

Department of Finance proposes significant changes to federal financial institutions legislation and Criminal Code

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On August 12, 2024, the Department of Finance launched its [Consultation on Proposals to Strengthen Canada's Financial Sector](#), representing the third phase of its review of Canada's federal financial institutions legislation. At the same time, Finance released yet another [proposal](#) to amend the criminal rate of interest provisions set out in the *Criminal Code*, accompanied by draft legislation. The consultation period for both proposals closes on September 11, 2024, which is extremely short given the nature of the consultations and the end-of-summer timing.

Financial sector consultation

The Department of Finance has launched the third phase of its review of Canada's federal financial institutions legislation. The [first phase](#) began in October 2023 and the [second phase](#) in December 2023. The legislative proposals set out in this third phase are organized under five themes addressing competition, consumer protection, modernizing the financial sector framework, geopolitical risks and developing a strong regulatory framework. We discuss the key consultation proposals below.

Competition and consumer choice

Preventing consolidation among large banks

The *Bank Act* sets out different ownership rules for banks depending on their size, with large banks considered those with equity of \$12 billion or greater. Finance is considering legislative measures to prohibit a large bank from acquiring control of or amalgamating with another large bank, subject to prudential or financial stability exemptions. The consultation is not specifically seeking views on whether such activity should be prohibited, which has been the policy position for many years, but rather whether any other exemptions should be considered.

Strengthening the Ministerial application process

Ministerial approval is required for various matters under the financial institutions statutes, including entry into the sector, amalgamations and change in ownership. Finance is proposing to introduce a mandatory public consultation process for applicants that raise "material" public-interest considerations, which would ask respondents' views on the

circumstances in which public consultations should be required, as well as how consultations should be conducted.

The consultation also notes that Finance is considering legislative amendments to broaden the Minister of Finance's authority to take into consideration other factors in connection with an application, such as compliance with obligations related to taxation or anti-money laundering, and that the Minister's authority to impose terms and conditions or require undertakings as part of an approval extends to employment matters.

Broadening participation in auto leasing

There has been a long-standing prohibition under the *Bank Act* against light motor vehicle leasing activity by banks, which has shaped the auto leasing market for decades. Finance is seeking views on permitting federally regulated financial institutions (FRFIs) to engage in light motor vehicle leasing with consumers, subject to measures that minimize the negative impact on the current market structure. Finance notes that these measures could include requiring the agreement of the auto manufacturer.

Regulating bank control over deposit broker subsidiaries

Finance is considering amending the *Bank Act* to prevent certain exercises of control by banks over their deposit broker subsidiaries in a way that may limit access by small and medium-sized banks.

Consumer protection

Increasing anti-fraud responsibilities

Two proposed measures are aimed at reducing consumer risk and increasing bank responsibility for fraud. The first would require a bank to prevent or delay transactions it believes are fraudulent. Given that consumers typically want instant transfers, and that there may be challenges in identifying such transactions in real time, it will be important for institutions to provide feedback on the circumstances in which this is possible.

Finance is also seeking views on whether banks should be required to allow consumers to turn off or adjust account capabilities to prevent fraud. Finally, Finance is seeking views on whether there should be a maximum liability threshold for victims, similar to the \$50 maximum for unauthorized credit card transactions.

Additional reporting obligations are also contemplated, where banks would be required to collect and report anonymized, aggregated data related to fraud and scams to the Financial Consumer Agency of Canada (FCAC).

Increasing branch network requirements and reporting

Two proposals relate to bank branches. One would require enhanced notices to the public and the FCAC when a bank intends to close a branch, including an assessment of the impact of the closure to the community. Feedback is also sought as to whether, in the event of a branch closure, the bank should facilitate client transfers to other financial institutions at no cost to the customer.

The second proposal would require expanded reporting for bank branch networks, including annual reporting on the number of branches, location (urban or rural) and the average volume and value of transactions processed at branch locations.

Modernizing the financial sector framework

Prohibiting interlocking directorates in the financial sector

Some directors of financial institutions serve in director or executive roles with other financial institutions. The consultation paper proposes to prohibit or restrict this practice, citing competition concerns and the goal of encouraging a broader range of individuals to serve as directors, although the consultation does not mention existing conflict-of-interest policies that are intended to address concerns with interlocking directorates.

Increasing statutory thresholds

The proposal states that the Department of Finance is considering updating several key statutory thresholds:

- Public float requirement: Medium-sized banks, being banks with equity of \$2 billion or more but less than \$12 billion, are required to ensure that at least 35% of their voting shares are publicly traded. Finance is considering whether to update the threshold for triggering the public float requirement.
- Finance is considering increasing limits on specialized financing activities, limits on investments powers and the ownership of certain real assets under the *Insurance Companies Act*. Finance notes that such limits may be set out in OSFI guidance, rather than in regulation, as guidance may be updated more quickly to respond to changes in market conditions.

Geopolitical risks

National security and integrity

This continues to be an area of focus for Finance, which is considering measures to further enhance the oversight of financial sector risks related to integrity and security, including national security. The proposal would create a committee to facilitate consultations among members on how to address these risks and provide for the exchange of related information.

Enhanced authority for Finance and OSFI

Related to the above, Finance is considering expanding OSFI's direction of compliance authority to include an act that may threaten the integrity or security of a FRFI and the affairs of a FRFI, including directing a FRFI to correct a governance matter. The Minister and OSFI may also be granted powers to require a FRFI to adhere to its own policies and procedures respecting integrity and security.

Regulatory framework

Predictability

Finance is seeking views on how to improve regulatory predictability and improving the understanding of regulatory actions and impacts, including coordinating periodic announcements on forthcoming regulatory actions, developing a forum for coordinating and collaborating on international issues and sharing information about integrity and security risks. Further to this, OSFI has recently launched a pilot project to release guidance on a quarterly basis, followed by a virtual industry day.

Strengthening oversight of artificial intelligence

The consultation paper seeks to strengthen federal involvement in the use of AI in the financial sector. The effort would engage a range of domestic and international stakeholders, identify and assess the potential risks of AI and develop a federal AI strategy.

Other proposals relate to facilitating the growth of federal credit unions, applying account-opening requirements to digital channels, increasing the amount of funds available when cashing a cheque in person and lowering maximum cheque hold periods, and providing more transparency in the approvals process, which has been subject to increasing delays in recent years.

Criminal Code

As we had previously reported in [April 2023](#) and [January 2024](#), the federal government introduced amendments to the criminal rate of interest provisions in Bill C-47, the *Budget Implementation Act, 2023, No. 1*. The amendments changed the definition of “criminal rate” in the *Criminal Code* from an effective annual rate of interest that exceeds 60% to an annual percentage rate (APR) that exceeds 35%, meaning that both the method of calculation and the interest rate cap were changed.

Subsequently, draft regulations were published on December 23, 2023, that set out important exemptions from the application of the criminal rate of interest cap, including in respect of certain commercial loans. These changes are set to come into force on January 1, 2025, although agreements or arrangements entered into before such date will benefit from the transitional provisions set out in Bill C-47.

Despite these significant changes, which have yet to be implemented, the government had previously signalled that it was contemplating even further amendments to the criminal interest rate provisions. In its [2024 Budget](#), published on April 16, 2024, the government announced its intention to work with the provinces and territories to harmonize and enhance consumer protections across Canada, which could include legislative action on the part of the federal government. Among the list of initiatives were proposals to

- cap the costs of optional insurance products for high-cost loans, including payday loans
- strengthen payday loan regulations, including by adding a minimum number of days for the loan terms, a requirement for borrowers to repay in installments and prohibiting loan rollovers

To implement its intent, the government has published draft legislation proposing changes to the criminal interest rate provisions of the *Criminal Code*. The draft legislation will amend the definition of “insurance charge” to provide that this term only includes costs that are paid by a borrower, and will amend the definition of “interest” to include insurance charges within the meaning of interest. (Previously, insurance charges were expressly excluded.) In effect, these changes will restrict the offering of implicated insurance, notably creditor insurance, to only those borrowers who qualify for interest rates that are comfortably below the criminal interest rate.

The draft legislation will also amend the criteria that apply to a payday loan for such loan to qualify from an exemption from the criminal interest rate cap. Section 347.1(2)(a) will be amended to provide that a payday loan must be for an amount of \$1,500 or less, be for a term of at least 42 days but not more than 62 days and be repayable in instalments. Currently, the term must be for 62 days or less, with no minimum term and no requirement that the loan be repayable in instalments. The \$1,500 threshold is unchanged. In addition, a new section — 347.1(2)(d) — will be added, which will prohibit charging any insurance premiums related to the credit risk to the borrower.

Next steps

These changes could raise significant hurdles and regulatory requirements, as well as opportunities, for existing and emerging actors in the financial sector. Industry participants are strongly encouraged to submit comments before the consultations close on September 11, 2024.