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Implementing Budget 2023: key developments for financial services providers

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Authors: Victoria Graham, Elizabeth Sale, Madison Kerr

On April 20, 2023, the government of Canada introduced Bill C-47, *The Budget Implementation Act* (Bill C-47) which proposes to implement many of the federal government's key proposals presented in its 2023 Budget (Budget 2023) [PDF].

This Update provides a summary of key legislative changes that are expected to affect financial service providers operating in Canada.

Lowering the criminal rate of interest

Bill C-47 amends the *Criminal Code* to lower the criminal rate of interest to an annual percentage rate of 35%. These changes follow a consultation paper launched by the federal government in August of 2022 (see our Osler update on this topic here) that solicited feedback on potential changes to the criminal rate of interest.

Currently, the criminal interest rate under Section 347 of the *Criminal Code* is 60%, calculated as an effective annual rate, meaning lenders must account for the effect of compounding, and includes most fees charged on the credit advanced, with some exclusions. The government states that an effective rate of 60% is equivalent to an annual percentage rate of 47% per annum. Bill C-47 proposes to both change the method of calculating the rate from an effective rate to an APR, and to lower the rate to 35%. While the proposal set out in Budget 2023 appeared targeted at consumer lenders, the proposed amendments apply to both commercial and consumer lenders, consistent with the existing criminal interest regime. Bill C-47 provides the Governor in Council with the authority to exempt certain prescribed agreements or arrangements by regulation. It remains to be seen if the government will rely on this authority to exempt certain or all commercial loans from the application of the lower criminal rate.

The Canadian government also announced in Budget 2023 its intention to lower the maximum amount that a payday lender may charge to $14 per $100 borrowed, consistent with the lowest payday lending cap currently in force (in Newfoundland and Labrador). Bill C-47 authorizes the Governor in Council to fix the limit on the total cost of borrowing under a payday loan agreement. We anticipate further consultations on the federal payday loan limits in the coming months.

Refer to Osler's Update Lowering the ceiling: the new reality for interest rate provisions in credit agreements for further discussion of the proposed reduction to the criminal rate of interest.

Combatting financial crime

Bill C-47 proposes to implement several of the initiatives introduced in Budget 2023 to combat money laundering, terrorist financing, sanction evasion, and foreign interference, and to respond to how new technology can embolden and empower financial crimes. Many of these initiatives are in response to the recommendations made by the Cullen Commission report released by the government of British Columbia in 2022, which we have reported on here.

Bill C-47 proposes amendments to the *Criminal Code* and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA). These amendments include:

- Giving law enforcement a special warrant power to freeze and seize digital assets, including virtual currency, with suspected links to crime.
- Creating a new offence for structuring financial transactions to avoid FINTRAC reporting, punishable by fine or imprisonment.
- Criminalizing the operation of an unregistered money services business.
- Strengthening the registration framework for money services businesses, including through criminal record checks for domestic MSBs, their agents/mandataries, and their respective directors, officers and significant shareholders (i.e. who own or control 20% or more of the shares of the entity).
- Providing whistleblower protections for employees who report information to FINTRAC, and
- Requiring reporting entities to report to FINTRAC information disclosed to the RCMP and CSIS under Canadian sanctions laws.

These proposed amendments supplement other recent initiatives by the federal government aimed at combatting financial crime. In June 2019, amendments to the *Canada Business Corporations Act* (CBCA) came into force which requires CBCA companies to maintain a register of individuals with significant control (ISCs) (defined with reference to a 25% legal ownership threshold or control in fact). As previewed in Budget 2023, on March 22, 2023, the federal government introduced Bill C-42, *An Act to amend the Canada Business Corporations Act and to make consequential and related amendments to other Acts* (Bill C-42). If passed, this Act will require CBCA companies to take reasonable efforts to provide their ISC registry information to the government at least annually. Certain information regarding the ownership interests, including name and address (if provided to the corporation), will be made public with some limited exceptions, including if the person is a minor or if the Director reasonably believes that making this information public would present a serious threat to the safety of the individual.

Among other consequential amendments, Bill C-42 proposes a change to the PCMLTFA. This change will give the government the power to implement regulations respecting the verification of identity, and requiring reporting entities under the PCMLTFA to report any discrepancies between the beneficial and control information contained in the public ISC register and information arising out of their verification process.

In addition to the amendments noted above, Budget 2023 announced that a parliamentary review will be launched of the PCMLTFA in 2023. The review will include a public consultation that will examine additional ways to improve the PCMLTFA to combat financial crimes, and examine how different orders of government can collaborate more closely. The government also announced that it will continue to develop the mandate of the Canada Financial Crimes

Agency (operated by Public Safety Canada). Budget 2023 commits $2 million to establishing this new agency, which was initially announced under Budget 2022. Although there have been many changes to the PCMLTFA in recent years, including the proposed amendments discussed above, it is clear combatting financial crime and anti-money laundering continue to be high priorities for the Canadian government, and we expect to see further developments in 2023.

Emerging foreign interference and national security risks affecting the financial sector

Bill-C-47 continues the broad trend that we have been seeing regarding the federal government's concern with foreign interference and national security (for example, in connection with Canada's payment networks, as we discuss here). Proposed changes to the federal financial institutions legislation and the PCMLTFA include:

- Granting the Minister of Finance with the power to direct the Superintendent of Financial Institutions to take control of a federally regulated financial institution (FRFI) for any reasons related to national security.
- Granting the Minister of Finance with the power to direct a shareholder of a FRFI to dispose of all or part of their shares where the Minister is of the opinion that the shareholder's ownership of such shares poses a threat to the integrity or security of the FRFI, the financial system in Canada or to national security. The voting rights attached to such shares may be suspended until the shares are disposed of.
- Requiring FRFIs to establish and adhere to policies and procedures to protect themselves against threats to their integrity or security, including foreign interference.
- Expanding the mandate of the Office of the Superintendent of Financial Institutions (OSFI) to expressly include the supervision of FRFIs to determine whether they have adequate policies and procedures to protect themselves against threats to their integrity or security, including foreign interference, and expanding OSFI's supevision tools to include:
  - The power to examine FRFIs at least once a year to determine whether they have adequate policies to protect their integrity and security.
  - The power to require any person who controls the FRFI, or any of its affiliates, to provide any information or documents that the Superintendent believes is necessary to satisfy OSFI that the FRFI has adequate policies and procedures to protect itself against threats to its integrity or security, and
  - The Superintendent's power to take control of the FRFI for reasons related to national security.
- Expanding the powers of the Minister of Finance under the PCMLTFA to issue directives relating to the risk that a foreign state, foreign entity or a reporting entity under the legislation may be facilitating the financing of threats to the security of Canada where the Minister is of the opinion that there could be an adverse impact on the integrity of the Canadian financial system, or a reputational risk to that system.

Bill C-47 also introduces changes to the PCMLTFA to permit the sharing of information among FINTRAC, OSFI and the Minister of Finance for purposes of assessing risk to the integrity of the Canadian financial system, and for purposes of assisting the Minister of

Finance in exercising its powers related to the protection of national security under the *Retail Payments Activities Act*. This builds on the trend of inter-governmental information sharing we have previously discussed here.

Complaints in the banking industry

To improve the current system for handling complaints against banks, as previewed in Budget 2023, Bill C-47 contemplates amendments to the *Bank Act* to provide for the designation of a single, external complaints body. Corresponding amendments have been made to the *Financial Consumer Agency of Canada Act* and the *Financial Consumer Protection Framework Regulations.* This continues a multi-year review of complaints handling by banks more generally.

Temporary increase of CDIC coverage

Bill C-47 amends the *Canada Deposit Insurance Corporation Act* to clarify that the Canada Deposit Insurance Corporation may administer any contract related to deposit insurance entered into by the Minister of Finance under the *Financial Administration Act*, and to allow the Minister to increase the deposit insurance coverage limit until April 30, 2024. After this date, the Minister must undertake a review of the deposit insurance coverage limit and publish a report on the review.

Guidelines to protect Canadians with existing mortgages

As promised in Budget 2023, the Financial Consumer Agency of Canada has published a Proposed Guideline on Existing Consumer Mortgage Loans in Exceptional Circumstances. This Guideline directs financial institutions to identify and assist mortgagors at risk of delinquency due to exceptional circumstances. Financial institutions are instructed to provide fair and equitable access to relief measures which may include extending amortizations, adjusting payment schedules, or authorizing lump-sum payments. More guidance on what constitutes “exceptional circumstances” will be important in applying these guidelines.

Outstanding items

While the federal government seeks to use Bill C-47 to implement many of the legislative changes promised in Budget 2023, changes related to the following prominent budget topics are notably absent.

'Junk fees' and credit card fees

The federal government has committed to working with regulatory agencies to reduce “junk” fees paid by Canadians across multiple industries. This commitment builds on recent amendments to the *Bank Act*, *Financial Consumer Agency of Canada Act* (as we have discussed here), and *Competition Act* (as Osler discussed in June 2022), all of which affect pricing transparency practices in the financial industry. As described in Budget 2023, the government’s understanding of junk fees appears broader than the hidden fees or drip pricing expressly prohibited in the recent statutory amendments, including not only hidden fees, but also “excessive” and “unjustified” fees. However, the government does not specifically enumerate any fees charged by financial services providers in Budget 2023.

The government also announced in Budget 2023 that it has secured commitments from Visa and Mastercard to lower credit card fees for small merchants, while also protecting reward points offered by the large banks. Budget 2023 suggests that the commitment will result in lowered fees for more than 90% of credit card-accepting businesses, with reductions in interchange fees of up to 27%. The government will be engaging with the networks, acquirers and payment service providers to ensure benefits from fee reductions are realized by small businesses.

Crypto asset disclosure requirements

In cooperation with OFSI, the government expects to implement disclosure requirements for crypto-asset exposure in certain regulated industries. Specifically, federally regulated financial institutions will need to publicly disclose their exposure, while large pension plans will disclose their exposure directly to OFSI. Budget 2023 states that OSFI will consult FRFIs on guidelines for such public disclosure, but no specific legislative changes have been suggested.

Diversity disclosure and virtual only meetings

Budget 2023 indicates that the federal government intends to apply CBCA-style disclosure requirements for FRFIs. This would require some disclosure surrounding the representation of women, Indigenous peoples (First Nations, Inuit and Métis), persons with disabilities, and members of visible minorities among the directors and senior management for these institutions.

The federal government also intends to permit virtual-only shareholder meetings for FRFIs.

However, Bill C-47 does not include the required changes to institute these changes.

Payments modernization and open banking

Absent from Budget 2023 is any mention of open banking and payments modernization, signaling that the government’s priorities are currently elsewhere. While these initiatives remain in progress, we do not expect that the implementation pace will accelerate in the near future.

Conclusion

Bill C-47 continues to progress through the parliamentary approval process, and most recently received a second reading in the House of Commons on May 2. This bill introduces many legislative changes which, if passed, are likely to have significant impact on Canadian financial services providers. Consistent with past practice, we expect that the government will introduce a second budget bill, which may address some of the outstanding items from Budget 2023. We will continue monitoring Bill C-47 and any future developments.