

Managing risks and meeting the future: financial services regulatory trends



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As in prior years, we have seen significant changes to financial services laws and regulations. We highlight some of the notable developments of 2023 that will have an impact on financial services providers into 2024 and beyond. These include changes to the criminal interest rate, new risk management requirements for federally regulated financial institutions relating to national security and foreign interference, the expected roll-out of the new retail payments regime and changes to anti-money laundering laws...

Criminal interest rate

Section 347 of the *Criminal Code* (Canada), as it currently reads, makes it illegal for any person to agree to charge or to receive an effective annual rate of interest that exceeds 60%. Known as the “criminal interest rate” provision, section 347 has remained unchanged for decades.

This is about to change. On April 20, 2023, the Government of Canada introduced Bill C-47, the *Budget Implementation Act, 2023, No. 1*. This bill includes amendments to the criminal interest rate provision that could have a significant impact on credit agreement terms going forward. The bill has passed third reading in Parliament, but these amendments are not yet in force, and no in-force date has been set. Once enacted, the amendments will change the definition of the criminal interest rate from an *effective annual rate of interest* to an *annual percentage rate* and lower the rate from an effective annual rate of 60% to an annual percentage rate of 35%.

The rate continues to be calculated in accordance with generally accepted actuarial practices and principles. However, the concept of annual percentage rate has historically only arisen in connection with fixed credit under consumer protection laws and not in the broader lending context. Consequently, calculation principles to determine the annual percentage rate for other types of lending — notably open credit such as lines of credit and credit cards — will need to be established.

The amended section 347 will not apply to agreements or arrangements to be prescribed by regulation, raising the possibility of exemptions. For example, as the government’s focus appears to be on the protection of consumers, it is possible that certain commercial lending agreements or arrangements may be exempt. The regulations may also set a limit on the maximum that may be charged by payday lenders, which is expected to be \$14 per \$100

borrowed based on the government's statements in the 2023 Budget. We described this proposal in our [blog post](#).

Although these amendments are not yet in force, the government has pressed ahead with further [consultations](#) on the criminal interest rate, raising the possibility that the rate might be lowered even further.

Lenders will need to monitor developments carefully to ensure that they are able to build and implement the new calculation method and systems in sufficient time before the changes come into force. Lenders will also need to stress test their lending arrangements in light of the lower usury limit. Edge cases that were legal but close to the 60% threshold may now be problematic under the new 35% threshold.

New OSFI mandate: regulation of emerging foreign interference and national security risks

Bill C-47 was introduced in April 2023 and received Royal Assent in June 2023. Bill C-47 expands the mandate and supervisory powers of the Office of the Superintendent of Financial Institutions (OSFI) to expressly include threats to the integrity or security of federally regulated financial institutions (FRFIs), including in respect of foreign interference. These changes represent one of the most significant expansions to the prudential regulator's mandate in 25 years. The nature of these expanded powers is consistent with the broad trend that we have observed regarding the federal government's concern with foreign interference and national security affecting the financial sector, as we have previously [discussed](#).

Pursuant to this newly expanded mandate, OSFI released a [draft guideline](#) addressing integrity and security on October 13, 2023. The draft guideline provides for enhanced obligations for financial institutions around governance, oversight and controls to protect against undue influence, foreign interference and malicious activity. It also includes new operational security requirements, such as the need for FRFIs to have physical security standards and controls, technical security inspections, and background checks and security screenings for all FRFI employees, as well as for senior leaders of certain vulnerable third-party vendors. The consultation period for the draft guideline was open until November 24, 2023. The final version of the guideline is expected to be released by the end of January 2024.

When the remaining relevant portions of Bill C-47 come into force on January 1, 2024, FRFIs will be required to ensure that they have and adhere to adequate policies and procedures to protect themselves from threats to their integrity and security, including foreign interference. This includes foreign bank branches and foreign insurance company branches with respect to their business in Canada. As part of its new mandate, commencing in 2024 OSFI will be reviewing each FRFI's policies and procedures and will report annually on its examinations to the Minister of Finance. Given the tight timing, FRFIs will need to carefully assess their existing policies and procedures against the new guideline and promptly identify and address any potential gaps and deficiencies in early 2024.

Retail Payment Activities Act

As we previously [reported](#), the Department of Finance published draft regulations under the *Retail Payment Activities Act* (RPAA) on February 11, 2023. The regulations proposed significant and detailed requirements that would apply to payment service providers (PSPs) regulated under the RPAA, regardless of their size and complexity. The consultation period for the draft regulations closed on March 28, 2023, and revised regulations are expected

shortly. The registration process will open in November 2024.

The Bank of Canada has also stated that it expects to publish guidance after the final regulations are enacted. Such guidance will cover matters such as managing operational risks, safeguarding funds and incident reporting.

Given this timeline, 2024 will be a busy year for PSPs, as they assess the final regulations once published and consider the changes required to respond to the regulations for their businesses. In addition to registering with the Bank of Canada, this will include establishing and implementing a risk management and incident response framework, reviewing arrangements with third parties and meeting the safeguarding of funds requirements (if the PSP holds end user funds).

Anti-money laundering

Major changes are coming to Canada's anti-money laundering law, the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA). These amendments will affect businesses and professionals in the mortgage sector, financial entities with correspondent banking relationships and businesses transporting currency and negotiable instruments.

In relation to the mortgage sector, on October 11, 2024, regulations will come into force requiring the mortgage sector to comply with new anti-money laundering (AML) and anti-terrorist financing (ATF) obligations. Mortgage lenders, brokers and administrators can expect new compliance obligations to broadly align with the current regime for other reporting entity sectors. However, the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) resource page for the sector is under development and affected entities will need to monitor this resource, as well as other FINTRAC resources, over the course of 2024, in preparation for implementation.

Additional correspondent banking obligations affecting relationships between domestic entities providing certain prescribed services to foreign entities will also come into force on October 11, 2024. Financial entities will be required to conduct a risk assessment specific to each correspondent banking relationship. They will be required to document the assessment and keep it updated. There is also a requirement to conduct risk-based ongoing monitoring of the correspondent banking relationship.

Financial entities will also be required to conduct additional due diligence measures beyond current requirements and keep a record of such measures. The current diligence process requires basic name and address verification, as well as some high-level AML/ATF compliance diligence. Under the new requirements, financial entities with correspondent banking relationships will also need to cover the nature of the clients and markets served by the foreign financial institution, the foreign financial institution's reputation with respect to AML/ATF requirements and the quality of the AML/ATF supervision of the jurisdiction in which the foreign financial institution is incorporated and conducts transactions.

FINTRAC's guideline on correspondent banking is expected to be updated before the in-force date.

With respect to armoured car businesses collecting currency, money orders, traveller's cheques or other negotiable instruments for transport, these businesses will need to register with FINTRAC as a money-services business starting July 1, 2024. Additionally, they will need to meet various compliance and reporting obligations under the PCMLTFA. Guidance has been published and will evolve as FINTRAC builds out the requirements for this sector.

Finally, starting April 1, 2024, FINTRAC will implement a new cost-recovery funding model. Under the new funding model, FINTRAC will impose compliance costs on banks, federally regulated trust and loan companies and life insurance companies, and any reporting entities under the PCMLTFA that submit 500 or more threshold reports during the fiscal year.

Still more changes are likely in store for the coming year. The Department of Finance and FINTRAC recently consulted industry stakeholders and provincial regulators regarding additional proposed amendments to the PCMLTFA. The consultation concluded in August 2023, and sought input regarding risks and vulnerabilities emerging in light of new financial technologies and in respect to national security risks, which is consistent with the broad regulatory trends we are seeing in the financial sector more generally.

Feedback was also sought regarding measures to improve Canada's anti-money laundering regime in light of the findings of the Cullen Commission Report and evolving international standards. Further developments have not yet been announced. However, we expect the government to bring forward further measures in the future in light of feedback received during the consultation period.

Participants in the financial services sector would be well-advised to engage early and proactively with advisors to stay abreast of the continuing and increasingly complex regulatory requirements and to be prepared to respond in a timely manner to legal change as it is enacted.