



NATIONAL ASSEMBLY OF QUÉBEC

FIRST SESSION

FORTY-SECOND LEGISLATURE

Bill 53

Credit Assessment Agents Act

Introduction

**Introduced by
Mr. Eric Girard
Minister of Finance**

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EXPLANATORY NOTES

This bill regulates the commercial practices and management practices of credit assessment agents. It entrusts the supervision and control of credit assessment agents to the Autorité des marchés financiers (the Authority), which will be responsible for designating the agents to whom the bill applies where the agent's business with financial institutions is significant enough to justify the designation.

The bill proposes three protection measures that a credit assessment agent must take when asked as regards the records the agent holds on each person concerned, namely a security freeze, a security alert and an explanatory statement. The bill therefore confers the right on any person concerned by a record held by a credit assessment agent to take each of those protection measures regarding his or her record. It also confers the right on every person concerned to the communication of their credit rating.

The bill sets out the terms and conditions for the exercise of those rights as well as the recourses and complaints that may be respectively exercised before the Commission d'accès à l'information or submitted to the Authority.

The bill prescribes the commercial practices that credit assessment agents must adhere to and imposes the obligation for them to adhere to appropriate management practices.

The bill also sets out the administrative measures and the other powers of the Authority, such as the power to issue instructions, guidelines and orders and to request an injunction and participate in proceedings relating to the administration of the Act.

Lastly, the bill prescribes monetary administrative penalties and sets out penal provisions.

LEGISLATION AMENDED BY THIS BILL:

- Act respecting the regulation of the financial sector (chapter E-6.1);
- Act respecting the protection of personal information in the private sector (chapter P-39.1).

Bill 53

CREDIT ASSESSMENT AGENTS ACT

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

INTRODUCTORY PROVISIONS

1. This Act applies to the supervision and control of credit assessment agents' commercial practices and management practices.

It also confers rights on the persons concerned by the records the agents hold and governs the exercise of those rights, in particular so that the persons may avail themselves of the protection measures the Act establishes.

2. For the purposes of this Act, a credit assessment agent means a personal information agent, within the meaning of the second paragraph of section 70 of the Act respecting the protection of personal information in the private sector (chapter P-39.1), where designated by the Autorité des marchés financiers (the Authority).

CHAPTER II

DESIGNATION AND DESIGNATION REVOCATION

3. The Authority designates a personal information agent where it considers that the agent's business with authorized financial institutions or banks, within the meaning of the Bank Act (Statutes of Canada, 1991, chapter 46), is significant enough to justify the designation.

It revokes the designation, on its own initiative or on an application made by the credit assessment agent concerned, where it considers that the significance of the business no longer justifies it.

Before designating a personal information agent or rejecting an application for the revocation of the designation of a credit assessment agent, the Authority must notify the prior notice prescribed by section 5 of the Act respecting administrative justice (chapter J-3) to the agent and grant the latter at least 10 days to submit observations.

4. The following are authorized financial institutions:

- (1) insurers authorized under the Insurers Act (chapter A-32.1);
- (2) deposit institutions authorized under the Deposit Institutions and Deposit Protection Act (chapter I-13.2.2);
- (3) financial services cooperatives within the meaning of the Act respecting financial services cooperatives (chapter C-67.3);
- (4) trust companies authorized under the Trust Companies and Savings Companies Act (chapter S-29.02); and
- (5) legal persons registered as dealers or advisers under the Derivatives Act (chapter I-14.01) or the Securities Act (chapter V-1.1) or registered as investment fund managers under the latter Act.

5. Where the Authority designates a personal information agent or revokes a credit assessment agent's designation, it notifies a document to the agent attesting that decision. The Authority sends a reproduction of the document to the Minister and the Commission d'accès à l'information.

The document must include the date and time of the Authority's decision and, if different, the date and time of the designation or designation revocation, as the case may be.

6. The Authority publishes the decision in its bulletin.

7. A decision referred to in section 3 may, within 30 days of its notification, be contested before the Financial Markets Administrative Tribunal.

The Tribunal may only confirm or quash a contested decision.

CHAPTER III

PROTECTION MEASURES, CONCERNED PERSONS' RIGHTS, RECOURSES AND COMPLAINTS

DIVISION I

PROTECTION MEASURES

8. The protection measures to which a record held by a credit assessment agent is liable to be subject are a security freeze, a security alert and an explanatory statement.

Such measures may be suspended or revoked.

9. A security freeze prohibits the credit assessment agent holding the record concerned from communicating personal information and the information produced on the basis of that information, where the communication is for the purpose of entering into a credit contract, increasing credit extended under such a contract or entering into a long-term contract of lease of goods.

For the purposes of this section:

(1) credit that is the subject of a contract has the meaning assigned by subparagraph *f* of the first paragraph of section 1 of the Consumer Protection Act (chapter P-40.1); and

(2) long-term contract of lease of goods has the meaning assigned by section 150.2 of that Act.

However, these definitions apply even if the person concerned is not a consumer.

10. A security alert requires the credit assessment agent holding the record concerned to notify the third party, to whom the agent communicates personal information the record contains or information produced on the basis of that information, of the third party's obligation under section 19.1 of the Act respecting the protection of personal information in the private sector.

Where an agent communicates such information in a credit report or other document, the notice provided for in the first paragraph must clearly appear on the report or document.

The first and second paragraphs do not apply if an Act provides that the information may be communicated to a third party without the consent of the person concerned.

11. The explanatory statement requires the credit assessment agent holding the record concerned to disclose the existence of a disagreement between the person concerned by the record and the agent over the application of a legislative provision on access to personal information or the correction of such information to any third party to whom the agent communicates personal information the record contains or information produced on the basis of that information.

Where the agent communicates such information in a credit report or other document, a mention of the existence of the disagreement and statement must clearly appear in the report or document.

At the third party's request, the agent sends the party a reproduction of the statement.

12. A record ceases to be the subject of a protection measure on revocation of the measure.

It also ceases to be the subject of such a measure when a time limit provided for by government regulation expires, except if the measure is an explanatory statement, in which case the record also ceases to be the subject of such a measure on the first of the following occurrences:

- (1) the time at which the parties agree to end the disagreement;
- (2) the time at which the Commission d'accès à l'information refuses or ceases to examine a disagreement under section 52 of the Act respecting the protection of personal information in the private sector; or
- (3) the time at which a decision that has become final puts an end to the disagreement.

DIVISION II

RIGHTS OF PERSONS CONCERNED

§1. — General provisions

13. In addition to the rights conferred by articles 35 to 40 of the Civil Code and the Act respecting the protection of personal information in the private sector, a person whose record is held by a credit assessment agent is entitled to obtain from the agent communication of his or her credit rating, together with the explanations necessary to understand it.

The person concerned is also entitled to have the agent take, with regard to that record, each of the protection measures provided for in Division I. The person is also entitled to obtain the revocation or suspension of such measures.

The rights conferred by this section are to be exercised in accordance with subdivision 2.

14. For the purposes of this Act, “credit rating” means the rating that is usually communicated to money lenders who request it.

15. A credit assessment agent may not take into account the exercise of a right conferred by this Act in the production of a credit rating nor of any other personal information concerning the person who exercises such a right.

§2. — Request to exercise a right

16. Exercising a right conferred by this Act requires a person to send a request to exercise the right to the credit assessment agent which proves that he or she is the person concerned, the representative of the person concerned or the person having parental authority over the person concerned, together with, if applicable, payment for the reasonable fees the agent may demand and the explanatory statement referred to in section 17.

Unless it is necessary to submit an explanatory statement with it, a request to exercise a right may be made verbally.

17. An explanatory statement must be submitted with the request for the exercise of the right to have such a statement added to the record, unless the person concerned consents to the statement proposed by the credit assessment agent from whom that protection measure is requested.

Explanatory statements must

- (1) contain a description of the disagreement referred to in section 11;
- (2) present the point of view of the person concerned as regards the disagreement, without it being defamatory; and
- (3) not exceed the number of words prescribed by government regulation and comply with any other conditions so prescribed.

18. A credit assessment agent must grant a request to exercise a right if it is compliant with the requirements of section 16.

19. The credit assessment agent holding a record that is the subject of a request for the exercise of a right must send a reply in writing to the person making the request, which either grants the request or gives reasons for its refusal to do so, and informs the person of his or her recourses.

The agent must send the reply promptly and not later than on the expiry of the time limit prescribed by government regulation.

20. A credit assessment agent who grants a request for the exercise of a right must, promptly and not later than on the expiry of the time limit prescribed by government regulation, communicate to the person making the request the credit rating of the person concerned, together with the explanations necessary to understand it or, as the case may be, take, suspend or revoke the measure that is the subject of the request.

DIVISION III

RECOURSES AND COMPLAINTS

21. Any interested person may submit an application to the Commission d'accès à l'information for the examination of a disagreement on the merits of a reason for refusing to grant a request for the exercise of a right conferred by this Act.

Division V of the Act respecting the protection of personal information in the private sector applies to the examination by the Commission of such a disagreement.

22. Even if the time limit prescribed by section 43 of the Act respecting the protection of personal information in the private sector is expired, the person who, under section 42 of that Act or section 21 of this Act, intends to submit an application for examination of a disagreement to the Commission d'accès à l'information may do so within 30 days of the latest of the following events:

- (1) the receipt of the notice under section 37;
- (2) the person's application to the credit assessment agent to have the complaint record examined by the Authority; or
- (3) the receipt of the notice under section 41.

The Commission d'accès à l'information may, for reasonable cause, release the applicant from a failure to observe the time limit provided for in this section.

23. A person who made a request for the exercise of a right to whom the credit assessment agent failed to reply before the expiry of the applicable time limit may file a complaint with the Authority.

The person may also file a complaint with the Authority where an agent, after having granted the request, does not follow up on it as provided for in section 20.

CHAPTER IV

SUPERVISION AND CONTROL OF CREDIT ASSESSMENT AGENTS' COMMERCIAL PRACTICES AND MANAGEMENT PRACTICES

DIVISION I

GENERAL PROVISION

24. The Authority supervises and controls the commercial practices and management practices of credit assessment agents.

DIVISION II

APPLICATION OF CERTAIN PROVISIONS TO GROUPS AND THIRD PARTIES ACTING ON BEHALF OF A CREDIT ASSESSMENT AGENT

25. The obligations of a credit assessment agent under the provisions of this Act remain unchanged by the mere fact that the agent entrusts a third party to carry on any part of an activity governed by those provisions.

26. A credit assessment agent must ensure that any group in respect of which the agent is the holder of control complies with the prohibitions imposed on the agent by this Act.

A prohibition imposed on such an agent applies to the groups in respect of which it is the holder of control not only when each of them is acting alone, but also when the acts or omissions of all or some of them would have contravened that prohibition had they been done or made by only one of them.

This section does not prohibit a group in respect of which a credit assessment agent is the holder of control from carrying on activities the group is permitted to carry on by the Act governing it even though the agent is not permitted to carry on those activities, provided the group is a financial institution.

27. A credit assessment agent is liable for failures to comply with this Act by a group in respect of which the agent is the holder of control or by whoever is the holder of control of the group and performs an obligation of the agent on the agent's behalf, as if those failures to comply were the agent's own.

28. The Authority's inspection functions and powers, provided for by the Act respecting the regulation of the financial sector (chapter E-6.1), that may be exercised in relation to a credit assessment agent extend to any affiliated group if the person authorized to conduct an inspection of the agent considers it necessary to inspect the group in order to complete the verification of the agent's compliance with this Act, even though the group does not carry on activities governed by an Act referred to in section 7 of that Act.

29. The Authority may prohibit a credit assessment agent's obligations under this Act from being performed by a third party on the agent's behalf if, in the Authority's opinion, such performance would render the application of this Act difficult or ineffective. Before rendering its decision, the Authority must notify the prior notice prescribed by section 5 of the Act respecting administrative justice to the agent in writing and grant the latter at least 15 days to submit observations.

30. Sections 8 to 19 of the Insurers Act apply to this Act, with the necessary modifications.

DIVISION III

COMMERCIAL PRACTICES

§1. — General provisions

31. A credit assessment agent must adhere to sound commercial practices.

Such practices include providing fair treatment to the persons concerned whose record the agent holds, in particular by

(1) providing appropriate information, in particular as regards the exercise of the rights conferred on them by this Act;

(2) making available to them appropriate means of communication to facilitate the timely exercise of those rights;

(3) adopting a policy for processing complaints filed by the persons concerned and resolving disputes with them; and

(4) keeping a complaints register.

32. A credit assessment agent must be able to show to the Authority that it adheres to sound commercial practices.

§2. — Complaint processing and dispute resolution policy and examination of complaints records by the Authority

33. The complaint processing and dispute resolution policy adopted under subparagraph 3 of the second paragraph of section 31 must, in particular,

(1) set out the characteristics that make a communication to the credit assessment agent a complaint; and

(2) provide for a record to be opened for each complaint and prescribe rules for keeping such records.

The agent must make a summary of the policy, including the elements specified in subparagraphs 1 and 2 of the first paragraph, publicly available on its website and disseminate it by any appropriate means to reach the persons concerned.

34. The Authority may, by regulation, determine the policy that credit assessment agents must adhere to under subparagraph 3 of the second paragraph of section 31 or components of such a policy.

35. The credit assessment agent must, without delay, enter in the complaints register referred to in subparagraph 4 of the second paragraph of section 31 a communication having the characteristics of a complaint.

36. Within 10 days after a complaint is entered in the complaints register, the credit assessment agent must send the complainant a notice stating the complaint registration date and the complainant's right, under section 38, to have the complaint record examined.

37. Within 30 days from the time a complaint is entered in the complaints register, the credit assessment agent must send the complainant a notice specifying the manner in which the complaint was processed and mentioning the complainant's right, under section 38, to have the complaint record examined within 30 days after receiving the notice.

38. Within 30 days after receiving the notice under section 37, a complainant whose complaint has been entered in the complaints register may, if dissatisfied with the processing of the complaint by the credit assessment agent or the outcome, make a request to the agent to have the complaint record examined by the Authority.

The agent is required to comply with the complainant's request and to send the record to the Authority.

39. The Authority examines the complaint records that are sent to it.

The Authority may, with the parties' consent, act as conciliator or mediator or designate a person to act as such.

In addition, the Authority may invite an authorized financial institution or a bank to participate in the conciliation or mediation, if it considers that such participation could contribute to resolving the situation that gave rise to a complaint or, in the case of a financial institution, if it considers that the latter's participation would be in keeping with sound commercial practices.

40. Conciliation or mediation may not, alone or in combination, continue for more than 60 days after the date of the first conciliation or mediation session, as the case may be, unless the parties consent to it.

Conciliation and mediation are free of charge.

41. Where the examination of a complaint record and, if applicable, conciliation or mediation have not resolved the situation giving rise to the complaint, the Authority sends the complainant a notice stating that fact and mentioning the complainant's right, where the complaint is partially or exclusively based on a disagreement within the meaning of section 42 of the Act respecting the protection of personal information in the private sector or section 21 of this Act, to submit the disagreement to the Commission d'accès à l'information.

42. Unless the parties agree otherwise, nothing that is said or written in the course of a conciliation or mediation session may be admitted into evidence before a court of justice or before a person or body of the administrative branch exercising adjudicative functions.

A conciliator or mediator may not be compelled to disclose anything revealed or learned in the exercise of conciliation or mediation functions or to produce a document prepared or obtained in the course of such functions before a court of justice or before a person or body of the administrative branch exercising adjudicative functions.

Despite section 9 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), no one has a right of access to a document contained in the conciliation or mediation record.

43. Despite sections 9 and 83 of the Act respecting Access to documents held by public bodies and the Protection of personal information, the Authority may not communicate a complaint record without the authorization of the credit assessment agent that sent it.

44. On the date set by the Authority, a credit assessment agent must send the Authority a report on the complaint processing and dispute resolution policy adopted under subparagraph 3 of the second paragraph of section 31 stating, among other things, the number of complaints that the agent has entered in the complaints register and their nature.

The report must cover the period determined by the Authority.

DIVISION IV

MANAGEMENT PRACTICES

45. A credit assessment agent must adhere to appropriate management practices ensuring that the rights conferred by this Act are respected.

46. A credit assessment agent must be able to show to the Authority that it adheres to appropriate management practices.

DIVISION V

ANNUAL STATEMENTS AND OTHER COMMUNICATIONS WITH THE AUTHORITY

47. A credit assessment agent must prepare an annual statement of the position of its affairs in Québec as at the date determined by the Authority.

The statement's certification, form and content and the date on which it must be sent to the Authority are determined by the Authority.

48. A credit assessment agent must send the Authority, according to the form and content and at the time or intervals the Authority determines, the documents it considers useful to determine whether the agent is complying with this Act.

49. The Authority may require a credit assessment agent to provide the documents or information the Authority considers useful for the purposes of this Act or that the agent otherwise provide access to those documents and information.

The agent is required to reply by not later than the date determined by the Authority.

CHAPTER V

ADMINISTRATIVE MEASURES AND OTHER POWERS OF THE AUTHORITY

DIVISION I

INSTRUCTIONS, GUIDELINES AND ORDERS

50. The Authority may establish instructions intended for a credit assessment agent.

Instructions must be in writing and must be specific to the addressee, but need not be published.

The Authority must, before sending an instruction, notify the addressee and give the addressee an opportunity to submit observations.

51. The Authority may establish guidelines intended for all credit assessment agents.

Guidelines must be general and impersonal; the Authority publishes them in its bulletin after sending a copy of them to the Minister.

52. An instruction informs its addressee of the obligations that, in the Authority's opinion, are incumbent on the addressee under Chapters III and IV.

For its part, a guideline informs its addressees of measures that, in the Authority's opinion, may be established to satisfy the obligations specific to credit assessment agents that are incumbent on them under those chapters.

53. The Authority may order a credit assessment agent to cease a course of action or to implement specified measures if the Authority is of the opinion that the agent is failing to perform its obligations under this Act in full, properly and without delay.

The Authority may, for the same reasons, issue an order against a third party that, on behalf of a credit assessment agent, carries on its activities or performs its obligations.

At least 15 days before issuing an order, the Authority must notify the prior notice prescribed by section 5 of the Act respecting administrative justice to the contravener in writing, stating the reasons which appear to justify the order, the date on which the order is to take effect and the contravener's right to submit observations.

The Authority may not issue any order with respect to a disagreement submitted to the Commission d'accès à l'information or that is the object of an enforceable decision rendered by the latter.

54. The Authority's order must state the reasons for which it is issued. The order must be served on each person to whom it applies.

The order takes effect on the date it is served or on any later date specified in it.

55. The Authority may, without prior notice, issue a provisional order valid for up to 15 days if, in its opinion, any period of time granted to the person concerned to submit observations may be detrimental.

The order must include reasons and takes effect on the date it is served on the person concerned. The latter may, within six days after receiving the order, submit observations to the Authority.

56. The Authority may revoke or amend an order it has issued under this Act.

DIVISION II

INJUNCTION AND PARTICIPATION IN PROCEEDINGS

57. The Authority may apply to a judge of the Superior Court for an injunction in respect of any matter relating to the carrying out of this Act.

The application for an injunction constitutes a proceeding in itself.

The procedure prescribed in the Code of Civil Procedure (chapter C-25.01) applies, except that the Authority cannot be required to give security.

58. The Authority may, on its own initiative and without notice, intervene in any proceeding relating to a provision of this Act.

DIVISION III

REGISTER, ADMINISTRATION OF THE ACT AND AUTHORITY'S REPORT

59. The Authority must establish and keep up to date a register of credit assessment agents that contains the following information for each of them:

(1) its name, the name it uses in Québec if different, the address of its head office and, if its head office is not in Québec, the address of its principal establishment in Québec; and

(2) any other information considered by the Authority to be useful to the public.

The information contained in the register is public information; it may be set up against third parties as of the date it is entered and is proof of its contents for the benefit of third parties in good faith.

60. A credit assessment agent must declare to the Authority any change required to be made to the information concerning that agent contained in the register, unless the Authority was otherwise informed by a notice or other document sent in accordance with this Act.

The declaration must be filed within 30 days of the date of the event giving rise to the change.

61. The costs that must be incurred by the Authority for the administration of this Act are to be borne by the credit assessment agents; they are determined annually by the Government based on the forecasts provided to it by the Authority.

The Government prescribes, by regulation, the rules determining the manner in which the Authority distributes the costs among the credit assessment agents.

The difference noted between the forecast of the costs that must be incurred for the administration of this Act for a year and those actually incurred for the same year must be carried over to similar costs determined by the Government for the year after the difference is noted.

The certificate of the Authority must definitively establish the amount payable by each agent under this section.

62. The Authority must, before 30 June each year, report to the Minister, on the basis of the information obtained from the credit assessment agents and following the investigations, inspections and evaluations made by the Authority, on the commercial practices and management practices of all the agents for the year ending on the preceding 31 December.

63. The Minister tables the Authority's report in the National Assembly within 30 days of its receipt or, if the Assembly is not sitting, within 15 days of resumption.

DIVISION IV

REGULATIONS

64. In addition to the other regulations it may make under this Act, the Authority may, by regulation, determine the standards that apply to credit assessment agents as regards their commercial practices and management practices.

65. A regulation made under this Act by the Authority is approved by the Minister with or without amendment.

The Minister may make such a regulation if the Authority fails to do so within the time specified by the Minister.

A draft of a regulation must be published in the Authority's bulletin with the notice required under section 10 of the Regulations Act (chapter R-18.1).

The draft of the regulation may not be submitted for approval, and the regulation may not be made before 30 days have elapsed since the publication of the draft.

A regulation under this section comes into force on the date of its publication in the *Gazette officielle du Québec* or on any later date specified in it. It must also be published in the Authority's bulletin. If the regulation published in the Authority's bulletin differs from the one published in the *Gazette officielle du Québec*, the latter prevails.

Sections 4 to 8, 11 and 17 to 19 of the Regulations Act do not apply to a regulation made by the Authority under this Act.

66. In addition to the other regulations it may make under this Act, the Government may, by regulation, set a price limit on each service provided by a credit assessment agent to a person whose record the agent holds.

CHAPTER VI

MONETARY ADMINISTRATIVE PENALTIES AND PENAL PROVISIONS

DIVISION I

MONETARY ADMINISTRATIVE PENALTIES

§1. — Failures to comply

67. A monetary administrative penalty of \$1,000 may be imposed on a credit assessment agent that,

(1) in contravention of section 44, fails to send the Authority a report on its complaint processing and dispute resolution policy; or

(2) in contravention of section 48, fails to send the Authority an annual statement of the position of its affairs.

The penalties prescribed in the first paragraph also apply if the document concerned is incomplete or is not sent before the specified time limit.

68. A monetary administrative penalty of \$2,500 may be imposed on a credit assessment agent that, in contravention of section 31, fails to adopt a complaint processing policy or does not keep the complaints register prescribed by that section.

69. A monetary administrative penalty of \$5,000 may be imposed on a credit assessment agent that,

(1) in contravention of section 15, takes into account the exercise of a right conferred by this Act in the production of a credit rating or of any other personal information concerning the person who exercises such a right;

(2) in contravention of section 19, fails to send a reply in writing to a request for the exercise of a right;

(3) in contravention of section 20, has granted a request for the exercise of a right but fails to follow up on it or, in the case of a request for the communication of the credit rating, communicates it without the explanations necessary to understand it;

(4) in contravention of section 35, fails to enter a communication having the characteristics of a complaint in the complaints register;

(5) in contravention of section 36, fails to send the complainant the notice stating the complaint's entry in the complaints register; or

(6) in contravention of section 37, fails to send the complainant the notice specifying the manner in which the complaint was processed.

The penalties prescribed in the first paragraph also apply where the document concerned is incomplete or is not sent before the specified time limit.

70. A monetary administrative penalty of \$10,000 may be imposed on a credit assessment agent that fails to comply with an order or other decision of the Authority.

71. A regulation made under this Act may specify that a failure to comply with the regulation may give rise to a monetary administrative penalty.

The regulation may define the conditions for applying the penalty and set forth the amounts or the methods for determining them. The amounts may vary according to the seriousness of the failure to comply, without exceeding \$10,000.

72. If a failure to comply for which a monetary administrative penalty may be imposed continues for more than one day, it constitutes a new failure for each day it continues.

§2. — Notice of non-compliance and imposition

73. In the event of a failure to comply referred to in subdivision 1, a notice of non-compliance may be notified to the credit assessment agent urging the agent to immediately take measures to remedy it.

Such a notice must mention that the failure may, in particular, give rise to a monetary administrative penalty.

74. The imposition of a monetary administrative penalty is prescribed by two years from the date of the failure to comply.

75. The monetary administrative penalty for a failure to comply with a provision of this Act may not be imposed on the credit assessment agent if a statement of offence has already been served on the agent for a failure to comply with the same provision on the same day, based on the same facts.

76. A monetary administrative penalty is imposed on the credit assessment agent by the notification of a notice of claim.

The notice must state

- (1) the amount of the claim;
- (2) the reasons for it;
- (3) the time from which it bears interest;
- (4) the right, under section 77, to obtain a review of the decision to impose the penalty and the time limit for exercising that right; and
- (5) the right to contest the review decision before the Financial Markets Administrative Tribunal and the time limit for bringing such a proceeding.

The notice must also include information on the procedure for recovery of the amount claimed. The credit assessment agent must also be informed that the facts on which the claim is founded may result in penal proceedings.

Unless otherwise provided, the amount owing bears interest at the rate determined under the first paragraph of section 28 of the Tax Administration Act (chapter A-6.002), from the 31st day after notification of the notice.

§3. — *Review*

77. The credit assessment agent may apply in writing to the Authority for a review of the decision to impose a monetary administrative penalty within 30 days after notification of the notice of claim.

The persons responsible for the review are designated by the Authority; they must not come under the same administrative authority as the persons responsible for imposing such penalties.

78. The application for review must be dealt with promptly. After giving the applicant an opportunity to submit observations and produce any documents to complete the record, the person responsible for the review renders a decision on the basis of the record, unless the person deems it necessary to proceed in some other manner.

79. The review decision must be written in clear and concise terms, with reasons given, must be notified to the applicant and must state the applicant's right to contest the decision before the Financial Markets Administrative Tribunal and the time limit for bringing such a proceeding.

If the review decision is not rendered within 30 days after receipt of the application or, if applicable, within the time granted to the applicant to submit observations or documents, the interest provided for in the fourth paragraph of section 76 on the amount owing ceases to accrue until the decision is rendered.

80. A review decision that confirms the imposition of a monetary administrative penalty may be contested before the Financial Markets Administrative Tribunal by the credit assessment agent to which the decision pertains, within 60 days after notification of the review decision.

The Tribunal may only confirm or quash a contested decision.

When rendering its decision, the Tribunal may make a ruling with respect to interest accrued on the penalty while the matter was pending before it.

§4. — *Recovery*

81. If the credit assessment agent has defaulted on payment of a monetary administrative penalty, its directors and officers are solidarily liable with the agent for the payment of the penalty, unless they establish that they exercised due care and diligence to prevent the failure.

82. The payment of a monetary administrative penalty is secured by a legal hypothec on the debtor's movable and immovable property.

For the purposes of this division, "debtor" means the credit assessment agent that is required to pay a monetary administrative penalty and, if applicable, each of its directors and officers who are solidarily liable with that agent for the payment of the penalty.

83. The debtor and the Authority may enter into a payment agreement with regard to a monetary administrative penalty owing. Such an agreement, or the payment of the amount owing, does not constitute, for the purposes of any other administrative penalty under this Act, an acknowledgement of the facts giving rise to it.

84. If the monetary administrative penalty owing is not paid in its entirety or the payment agreement is not adhered to, the Authority may issue a recovery certificate on the expiry of the time for applying for a review of the decision to impose the penalty, on the expiry of the time for contesting the review decision before the Financial Markets Administrative Tribunal or on the expiry of 30 days after the final decision of the Tribunal confirming all or part of the decision to impose the penalty or the review decision, as applicable.

However, a recovery certificate may be issued before the expiry of the time referred to in the first paragraph if the Authority is of the opinion that the debtor is attempting to evade payment.

A recovery certificate must state the debtor's name and address and the amount of the debt.

85. Once a recovery certificate has been issued, any refund owed to a debtor by the Minister of Revenue may, in accordance with section 31 of the Tax Administration Act, be withheld for payment of the amount due referred to in the certificate.

Such withholding interrupts the prescription provided for in the Civil Code with regard to the recovery of an amount owing.

86. On the filing of the recovery certificate at the office of the competent court, together with a copy of the final decision stating the amount of the debt, the decision becomes enforceable as if it were a final judgment of that court not subject to appeal, and has all the effects of such a judgment.

87. The debtor is required to pay a recovery charge in the cases, under the conditions and in the amount determined by regulation of the Minister.

§5. — *Register*

88. The Authority keeps a register relating to monetary administrative penalties.

The register must contain at least the following information:

- (1) the date the penalty was imposed;
- (2) the date and nature of the failure, and the legislative provisions under which the penalty was imposed;
- (3) if the penalty was imposed on a legal person, its name and the address of its head office or that of one of its establishments;
- (4) if the penalty was imposed on a partnership, an association without legal personality or a natural person, the partnership's, association's or person's name and address;

(5) the amount of the penalty imposed;

(6) the date of receipt of an application for review and the date and conclusions of the decision;

(7) the date a proceeding is brought before the Financial Markets Administrative Tribunal and the date and conclusions of the decision rendered by the Tribunal, as soon as the Authority is made aware of the information;

(8) the date a proceeding is brought against the decision rendered by the Financial Markets Administrative Tribunal, the nature of the proceeding and the date and conclusions of the decision rendered by the court concerned, as soon as the Authority is made aware of the information; and

(9) any other information the Authority considers of public interest.

The information contained in the register is public information as of the time the decision imposing the penalty becomes final.

DIVISION II

PENAL PROVISIONS

89. Anyone who fails to comply with a request made under section 38 commits an offence and is liable to a fine of \$2,500 to \$25,000 in the case of a natural person and \$7,500 to \$75,000 in any other case.

90. Anyone who

(1) provides a document or information that they know is false or inaccurate, or access to such a document or information, to the Authority, a member of the Authority's staff or a person appointed by the Authority, or

(2) hinders or attempts to hinder, in any manner, the exercise of a function by a member of the Authority's staff or by a person appointed by the Authority for the purposes of this Act,

commits an offence and is liable to a fine of \$5,000 to \$50,000 in the case of a natural person and \$15,000 to \$150,000 in any other case.

91. Anyone who contravenes an order commits an offence and is liable, in the case of a natural person, to a fine of \$5,000 to \$100,000 or, despite article 231 of the Code of Penal Procedure (chapter C-25.1), to a maximum term of imprisonment of 18 months, or to both the fine and imprisonment, and, in any other case, to a fine of \$30,000 to \$2,000,000.

92. The Minister may determine the regulatory provisions made under this Act whose contravention constitutes an offence and renders the offender liable to a fine the minimum and maximum amounts of which are set by the Minister.

The maximum amounts set under the first paragraph may vary according to the seriousness of the offence, without exceeding those prescribed by section 91.

93. The fines prescribed by sections 89 to 91 or by the regulations are doubled for a second offence and tripled for a subsequent offence. The maximum term of imprisonment is five years less a day for a second or subsequent offence.

If an offender commits an offence under this Act after having previously been found guilty of any such offence and if, without regard to the amounts prescribed for a second or subsequent offence, the minimum fine to which the offender was liable for the first offence was equal to or greater than the minimum fine prescribed for the second offence, the minimum and maximum fines and, if applicable, the term of imprisonment prescribed for the second offence become, if the prosecutor so requests, those prescribed in the case of a second or subsequent offence.

This section applies to prior findings of guilty pronounced in the two-year period preceding the second offence or, if the minimum fine to which the offender was liable for the prior offence is that prescribed in section 91, in the five-year period preceding the second offence. Fines for a third or subsequent offence apply if the penalty imposed for the prior offence was the penalty for a second or subsequent offence.

94. If an offence under this Act is committed by a director or officer of a legal person or of another group, regardless of its juridical form, the minimum and maximum fines that would apply in the case of a natural person are doubled.

95. If an offence under this Act continues for more than one day, it constitutes a separate offence for each day it continues.

96. Anyone who, by an act or an omission, helps or, by encouragement, advice, consent, authorization or order, induces another person to commit an offence under this Act commits an offence and is liable to the same penalty as that prescribed for the offence they helped or induced the person to commit.

97. In any penal proceedings relating to an offence under this Act, proof that the offence was committed by an agent, mandatary or employee of any party is sufficient to establish that it was committed by that party, unless the party establishes that it exercised due diligence, taking all necessary precautions to prevent the offence.

98. If a legal person or an agent, mandatary or employee of a legal person, of a partnership or of an association without legal personality commits an offence under this Act, the directors of the legal person, partnership or association are presumed to have committed the offence unless it is established that they exercised due diligence, taking all necessary precautions to prevent the offence.

For the purposes of this section, in the case of a partnership, all partners, except special partners, are presumed to be directors of the partnership unless there is evidence to the contrary appointing one or more of them, or a third party, to manage the affairs of the partnership.

99. In determining the penalty, the judge may take into account aggravating factors such as

- (1) the intentional, negligent or reckless nature of the offence;
- (2) the foreseeable character of the offence or the failure to follow recommendations or warnings aimed at preventing it;
- (3) the offender's attempts to cover up the offence or failure to try to mitigate its consequences;
- (4) the increase in revenues or decrease in expenses that the offender intended to obtain by committing the offence or by omitting to take measures to prevent it; and
- (5) the offender's failure to take reasonable measures to prevent the commission of the offence or mitigate its consequences despite the offender's ability to do so.

A judge who, despite the presence of an aggravating factor, decides to impose the minimum fine must give reasons for the decision.

100. On an application made by the prosecutor and submitted with the statement of offence, the judge may impose on the offender, in addition to any other penalty, a further fine not exceeding the financial benefit realized by the offender as a result of the offence, even if the maximum fine has also been imposed.

101. When determining a fine higher than the minimum fine prescribed by this Act, or when determining the time within which an amount must be paid, the judge may take into account the offender's inability to pay, provided the offender provides proof of assets and liabilities.

102. Penal proceedings for offences under this Act are prescribed by three years from the date the investigation record relating to the offence was opened. However, no proceedings may be instituted if more than five years have elapsed since the date of the offence.

The certificate of the secretary of the Authority indicating the date on which the investigation record was opened constitutes conclusive proof of that date, in the absence of any evidence to the contrary.

103. Penal proceedings for an offence under this Act may be instituted by the Authority.

104. The fine imposed by the court is remitted to the Authority if it has taken charge of the prosecution.

CHAPTER VII

AMENDING PROVISIONS

ACT RESPECTING THE REGULATION OF THE FINANCIAL SECTOR

105. Schedule 1 to the Act respecting the regulation of the financial sector (chapter E-6.1) is amended by inserting “CREDIT ASSESSMENT AGENTS ACT (*insert the year and chapter number of that Act*)” in alphabetical order.

ACT RESPECTING THE PROTECTION OF PERSONAL INFORMATION IN THE PRIVATE SECTOR

106. Section 19 of the Act respecting the protection of personal information in the private sector (chapter P-39.1) is amended by adding the following sentence at the end of the second paragraph: “The person must also inform the natural person who so requests that the refusal to grant a loan is based on the consultation of such a report or recommendation.”

107. The Act is amended by inserting the following section after section 19:

“**19.1.** Every person who consults a recommendation or credit report referred to in section 19 or other document sent by a credit assessment agent on which the notice referred to in the first paragraph of section 10 of the Credit Assessment Agents Act (*insert the year and chapter number of that Act*) appears or is otherwise notified by that agent must take reasonable measures to ensure that the person from whom consent was obtained to obtain the recommendation, report, document or personal information on him or her is actually the person who is the subject of the recommendation, report, document or personal information before entering into a contract with that person.”

CHAPTER VIII

FINAL PROVISIONS

108. The costs incurred by the Government for the administration of this Act, as determined each year by the Government, are borne by the Authority.

109. The Minister must, at least once every five years, report to the National Assembly on the carrying out of this Act and make recommendations on the advisability of maintaining or amending its provisions.

110. The Authority is responsible for the administration of this Act.

111. The Minister of Finance is responsible for the carrying out of this Act.

112. This Act comes into force on (*insert the date of assent to this Act*), except section 8 insofar as it concerns security freezes and section 9, which come into force on the date set by the Government.

