

Carrying on Professional Activities and Limited Liability

By Daniel Alain Dagenais and Luc Pariseau

Amendments made to the Quebec Professional Code in 2001 authorize professional orders to allow their members to exercise their professional activities within the framework of a limited liability partnership, or a joint-stock company.

In 2002, the *Ordre des comptables agréés* (Order of Chartered Accountants) was the first professional order to adopt a regulation to this effect. The Quebec Bar and the *Ordre des comptables généraux licenciés* (Certified General Accountants) followed suit in 2004. Others, in particular the *Chambre des notaires* (Chamber of Notaries) and the *Ordre des pharmaciens* (Order of Pharmacists), plan to do the same.

Every professional order must first prepare, together with the *Office des professions*, the regulation required to determine the criteria that members interested in this type of professional practice must respect. These criteria include the ownership of such a firm, its management, professional liability insurance and code of ethics requirements.



Professionals who are currently members of a partnership would have to change to a limited liability partnership or a joint-stock company.

Limited Liability

Even when carrying on professional activities within such a framework, each professional remains personally liable for any professional errors or omissions made by him or by his employees or agents. The amendments to the Professional Code have not limited this liability in any way.

In addition, the Professional Code has not limited the liability arising from the firm's other obligations, such as commercial obligations contracted for the operation of the business.

The principal change is that the professional will no longer be held personally liable for the professional errors or negligence of other professionals who are members of the same firm. In other words, it is the solidary liability of members of the same firm that is the object of the limitation.

However, since the firm itself continues to be liable for errors or negligence of all its members, the legislator intended that each member who practises within such a firm should provide a guarantee, typically in the form of additional insurance, in order to cover the firm's professional liability.

These legislative changes also pave the way for the organization of multidisciplinary partnerships, in some cases.



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Taxation

These legal entities, which may now be used by some professionals, offer attractive tax planning opportunities, including tax deferrals and savings related to the use of a joint-stock company or a family trust to hold the shares.

The members of *Lavery, de Billy* have closely studied the issues raised by the transformation of a professional firm into a limited liability partnership or a joint-stock company and the professional activities within such a framework and have provided advices on these subjects to both professional orders and professional firms on numerous occasions. Our firm members are therefore well-positioned to advise you and help you to implement appropriate and effective solutions to the problems that you may be facing.

This bulletin only provides general guidelines about practising in a limited liability partnership or a joint-stock company. For an analysis of your specific situation, please contact either Daniel Alain Dagenais at 514 877-2924, or by e-mail at dadagenais@lavery.qc.ca, or Luc Pariseau at 514 877-2925, or by e-mail at lpariseau@lavery.qc.ca.

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