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Changes to Québec's Consumer Protection Regime: Monetary Administrative Penalties and Increased Penal Fines

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Significant changes to the Québec consumer protection regime came into effect earlier this year. The president of the Office de la protection du consommateur (OPC), Québec's consumer protection regulator, can now impose monetary administrative penalties (AMPs) for failing to comply with a large range of consumer protection rules. The applicable penal fines have also been increased.

All businesses engaged in activities subject to the Québec *Consumer Protection Act* (CPA), as well as their directors, officers and ultimate beneficiaries, should familiarize themselves with the new rules and ensure that their activities comply with the CPA.

Key Details

- For “objectively observable failures” to comply with several consumer protection rules, the president of the OPC can now impose AMPs ranging from \$300 to \$1,750 for a natural person, and from \$600 to \$3,500 for entities, in addition to interest. These penalties can be imposed for each day during which the failure to comply continues.
- The imposition of an AMP can be contested before the Administrative Tribunal of Québec (TAQ).
- If an entity responsible for a failure to comply fails to pay an AMP, its directors and officers will be solidarily (i.e., jointly and severally) liable for payment of the AMP, unless they establish that they exercised due care and diligence to prevent the failure. To guarantee payment of the AMP, the CPA provides for a legal hypothec (similar to a lien) on the movable and immovable property of the entity, as well as on that of each of the directors and officers held solidarily liable.
- Offences under the CPA are now divided into four types, with each type attracting a different set of fines. The highest maximum fine has been increased to \$175,000 (except for a natural person). For certain offences, however, the maximum fine could be increased to 5% of the offender's worldwide turnover for the preceding fiscal year. To determine the amount of the fine, the court will consider the pecuniary benefit derived from the offence, the economic loss caused to consumers and the offender's past conduct regarding compliance with the CPA, among other things.
- The directors, officers, mandataries, representatives or ultimate beneficiaries of an offender will be presumed to have committed the offence and be liable for a fine unless they establish their due diligence (or, in the case of an ultimate beneficiary, the absence of de facto control of the entity).

Monetary Administrative Penalties

The new AMP regime stems from certain provisions of Bill 29, *An Act to protect consumers from planned obsolescence and to promote the durability, reparability and maintenance of goods*, adopted by the National Assembly of Québec in October 2023. Bill 29 stipulated that the Québec government would determine by regulation the “objectively observable failures to comply” with consumer protection rules that may “give rise to a monetary administrative penalty imposed by the president” of the OPC. On November 27, 2024, the following regulations were adopted: *Regulation respecting monetary administrative penalties with respect to the Consumer Protection Act* and *Regulation to amend the Regulation respecting the application of the Consumer Protection Act* (Regulations). The relevant provisions of Bill 29 and of the Regulations came into force on January 5, 2025.

AMPs are different from penal fines. AMPs are an enforcement mechanism that is less onerous for authorities, as opposed to the requirements of penal proceedings, which trigger the application of rights under the *Canadian Charter of Rights and Freedoms* and *Québec Charter of Human Rights and Freedoms* (such as the presumption of innocence and the elevation of the burden of proof to proof beyond a reasonable doubt). But when an AMP imposes a “true penal consequence,” similar constitutional guarantees can apply. The implementation of the AMP regime could therefore signal an increase in the activities of the OPC to enforce the CPA. This new regime could also give rise to constitutional challenges.

The consumer protection rules that may be subject to AMPs are numerous and varied. They include both general rules applicable to any consumer contract and more specific rules applicable to certain contracts only, such as contracts of sale or lease of goods, contracts of services, distance contracts and contracts of credit. AMPs may also be imposed for certain prohibited practices, including making a false representation to a consumer.

If the president of the OPC identifies one of the failures to comply specified by regulation, it may first issue a notice of non-compliance to the defaulting entity to encourage it to promptly take the necessary measures to remedy the identified failure. The entity will then be able to make representations to the president of the OPC.

If it decides to impose an AMP, the president of the OPC will send a notice of claim to the person responsible for the failure to comply, indicating the amount claimed and the due date for payment, as well as the reasons for the imposed AMP. Generally, an AMP can be imposed up to two years after the date of the failure to comply.

The notice of claim may be contested within 30 days of notification before the Economic Affairs Division of the TAQ, which can only confirm or quash the decision of the president of the OPC. The TAQ’s decision cannot be appealed but may be subject to judicial review before the Superior Court of Québec.

The directors and officers of an entity that has failed to comply with the consumer protection rules will be solidarily (i.e., jointly and severally) liable for the payment of the AMP in case of non-payment of the entity, unless they establish that they exercised due care and diligence to prevent the failure. The CPA provides that the payment of the sanction will be secured by a legal hypothec (similar to a lien) not only on the movable and immovable property of the responsible party but also on those of each of the directors and officers held solidarily liable.

The non-payment of an AMP may also lead to other administrative consequences, including the refusal to issue a permit under the CPA or the suspension or cancellation of such a permit.

Penal Fines

Persons found guilty of an offence under Québec’s consumer protection rules were previously subject to a maximum fine of \$15,000 in the case of a natural person, or \$100,000 in the case of a legal entity. Furthermore, proving culpability in respect of a director or representative of a legal entity required proof beyond a reasonable doubt that the individual had knowledge of the offence.

Since January 5, 2025, this regime of penal fines has been increased and modified. Offences under the CPA are now divided into four types, with each type attracting a different set of fines (offences under the regulation are subject to specific rules):

- Type 1 offences are punishable by a maximum fine of \$15,000 for a natural person, or \$30,000 in other cases. Type 1 offences include all those that are not expressly subject to higher fines.
- Type 2 offences are punishable by a maximum fine of \$37,500 for a natural person, or \$75,000 in other cases. These offences notably include non-compliance with several form or content requirements in consumer contracts.
- Type 3 offences are punishable by a maximum fine of \$62,500 for a natural person, or \$125,000 in other cases. However, the fine can exceed these thresholds and be increased to 5% of the offender’s worldwide turnover for the preceding fiscal year. The offences in question are numerous and include, in particular, including certain prohibited stipulations in a contract; claiming costs from a consumer that are not precisely indicated in the contract; exacting credit charges higher than those allowed by the CPA; false or

misleading representations made to a consumer; failing to comply with several other rules specific to certain types of contracts, and engaging in several other types of prohibited practices.

- Type 4 offences are punishable by a maximum fine of \$87,500 for a natural person, or \$175,000 in other cases. These offences notably include not holding a permit, obstructing the application of the CPA or not complying with a decision of the president of the OPC or a court order.
- The maximum fine is doubled in the case of a repeat offence.

Furthermore, the directors, officers, mandataries, representatives or ultimate beneficiaries of an offender will now be presumed to have committed the offence and will be liable to pay a fine unless:

- in the case of directors, officers, representatives or mandataries, they establish that they exercised due diligence, taking all necessary precautions to prevent the offence; or
- in the case of ultimate beneficiaries, they establish that they do not have any influence giving them de facto control of the entity that committed the offence under the CPA.

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