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Accounting Firms as the Next Frontier for Private Equity: A Quebec Legal Perspective

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There has been a recent surge of private capital investment in the professional services sector in the United States, particularly in chartered professional accountant (“**CPA**”) firms.² Investors in this sector are often seeking to leverage innovative technologies (frequently driven by artificial intelligence) in providing enhanced service offerings.³ As of August 2024, private equity firms had purchased ownership stakes in five of the top 26 accounting firms in the United States.⁴ By way of example, in 2024, a group led by New Mountain Capital announced the closing of a significant growth investment in Grant Thornton LLP⁵ and Hellman & Friedman and Valeas Capital Partners announced a strategic investment in Baker Tilly⁶. The market for such private capital investments in smaller CPA firms is also reportedly developing.⁷ Such transactions, whether on a large or small scale, require navigating a highly regulated sector and addressing applicable rules regarding the ownership and management of CPA firms, which present a multitude of legal complexities and considerations.

In Canada, the regulatory framework governing the ownership and management of CPA firms varies from province by province, as does the approach taken by applicable regulators with respect to such transactions. By way of example, we note that on November 18, 2024, CPA Ontario (being the governing body for CPAs in the province of Ontario) published regulatory guidance expressly responding to the growing trend of private equity investments in CPA firms internationally, and reminding firms of the “registration requirements in Ontario that do not permit private equity structures”, as opposed to

¹ With special thanks to Bruno Floriani for his invaluable input in connection with this article, and to Aurélie Maroun, summer student, for her assistance in researching the applicable law.

² Nadya Britton, “The rise of private equity in accounting: Not just for large firms anymore”, Thomson Reuters Institute (August 20, 2024) online : <thomsonreuters.com> [<https://www.thomsonreuters.com/en-us/posts/tax-and-accounting/private-equity-accounting-firms/>].

³ *Ibid.*

⁴ *Ibid.*

⁵ Grant Thornton, “New Mountain Capital and Grant Thornton close growth investment”, (May 31, 2024), online : <grantthornton.com> [<https://www.grantthornton.com/insights/press-releases/2024/may/new-mountain-capital-and-grant-thornton-close-growth-investment/>].

⁶ Baker Tilly, “Baker Tilly Secures Strategic Investment Led By Hellman & Friedman”, (February 05, 2024) online: <bakertilly.com> [<https://www.bakertilly.com/news/baker-tilly-secures-strategic-investment-led-by-hellman/>].

⁷ *Supra* note 2.

regulations in the United States and the United Kingdom which, as mentioned in such regulatory guidance, require audit firms to be majority controlled by CPAs.⁸

QUEBEC CONTEXT

In the province of Quebec, the practice of the CPA profession is governed by the *Chartered Professional Accountants Act* (c-48.1) (the “**Act**”) and underlying regulations. Article 4 of the Act defines the practice of the CPA profession so as to include public accountancy, which consists of:

- (1) expressing an opinion to provide a level of assurance about a financial statement or any part of a financial statement, or about any other information related to the financial statement; this corresponds to an assurance engagement, which comprises the performance of both an audit engagement and a review engagement, as well as the issue of special reports;*
- (2) issuing any form of certification, declaration or opinion in respect of information related to a financial statement or to any part of a financial statement, or in respect of the application of specified auditing procedures with respect to financial information, other than financial statements, neither being intended exclusively for internal management purposes; and*
- (3) performing a compilation engagement that is not intended exclusively for internal management purposes. (...)*

Members of the CPA profession in Quebec are authorized to carry on their professional activities within a limited liability partnership (an “**LLP**”) or joint-stock company (a “**Company**”) that complies with certain restrictions on the ownership and management of a CPA firm, which are set out in the *Regulation respecting the practice of the chartered professional accountancy profession within a partnership or a joint-stock company* (chapter C-48.1, r. 16) (the “**Regulation**”).

Article 1 of the Regulation provides that members of the CPA profession in Quebec may practice their profession within an LLP or Company holding itself out as a partnership or company of CPAs, or within which one or more members offer assurance services, provided that the following conditions are met:

- At all times, more than 50% of the voting rights attached to the shares of the LLP or Company are held (a) by members of the CPA order in Quebec or of a professional order of chartered accountants, certified general accountants or certified management accountants, or the equivalent in a Canadian province or territory, who are practising the profession within the LLP or Company (collectively, the “**Authorized Individuals**”), (b) by legal persons, trusts or any other enterprise, the voting rights or partnership shares of which are held wholly by one or more members of the CPA order in Quebec or by other Authorized Individuals who are practising the profession within the LLP or Company (collectively, the “**Authorized Entities**”) or (c) by a combination of Authorized Individuals and Authorized Entities.
- A majority of the board of directors of the Company, a majority of the partners (or as applicable, of the managers appointed by the partners to manage the affairs) of the LLP) must be Authorized Individuals who are practising the profession within the Company or LLP.

⁸ Chartered Professionals of Ontario, “Alternative Practice Structures and Private Equity”, (November 18, 2024), online: <cpaontario.ca> [<https://www.cpaontario.ca/members/regulations-guidance/regulatory-publications/alternative-practice-structures-and-private-equity>].

- The board of directors or similar internal management board must be composed of a majority of Authorized Individuals, who shall, at all times, constitute the majority of the quorum of such board.
- One or more members of the CPA profession in Quebec who engages in professional activities within the LLP or Company must hold a partnership unit or company share with voting rights.
- The chair of the board of directors of the Company (or the person who performs similar functions in the case of an LLP) must be a shareholder or partner with voting rights who is an Authorized Individual.
- Only an Authorized Individual who is practising the profession within the Company or LLP may be granted, by voting agreement or proxy, the voting right attached to a company share or partnership unit held by another Authorized Individual, or by an Authorized Entity.

These conditions must be included in the articles of incorporation of the Company or in the partnership agreement in respect of the LLP, and such documents must also stipulate that the LLP or the Company is constituted for the purpose of carrying on professional activities.

Article 2 of the Regulation expands the list of authorized classes of individuals and entities who may hold more than 50% of the voting rights attached to the units of the LLP or the shares of the Company, in all other circumstances, to certain other individuals practising in the LLP or Company such as (a) members of another professional order governed by the *Professional Code* (Quebec) (chapter C-26), (b) professional accountants who are members of a professional order of accountants or the equivalent in a Canadian province or territory, (c) licensed real estate or mortgage brokers, (d) insurance representatives, claims adjusters and financial planners, (e) licensed dealers, advisers and investment fund managers, (f) members of the Canadian Institute of Actuaries, (g) legal persons, trusts or any other enterprise, the voting rights or partnership units of which are wholly held by one or more persons contemplated in clauses (a) through (f), or (h) by a combination of the foregoing. This expanded group of authorized persons can comprise the majority of the directors of the board of directors of the Company or the partners of the LLP, and constitute the majority of the quorum of such board.

It should be further noted that the Authorized Individuals and Authorized Entities, together with the percentage of voting rights in the LLP or Company held by each, must be identified in an affidavit to be furnished to the CPA order in Quebec, by a member of the CPA order wishing to practise his profession within the LLP or Company.⁹

In addition to applicable ownership and management restrictions, there are provisions governing ethical obligations and professional independence that should be carefully considered in the potential restructuring of a CPA firm, including the independence standards provided for in Rule 204 of the CPA Code of Professional Conduct adopted by CPA Canada's Public Trust Committee, to which members of the CPA order in Quebec are required to comply.¹⁰ We specifically note s. 75 of the *Code of ethics of chartered professional accounts* (Quebec), which provides as follows:

A chartered professional accountant shall not conclude or allow to be concluded, at a firm holding itself out to be a partnership or company of chartered professional accountants offering public accountancy services, any agreement, particularly a unanimous shareholders' agreement, that impairs the independence, objectivity and integrity necessary to provide public accountancy services

⁹ Regulation respecting the practice of the chartered professional accountancy profession within a partnership or a joint-stock company, CQRL c. C-48.1, r. 16, s. 4.

¹⁰ Code of ethics of chartered professional accounts (Quebec), c. C-48.1, r. 6.1, s. 28.

or that could lead chartered professional accountants to violate the Chartered Professional Accountants Act (chapter C-48.1), the Professional Code (chapter C-26) or the regulations made thereunder.

CONCLUSION

In summary, the Regulation sets forth various restrictions on the ownership and management of an LLP or Company through which members of the CPA profession in Quebec are permitted to carry on their professional activities. The Regulation expressly limits those individuals and entities which may hold a controlling (more than 50%) voting interest of the LLP or Company.

Given that the Regulation does not impose restrictions with respect to the non-controlling (less than 50%) voting interest in the LLP or Company, it would appear possible to structure a CPA firm with a non-majority participation by a private equity firm or other investor who is not an Authorized Person or an Authorized Entity. Furthermore, the absence of restrictions with respect to the ownership of non-voting units or shares in the LLP or Company operating a CPA practice allows, in principle, for a significant economic participation in the profits of the CPA practice. Finally, the expanded definition of an Authorized Person or Authorized Entity, which includes various other professions, provides significant flexibility in structuring multidisciplinary firms.

Ultimately, insofar as the operation of the CPA practice itself is concerned, regardless of the legal form of the entity engaged in such practice, the fundamental restriction remains avoidance of any control by a person or entity (other than an Authorized Person or Authorized Entity, respectively) that may impair the independence, objectivity and integrity necessary to provide public accountancy service or that could lead CPAs to violate applicable professional rules. This having been said, many business aspects of the operation of a professional practice, or the corporate governance of an entity carrying on a professional practice, may be viewed as not affecting the practice itself, which allows for additional creativity in structuring an investment by a private equity firm or other investor who is not an Authorized Person or an Authorized Entity.

Any such alternate structure pursuant to which a private equity firm or other investor could acquire a substantial interest in a Quebec-based LLP or Company which carries on a CPA practice would require significant review and investigation by counsel with previous experience and expertise in the implementation of such transactions in highly regulated sectors, as well as discussions with the application professional orders in the various provinces in which such a Quebec-based LLP or Company would intend to operate. In fact, it should be emphasized that any such structure, to the extent feasible under applicable law, would require careful implementation to ensure that even where full compliance with applicable ownership and management restrictions has been achieved, members of the CPA order in Quebec who carry on their professional activities within the CPA firm in question will preserve appropriate professional independence and control over such activities and respect all applicable professional and ethical requirements governing the CPA profession in Quebec.

The information and commentary set forth herein are for the general information of the reader and are not intended as legal advice or as an opinion to be relied upon in relation to any particular circumstances.

If you have any questions with respect to the subject matter hereof, please contact one of our specialized attorneys, who will be pleased to advise you.

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