



Special issue !

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THE HUMAN SIDE OF CORPORATE BUSINESS

INCORPORATING CHARTERED ACCOUNTANTS: Overview of applicable rules in force since February 20, 2003

It is now official: Chartered Accountants (hereinafter “CA”) can now practice their profession through a corporation. Will the 16,000 CAs in Quebec jump at this opportunity? Will they instead prefer to continue as limited liability partnerships, the other legal form provided for in Quebec’s Professional Code (hereinafter “P.C.”)? For the time being, and partly due to the frenzied income tax period now in full swing, it appears that many accountants have postponed taking any decision on this matter. It should be pointed out that the regulation in question is rather complex, consisting of numerous conditions and formalities. Also, relevant is the fact that most of the conditions are compulsory prerequisites. For another view on this subject, we refer you to a recent article written by Mr. Nicolas Faucher in *La Presse*¹.

Interests

With this change, a CA will no longer be personally liable for obligations of the partnership or corporation or of any professional arising from fault or negligence committed by the latter, in the course of professional activities within the partnership or corporation (article 187.14 and 187.17 P.C.). CAs are allowed to incorporate with other professionals (lawyers, notaries, etc.), subject to adoption by their respective Boards of a similar regulation. Finally, there could be tax advantages arising from these new structures.

Thus, our CA clients and especially our legal clients working in the corporate field are well advised to familiarize themselves with this regulation. They could indeed be called upon to advise not only their clients who are CAs but other professionals (engineers, doctors, etc.) who will eventually be granted these same rights, subject to basically the same conditions.

Legislative Texts

The Professional Code² was amended on June 21, 2001³, to allow any professional Board to authorize its members, by regulation, to exercise their professional activities *within a limited liability partnership or a joint-stock company* (art. 94(p) P.C.).

The Bureau de l’Ordre des comptables agréés du Québec (OCAQ) is the first and only Professional Board in Quebec to this day, to have published such a regulation⁴.

Limited Liability Partnership?

It is the new chapter VI.3 (articles 187.11 to 187.20) of the Professional Code that provides the details on this “new” legal form. That being said, and subject to the provisions of said chapter VI.3, the rules of the Civil Code of Quebec concerning general partnership apply to a LLP⁵. Why was this legal form introduced by the Professional Code and not by the Civil Code? In terms of legislative consistency, we have seen better!

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The main distinction between a general partnership (“GP”) and a LLP is the non-solidarity of a member in terms of the professional liability with respect to the partnership and other members thereof (187.14 P.C.). Please note that an existing GP can continue as a LLP (187.15 P.C.). In such a case, the rights and obligations are transferred to the LLP and all partners in the previous G.P. remain liable in accordance with article 2221 C.C.Q. (art. 187.16 P.C.).

Outline of Main Conditions (see page 3)

We have grouped together the principal legal and formal conditions provided in the regulation in one chart on page 3. It should be consulted together with the regulation. This being said, it is a useful tool to be kept for future reference.

Legal Conditions

They vary depending on whether or not the LLP or corporation offers assurance services (certification services). Except for this distinction, the criteria are practically the same, whether one wishes to form a corporation or a LLP. Therefore to help simplify, our outline covers only the requirements for forming a corporate entity (we use the term “corporation” in the outline).

Article 2 provides for the possibility of other professionals joining with CAs for the purpose of forming a LLP or a corporation.

Formal Conditions

There are many (articles 3 to 15 of the regulation). Please note that a CA is not authorized to practice his profession within a corporation or LLP until these conditions have been met (article 5).

Written Notice to All Clients

It is mandatory for a CA to send this notice to all his or her clients before the incorporation date (article 14). The notice must specify the nature and the effects resulting from the change from a GP into a LLP or a corporation, and particularly regarding the issue of professional liability of members thereof.

Formalities as to the name

A limited liability partnership must use the expression “L.L.P.” in its name or the long version thereof (187.13 P.C.). It can also use in or at the end of the name, the expression “firm of professionals governed by the Professional Code” or the initials “FPGPC” (article 16 of the regulation) This last option is also available to corporations.

On the other hand, restrictions relating to the use of the title “CA” or “chartered accountant” still apply. All the partners practicing in Quebec must therefore be members of the OCAQ. The other partners must be members of a similar Board of CAs elsewhere in Canada⁶. The English version of section 25 uses the word “partnership” without distinguishing between a general partnership and limited liability partnership. Although it may be possible to interpret this as meaning the title of CA can be used by a LLP, it does not seem possible to extend this to include a corporate entity, even though the French version may allow it. It would be prudent to require a written confirmation on this specific issue.

Finally, it must be remembered that the name adopted by a LLP or a corporation must comply with existing rules regarding the use of corporate and business names (Companies Act, Legal Publicity Act and the C.B.C.A.) as well as the revised Code of ethics⁷.

Other Professional Boards

We are told that the Chambre des notaires is poised to make the move any day now. As to lawyers, the consultation process is not yet completed. However, a proposed regulation has been drafted. It will be interesting to follow the situation with regard to other professions, especially in the health sector.

Final Observations

At the present time, it seems that the authorities (Corporations Canada and the Inspector General’s Office) are not committing to ensure that Articles of incorporation contain the conditions set forth by article 1 or article 2 of the regulation. It would appear that the situation is the same regarding compliance of proposed names for LLPs or for corporations formed by CAs pursuant to the regulation.

We at CRAC are able to assist you in these matters.

1. N. Faucher, “Comptables inc.” *La Presse* (Montreal) (March 26, 2003) D18.
2. *Professional Code, R.S.Q. c. C-26*.
3. *An Act to amend the Professional Code and other legislative provisions as regards the carrying on of professional activities within a partnership or company, S.Q. 2001, c. 34*.
4. *Regulation respecting the practice of the chartered accountancy profession within a partnership or a joint-stock company, O.C. 57-2003, January 22, 2003, G.O.Q. 2003.II.857 (in force since February 20, 2003)*.
5. *Art. 187.12 Professional Code; Arts. 2186-2235.C.C.Q.*
6. *Chartered Accountants Act, R.S.Q. c. C-48, s. 25*.
7. *O.C. 58-2003, January 22, 2003, G.O.Q. 2003.II.968, article 76*.

LEGAL CONDITIONS

Company <i>WITH</i> certification services (article 1)	Company <i>WITHOUT</i> certification services (article 2)
<p>1. Must be controlled (50% + 1 votes) by:</p> <p>a) The member(s)*;</p> <p>b) Legal persons, trusts or other enterprises where one or several members* exercise 100% control; or</p> <p>c) A combination of persons cited in a) and b).</p> <p>* Unless otherwise indicated, the expression "member" used in this column includes a member of the <i>Ordre des comptables agréés du Québec (OCAQ)</i> or of the <i>Canadian Institute of Chartered Accountants (CICA)</i> and who exercises his profession within the corporation.</p>	<p>1. Must be controlled (50% + 1 votes) by the following persons, duly authorized and in good standing:</p> <p>a) Other persons governed by the Professional Code (lawyers, notaries, engineers, etc.); brokers or real estate agents (QC); brokers or stock brokers or; representatives, agents or insurance brokers or actuaries;</p> <p>b) Legal persons, trusts or other enterprises where one or more persons cited in paragraph a) exercise 100% control; or</p> <p>c) A combination of persons cited in a) and b).</p>
<p>2. The majority of the board of directors are members*.</p>	<p>2. The majority of the board of directors is made up of persons cited in paragraph 1a).</p>
<p>3. The majority of the board of directors is formed of members* who form at all times, the majority of the quorum. In this case, the members* do not have to exercise their profession within the corporation.</p>	<p>3. The majority of the board of directors is formed of persons cited in paragraph 1a) who form at all times, the majority of the quorum.</p>
<p>4. At least one voting shareholder is a member of the OCAQ and exercises his profession within the corporation.</p>	N/A
<p>5. The Chairman of the board of directors must be a member* and a voting shareholder. In this case, the member* need not exercise his profession within the corporation.</p>	N/A
<p>6. Only a member* can be invested, by agreement or proxy, with the right to vote relating to a share held by a member of the OCAQ, of the CICA or by one of the enterprises cited in sub-paragraph 1b).</p>	N/A

NOTE: All the conditions listed above must appear in the articles of incorporation. The articles must also mention that the corporation is formed for the purpose of carrying on professional activities. To obtain a copy of the schedules adapted for this specific purpose, please contact us.

FORMAL CONDITIONS

The following is a list of written confirmations and authorizations that must be provided by a member to the OCAQ (art. 3 of the regulation). A member is not authorized to practice his profession within the corporation until these conditions have been met (art. 5):

- That the corporation is insured and that coverage includes all requirements provided for in articles 12 and 13;
- That the government agencies recognize the incorporation's existence;
- That the corporation be duly registered (CIDREQ);
- That the corporation maintain an establishment in Quebec;
- An irrevocable written authorization in favor of a person or entity cited in article

192 of the Professional Code, in order that he may consult or obtain an up-to-date copy of the corporate minute book (article 15);

- Payment of fees as determined by the OCAQ;
- A declaration as provided by the OCAQ, signed under oath (article 4);
- These documents must be updated every year, before March 31 (article 8);
- In certain cases, a modification or change of status must be communicated to the OCAQ without delay (article 10);
- If the corporation offers certification services (article 1), a representative must be designated. Otherwise, it is optional (article 6).

WRITTEN NOTICE TO ALL CLIENTS

It is mandatory for a CA to send the required notice to all clients before the incorporation date (article 14).

FORMALITIES AS TO THE NAME

A *limited liability* partnership must use the expression "L.L.P." in its name or the long version thereof (187.13 P.C.). It can also use in or at the end of its name, the expression "firm of professionals governed by the Professional Code" or the initials "FPGPC" (article 16). This last option is also available to corporations.

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