct supervision or is or has been the candidate's immediate superior.

A member must immediately bring to the attention of the other members of the committee any fact that may give rise to a reasonable apprehension of bias.

Where a member of the committee has withdrawn, is absent or is unable to act, the decision must be made by the other members.

**7.** Before taking office, the members of the committee must take an oath by solemnly affirming the following: "I, (full name), swear that I will neither reveal nor disclose, without due authorization to do so, anything whatsoever may come to my knowledge in the exercise of my duties."

The oath is taken before a member of the staff of the Ministère du Conseil exécutif or the Ministère des Finances empowered to administer oaths.

The writing evidencing the oath must be sent to the Associate Secretary General.

**8.** A person may be appointed to more than one selection committee at the same time.

**9.** Travel and accommodation expenses of the committee members are reimbursed in accordance with the Règles sur les frais de déplacement des présidents, vice-présidents et membres d'organismes gouvernementaux made by Décret 2500-83 dated 30 November 1983.

In addition to the reimbursement of their expenses, the chair and the committee members who are neither members of the Tribunal nor employees of a government department or body are entitled respectively to fees of \$250 or \$200 per half-day of sitting they attend.

### DIVISION IV FUNCTIONING OF THE SELECTION COMMITTEE

**10.** The list of candidates and their records are sent to the members of the selection committee.

**11.** The committee analyzes the candidates' records and retains those who, in its opinion, meet the eligibility requirements and any additional evaluative measures applied in consideration of the positions to be filled or the large number of candidates.

**12.** The chair of the committee informs the short-listed candidates of the date and place of their meeting with the committee and informs the other candidates that they were turned down and, as a result, will not be called to a meeting.

**13.** The committee's report lists the candidates that were turned down, giving reasons therefor.

### DIVISION V CONSULTATIONS AND SELECTION CRITERIA

**14.** The committee may, on any matter in a candidate's record or any aspect of a candidacy or of the candidacies as a whole, consult with

- (1) any person who has been, in the last 10 years, an employer, partner, immediate or line superior of the candidate; and

(2) any legal person, partnership or professional association of which a candidate is or was a member in the last 10 years.

**15.** The selection criteria to be taken into account by the committee in assessing a candidate's qualifications are

(1) the experience required and any other experience relevant to the duties of a member of the Tribunal;

(2) the extent of the candidate's knowledge or skills in view of the required professional qualifications, training or particular experience specified in the notice of recruitment;

(3) the candidate's personal and intellectual qualities and ability to perform the duties of a member of the Tribunal, in particular the candidate's judgment, including his or her impartiality and independence, open-mindedness, insight, level-headedness, analysis and capacity for synthesis, decision-making abilities, ability to work in a team, ability to express himself or herself, and ability to engage in ethical conduct; and

(4) the candidate's conception of the duties of a member of the Tribunal.

#### **DIVISION VI** REPORT OF THE SELECTION COMMITTEE

**16.** Committee decisions are made by a majority vote of its members. In the case of a tie-vote, the chair of the committee has a casting vote.

**17.** Not later than 30 days after an application therefor by the Associate Secretary General, the committee promptly submits a report including

(1) the names of the candidates who meet the eligibility requirements and who have not been selected;

(2) the names of the candidates whom the committee declared qualified for appointment as members of the Tribunal, their profession, and their personal and professional contact information; and

(3) any information that the committee considers appropriate, particularly with respect to the particular characteristics, qualifications or area of expertise of the qualified candidates.

The report is submitted to the Minister, to the Associate Secretary General, and to the president of the Tribunal if the latter is not a member of the committee.

**18.** Wherever possible, the committee declares qualified a number of candidates corresponding to at least twice the number of vacant positions, if any.

**19.** A committee member may register dissent with respect to all or part of the report.

#### **DIVISION VII** REGISTER OF CERTIFICATES OF QUALIFICATION

**20.** The Associate Secretary General writes to the candidates to inform them of whether they have been declared qualified for appointment as members of the Tribunal.

**21.** The Associate Secretary General keeps the register of certificates of qualification up to date.

A certificate of qualification is valid for a period of 3 years from the date on which it is entered in the register.

The Associate Secretary General strikes out an entry on the expiry of the validity period of the certificate of qualification, or where the person is appointed as a member of the Tribunal, dies or asks to be withdrawn from the register.

#### **DIVISION VIII** RECOMMENDATION

**22.** On being notified of a vacant position, the Associate Secretary General sends a copy of the updated list of persons declared qualified for appointment as members of the Tribunal to the Minister.

**23.** The Minister recommends to the Government the name of a person who has been declared qualified for appointment as a member of the Tribunal.

**24.** If the Minister is of the opinion that he or she cannot, considering the list of persons declared qualified for appointment as members of the Tribunal and in the best interest of the proper operation of the Tribunal, recommend an appointment, the Minister then asks the Associate Secretary General to have a notice of recruitment published, in accordance with Division I.

The committee assessing the qualifications of the candidates who submitted their candidacy after another notice of recruitment and reporting to the Associate Secretary General, to the Minister and to the president of the Tribunal may be composed of persons previously designated to sit on a preceding committee.

#### **DIVISION IX** RENEWAL OF TERMS OF OFFICE

**25.** In the 12 months before the expiry of a Tribunal member's term of office, the Associate Secretary General asks that member to provide the information mentioned in subparagraphs 7 and 8 of the first paragraph of section 4

and to send a writing in which the member agrees to a verification with, in particular, a disciplinary body, a professional order of which the member is or was a member and police authorities and, where applicable, in which the member agrees that the persons, partnerships or professional associations mentioned in section 14 be consulted.

**26.** The Associate Secretary General establishes a committee to examine the renewal of the Tribunal member's term of office and designates the chair thereof.

The committee is composed of a representative from the legal community, a retired person having exercised an adjudicative function within a body of the administrative branch and a university representative who is a member of a professional order, who do not belong to the Administration within the meaning of the Public Administration Act (chapter A 6.01), the Autorité des marchés financiers or any other body whose decisions may be contested before the Tribunal or represent them.

Sections 6 to 9 then apply.

**27.** The committee ascertains whether the Tribunal member whose term of office is being examined for renewal still meets the criteria set out in section 15, considers the member's annual performance evaluations and takes into account the Tribunal's needs. The committee may hold the consultations provided for in section 14 on any matter in the record.

**28.** Committee decisions are made by a majority vote of its members. In the case of a tie-vote, the chair of the committee has a casting vote. A member of the committee may register dissent.

The committee sends its recommendation to the Associate Secretary General and to the Minister.

**29.** The Associate Secretary General is the agent empowered to notify a member of the Tribunal of the non-renewal of a term of office.

## DIVISION X CONFIDENTIALITY

**30.** The names of candidates, the reports of selection committees, the recommendations of renewal committees, the register of certificates of qualification, the list of candidates declared qualified for appointment as members of the Tribunal and any information or document related to a consultation or decision by a committee are confidential.

Despite the foregoing, a member whose term of office is not renewed may consult the recommendation of the examination committee concerning him or her.

## DIVISION XI FINAL PROVISIONS

**31.** 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. 1729-2022, 16 November 2022

Act respecting the regulation of the financial sector  
(chapter E-6.1)

#### Code of ethics of the members of the Financial Markets Administrative Tribunal

Code of ethics of the members of the Financial Markets  
Administrative Tribunal

WHEREAS, under the first paragraph of section 115.15.25 of the Act respecting the regulation of the financial sector (chapter E-6.1), the Government, after consultation with the president of the Financial Markets Administrative Tribunal, is to establish a code of ethics applicable to the members of the Tribunal;

WHEREAS, in accordance with sections 10 and 11 of the Regulations Act (chapter R-18.1), a draft Code of ethics of the members of the Financial Markets Administrative Tribunal was published in Part 2 of the *Gazette officielle du Québec* of 27 April 2022 with a notice that it could be made by the Government on the expiry of 45 days following that publication;

WHEREAS it is expedient to make the Code without amendment;

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

THAT the Code of ethics of the members of the Financial Markets Administrative Tribunal, attached to this Order in Council, be made.

YVES OUELLET  
*Clerk of the Conseil exécutif*

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