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Regulation 45-106 - 7 months left!

Did you know that there are 7 months remaining to amend the articles of companies formed before September 14, 2005?

That's right! It's already been one year and 5 months since the notice¹ of the *Autorité des marchés financiers* (hereinafter "AMF") was published following the coming into force of the *Regulation 45-106 respecting prospectus and registration exemptions* (hereinafter "Regulation 45-106"). This notice gave companies incorporated prior to September 14, 2005 a delay of 2 years to amend their articles of incorporation in order to comply with the new requirements of Regulation 45-106. These companies have therefore until October 12, 2007 to carry out their amendments.

Closed company vs private issuer

The term *closed company* was abolished and replaced by *private issuer*. A closed company was one in which the articles of incorporation set forth 1) the restrictions on the transfer of shares; 2) the number of shareholders limited to 50; and 3) the prohibition of public distribution.

A private issuer is a company for which 1) its securities, other than non-convertible debt securities, are subject to restrictions on transfer set forth in the articles; 2) its securities are beneficially owned by not more than 50 persons; and 3) its securities are distributed to persons described in section 2.4 of Regulation 45-106.

What do you have to amend?

To qualify as a private issuer, the company must amend its articles to provide for restrictions on the transfer of *securities*, other than non-convertible debt securities. At the same time, the company should remove from the articles the clauses prohibiting public distribution and limiting the number of shareholders to 50, as long as the company factually complies with the latter clause. Keeping these 2 clauses in the articles becomes unnecessarily constraining.²

It's worth reminding everyone that a private issuer must comply with the other criteria set forth in section 2.4, failing which the company loses its qualification as a private issuer.

FOOD FOR THOUGHT

"Fool me once, shame on you; fool me twice, shame on me."

Chinese Proverb

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Loss of private issuer qualification

The advantage of the private issuer exemption is that the company may issue securities without having to prepare a prospectus and register as a dealer. What happens if the company loses its status as a private issuer? Unfortunately, it is lost forever! As a result, the company shall have to avail itself of other exemptions provided for in Regulation 45-106 and comply with the legal requirements of the exemption chosen in its place.

Do you have to amend the articles of the company?

On March 31, 2006, the AMF published another notice³ which attempted to answer some questions raised on different aspects of Regulation 45-106. Among other things, the AMF announced that in certain very specific situations amendments to the articles of the company were not necessary.

Evidently, certain nuances were put forward by the AMF based on the circumstances under which a company finds itself. Therefore, it becomes more and more critical for a company to get a legal opinion from a qualified professional as to its particular situation.

To avoid potential problems especially in situations in which transactions affecting the shares of the company are planned for and given that no one can predict the AMF's position will be the same after October 12, we recommend that you take no chances and proceed with your amendments prior to the deadline. Better safe than sorry!

A lot of amendments to file?

If, as a practitioner, you have a lot of articles of amendment to file, CRAC can certainly help you with this task!

Beginning April 1st, 2007, CRAC offers you a special rate on the basic service fee of \$83 (taxes not included) for filing articles of amendment, both at the provincial and federal levels. The following rebates are based on the number of articles you file which will have to be sent to CRAC simultaneously (minimum 5):

Number of articles	Service fee per articles	Saving per articles
5 to 14	\$48 + taxes	\$35
15 to 24	\$40 + taxes	\$43
more than 25	\$35 + taxes	\$48

These special rates apply to amendments intended solely to meet the requirements of Regulation 45-106. Moreover, a cheque payable to CRAC that will cover all the government fees must be sent with your documents in order to benefit from these special rates. Not only will you not have to worry about this any more but you will save money at the same time!

Conclusion

For those practitioners who are not yet familiar with Regulation 45-106, they have an interest to do so as quickly as possible as time is of essence. A word of advice - please don't wait until the last minute to file your documents, you should do it sooner rather than later.

If you have any questions or would like to make arrangements for the filing of your amendments, please contact Me Franca Sucapane at 514-861-2799, ext. 328 or by email at fsucapane@crac.com

¹ Décision no. 2005-PDG-0329 dated October 14, 2005.

² Me Paul Martel et Me Jocelyn Lafond, « Nouvelles règles sur les placements privés (45-106) ce que les sociétés fermées doivent savoir », Éditions Wilson & Lafleur Itée, Montréal.

³ Avis du personnel de l'AMF : Règlement 45-106 sur les dispenses de prospectus et d'inscription – Questions fréquemment posées, March 31, 2006.

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It's their turn...physicians can now incorporate!

Just like lawyers and notaries, physicians may now practise their professional activities within a joint-stock company or a limited liability partnership.

On March 22, 2007, the *Regulation respecting the practice of the medical profession within a partnership or a company* (hereinafter "Regulation") came into effect and it provides for the terms, conditions and restrictions under which physicians may carry out their profession.

Among other things, physicians must abide by the conditions set forth in section 1 of the Regulation regarding the voting rights with respect to the shares of the company or the partnership and ensure that these conditions are set forth in the articles of the company or the limited liability partnership agreement. Also included in the articles of incorporation must be the mention that the company is formed for the purposes of carrying on professional activities.

A physician who wishes to avail himself of this new manner in which to carry on his professional activities, should consult with the *Collège des médecins du Québec* (hereinafter "College") to ensure that all the terms and conditions are respected and that he has all the documents required to start-up his business according to the Regulation and the College. For a complete guide, visit the College's Web site www.collegedesmedecins.qc.ca

Section 16 of the Regulation stipulates the term "firm of professionals governed by the Professional Code" or the acronym "FPGPC" that the company is authorized to include in the name or after such name. With the objective to protect the public, this term provides physicians a unique way to identify the entity in which they will carry out their profession. The use of this term, however, is not mandatory. This is somewhat reminiscent of the term "A.P.C." or "authorized professional company" that the *Barreau du Québec* had first adopted for its members but finally did not retain it in its regulation.

Finally, schedules adapted for the incorporation of a company for physicians are available at CRAC. For more information, contact Me Annie Fredette at 514-861-2799, ext. 355 or by email at afredette@crac.com.

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Easter Holidays

The offices of the Enterprise Registrar and Corporations Canada will be closed on April 6 and 9, 2007 due to Easter. Our offices will also be closed

on those same days.

To obtain a certificate bearing a date between April 6 and 9, we must receive your documents for filing on Thursday, April 5 before 4:30 pm. The same applies for IncoWeb® users for online filings.

Don't forget to indicate the date you need in your cover letter and articles (for provincial filings). We will take care of getting the date you need for your certificates.

From all of us at CRAC, Happy Easter!

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