

N.B. In the event of a conflict of interpretation, the official French version of this Regulation published by Publications du Québec takes precedence.

## **REGULATION RESPECTING TRUST FUND ACCOUNTING BY CERTIFIED MANAGEMENT ACCOUNTANTS OF QUÉBEC**

Professional Code  
(R.S.Q., c. C-26, s. 89)

### **DIVISION I GENERAL PROVISIONS**

1. The members of the Ordre des comptables en management accrédités du Québec (“the Order”) are authorized, in the practice of the profession, to hold funds and property, including advances of fees, for a third party.
2. This Regulation applies to every member of the Order who, in the practice of the profession, administers, against remuneration, a property or a group of properties or funds belonging to another person, and to every member who administers a not-for-profit organization without charge.
3. The property administered or held by a member may be movable or immovable. It may include cash, negotiable bills payable to the member or to the member in trust, endorsed to the order of the member or of the member in trust, or payable to the bearer, and all bills and valuables payable to the bearer or registered in the name of the member or in the name of the member in trust and entrusted as such to the member.
4. Members may not be entrusted with funds or property that are not tied to the performance of a written contract and related to a clearly defined operation. Members must also take the necessary measures to ascertain that the operations concerned are legal.
5. Members may not combine the funds and property held or administered with their personal property.

They must take the necessary steps and exercise strict control in order to identify the funds and property administered or held.

All funds and all property held by members must, immediately after receipt, be deposited in a trust account.

6. Members who hold funds or property may use such funds or property only for the purposes for which they were entrusted.

Members who administer funds or property for a third party must comply with the contract entered into and satisfy the requirements of the law.

Members entrusted with property must take appropriate steps to preserve it.

7. This Regulation does not exempt members from a more compelling obligation imposed by provincial or federal legislation or by a regulation made under such legislation.

## **DIVISION II**

### **GENERAL TRUST ACCOUNT AND SPECIAL TRUST ACCOUNT**

8. Members may not deposit or leave their personal funds or property in a trust account.

All general trust accounts must be opened in the name of the member entrusted with funds or property. They may also be held jointly by several members or opened in the name of the partnership or joint-stock company within which the member practices the profession, provided a member practicing in the partnership or joint-stock company assumes direct control over the account.

No money or property placed in a general trust account, and no interest or other income generated by the money or property, belongs to the member.

9. A general trust account is any account opened in the name of a member, several members or the partnership or joint-stock company within which the member practices the profession, made up of deposits covered by deposit insurance pursuant to the Canada Deposit Insurance Corporation Act (R.S.C. 1985, c. C-3) or guaranteed under the Deposit Insurance Act (R.S.Q., c. A-26), in which such member deposits funds in Canadian dollars or foreign currencies. The trust account must be opened in Québec in a financial institution governed by the Act respecting trust companies and savings companies (R.S.Q., c. S-29.01), the Bank Act (S.C. 1991, c. 46), the Act respecting financial services cooperatives (R.S.Q., c. C-67.3) or the Trust and Loan Companies Act (S.C. 1991, c. 45).
10. Where so required by provincial or federal legislation or by the interest of a person, or where the person expressly requests the remittance of the interest or other income from the property, the member must deposit the funds in a special trust account or in a special consolidated trust account separate from the member's general account and ensure that the name of the person requiring the account to be opened is indicated on the account.
11. A special trust account is any account that meets the conditions set out in section 9, and any investment that is presumed sound within the meaning of paragraphs 2 and 3 of article 1339 of the Civil Code of Québec (1991, c.64).

In the case of an investment, the account may be opened with an unrestricted practice investment dealer duly accredited by the Autorité des marchés financiers or a similar organization that is a member of the Investment Dealers Association of Canada. The member must also, provided the member holds a general power of attorney, obtain written authorization from the client specifying the type of investment, its maturity and the terms and conditions.

- 12.** A member who deposits funds pursuant to section 10 in a special consolidated trust account must
- (1) exercise direct control over the account or, where the account is opened by the partnership or joint-stock company within which the member practices the profession, ensure that a member practicing within such partnership or joint-stock company exercises direct control over the account;
  - (2) maintain in good order a bank account and an accounting system allocating, on a monthly basis, the interest and expenses generated by the consolidated trust account;
  - (3) make accessible to the person who requested that the funds be deposited in such an account and to the persons and committees contemplated in paragraph 3 of section 13, the computation method, the amount of any expenses related to the consolidated account and the allocation of such expenses.
- 13.** Upon opening a general trust account, the member must complete the form provided by the Order without delay. The form must contain a sworn statement by the member indicating:
- (1) the name, address, postal code and transit number of the depository financial institution, as well as the account number and the date of its opening;
  - (2) an irrevocable waiver in favour of the Order of the interest or other income from such account and an authorization for the financial institution to directly transfer to the Order the interest and other income from such account, less administration costs, if any, for deposit into the indemnity fund;
  - (3) an irrevocable authorization entitling the board of directors, the executive committee, the professional inspection committee, the person responsible for professional inspection appointed in accordance with section 90 of the Professional Code (R.S.Q., c. C-26), an inspector or a syndic of the Order to take any action contemplated in section 32;
  - (4) an irrevocable authorization entitling the board of directors or executive committee, on the recommendation of a syndic, the professional inspection committee or the person responsible for professional inspection appointed in accordance with section 90 of the Professional Code, to require that the member obtain, at the member's expense, the cosignature of another member designated by the inspection committee or a syndic of the Order, to draw cheques and other payment orders on the account.
- 14.** Upon opening a special trust account, the member must complete the form provided by the Order without delay. In addition to the information and other requirements under section 12, the form must contain a sworn statement by the member that:
- (1) the interest or other income from the account will be the property of the person;

- (2) the member has obtained an irrevocable authorization from the person entitling the board of directors, the executive committee or, if applicable, the professional inspection committee, the person responsible for professional inspection appointed in accordance with section 90 of the Professional Code, an inspector or a syndic of the Order to take any action contemplated in section 32.
15. The member must submit without delay a duly completed copy of the form contemplated in sections 13 and 14 to the financial institution or investment dealer with which the general trust account or the special trust account was opened as well as to the Order, and keep a copy of the form.
16. Upon closing a trust account, the member must notify the Order of the closing without delay by completing the form provided by the Order, indicating the name, address, postal code and transit number of the financial institution or investment dealer, as the case may be, as well as the account number and the opening date and the effective closing date of the account.

### **DIVISION III**

#### **CASH TRANSACTIONS**

17. A member may not receive in trust, on a client's behalf, an amount of \$7,500 or more in cash in connection with a contract for services or a mandate.
18. The term "cash" as used in this Regulation means coins within the meaning of section 7 of the Currency Act (R.S.C. 1985, c. C-52) and notes issued by the Bank of Canada pursuant to the Bank of Canada Act (R.S.C. 1985, c. B-2) intended for circulation in Canada, as well as the coins and notes of countries other than Canada.
19. Notwithstanding section 17, a member may receive in trust a total amount of \$7,500 or more in cash
- (1) from a financial institution;
  - (2) from a government department or agency;
  - (3) from a local or territorial authority governed by the Cities and Towns Act (R.S.Q., c. C-19), the Municipal Code of Québec (R.S.Q., c. C-27.1) or the Act respecting municipal territorial organization (R.S.Q., c. 0-9), or by decree, letters patent or special statute;
  - (4) in accordance with a court order or for the purpose of paying a fine;
  - (5) for the payment of expenditure incurred on behalf of the client;
  - (6) as professional fees.
20. A member who is required to pay an amount received in cash pursuant to paragraph 5 of section 19 must make the payment in cash.

In such a case, the member must obtain, from the person to whom the payment is made, a receipt signed by that person containing the following information:

- (1) the name of the client;
- (2) the name of the person to whom the money is paid;
- (3) the amount paid;
- (4) the date of payment;
- (5) the associated file number.

- 21.** For the purposes of section 17, an amount in foreign currency is deemed to have been received as the equivalent amount in Canadian dollars, at the official conversion rate published in the daily digest of exchange rates by the Bank of Canada.

The rate used is the rate in force at noon on the day on which the amount is received or, if that day is a public holiday, on the preceding business day.

- 22.** The member must give the person from whom the member receives an amount in cash a receipt, and keep a duplicate, indicating

- (1) the date on which the amount was received;
- (2) the name of the person from whom the amount was received;
- (3) the amount received;
- (4) the name of the client on whose behalf the amount was received;
- (5) the associated file number.

The receipt must be signed by the member who receives the amount, or by the person authorized by the member to receive the amount.

- 23.** A member who receives an amount in cash of \$7,500 or more in accordance with section 19 must, within 30 days of receipt, send to the syndic of the Order a statement setting out the amount received, the number of the corresponding receipt and, in each case, the exception listed in section 19 on the basis of which the amount was accepted in cash.

#### **DIVISION IV**

#### **KEEPING OF TRUST ACCOUNTS AND ADMINISTRATION OF THE PROPERTY AND FUNDS OF THIRD PARTIES**

- 24.** Trust accounting records must be kept up to date and a reconciliation of accounts must be made each month.

Trust accounting must:

- (1) ensure data confidentiality, security and completeness;
- (2) allow the member and the Order access at all times to readable data;

- (3) include all information relevant for the control and administration of the funds received and required, if applicable, by the standards, principles or data contemplated in section 25.
- 25. Members must comply with generally accepted standards and principles respecting bookkeeping and trust accounting, and with current accounting science.
  - 26. Trust account inflows and outflows, including electronic transfers, are subject to the obligations under this Regulation.
  - 27. For each mandate to administer a person's property, members must keep up-to-date accounting records in accordance with generally accepted accounting standards and principles and with current accounting science.

Members must keep separate accounting records for all trust accounts.

#### **DIVISION V**

#### **REPORT TO THE ORDER**

- 28. Each year, on or before March 31, members must forward to the Order, using the form provided by the Order, a sworn statement attesting that the funds and property entrusted to them during the year ending December 31 were deposited, accounted for and used in accordance with the provisions of this Regulation.
- 29. A single report is sufficient for members who have a joint trust account or who jointly administer the property of third parties, provided they practice their profession within the same partnership or joint-stock company and that a member, who is a partner or director in the partnership or joint-stock company, was designated as the representative for the members in that partnership or joint-stock company and that the Order received prior notice of the designation.
- 30. A member who has not been entrusted with any funds or property during the year ending December 31 must submit to the Order, on or before March 31 and using the form provided for in section 28, a sworn statement to that effect.
- 31. Members must keep, and provide upon request to the Order in a readable format, up-to-date information pertaining to:
  - (1) trust accounting, including:
    - (a) a list of the funds held;
    - (b) a list of the general and special trust accounts held, indicating for each, if applicable, the name of the investment dealer or depository financial institution, the account number and the balance at the end of each fiscal year identified by the Order;

- (c) the accounting books and accounts pertaining to the said accounting;
- (2) the administration of the funds and property of third parties, including:
  - (a) the nature of the administration mandate;
  - (b) the date on which the mandate was entrusted and, if applicable, the date on which it ended;
  - (c) a brief description of the funds and property administered, their value, their location and the member's responsibility for them;
  - (d) the accounting books, accounts and records pertaining to the administration.

Members must keep the accounting books, documents, records and statements of account of the financial institution or investment dealer, or any other document pertaining to trust accounting or to the administration of the funds and property of third parties, for a period of 7 years following the end of the contract, unless different terms and conditions or time periods are provided for in the Regulation adopted under section 91 of the Professional Code.

## **DIVISION VI**

### **MISCELLANEOUS PROVISIONS**

- 32.** The board of directors, the executive committee, the professional inspection committee, the person responsible for professional inspection appointed in accordance with section 90 of the Professional Code, an inspector, or a syndic or the Order, is authorized to:
- (1) request and obtain at any time from the financial institution or investment dealer with which any general or special trust account has been opened all the information or explanations that are necessary or useful for the purposes of this Regulation;
  - (2) require and obtain from the financial institution or investment dealer with which are deposited funds belonging to a client that should have been deposited in a trust account, all the information or explanations that are necessary or useful for the purposes of this Regulation;
  - (3) unless a provincial or federal act or a regulation thereunder provides otherwise, block the funds deposited;
  - (4) unless a provincial or federal act or a regulation thereunder provides otherwise, take possession of any property or funds entrusted to a member, revoke the signature of a member or close the account;
  - (5) unless a provincial or federal act or a regulation thereunder provides otherwise, dispose of the property or funds entrusted to a member if the permit of the member is revoked, the member is subject to a striking off the roll or a limitation of the right to practice, if the member ceases to practice or is in a situation where a provisional guardian or an assignee may be appointed, or when the interest of the person so requires.

33. The board of directors, the executive committee, the professional inspection committee, the person responsible for professional inspection appointed in accordance with section 90 of the Professional Code, an inspector, or a syndic of the Order may, when informed that a member has failed to comply with the provisions of this Regulation, select and appoint a member to conduct an audit of the trust accounting records of the member, at the member's expense, and compel the member to provide the information required for such audit, including the information contemplated in section 31.