Financial crime, consumer protection, and banking measures proposed in 2024 Fall Economic Statement

December 19, 2024

Canada's 2024 Fall Economic Statement (FES) was tabled on December 16, 2024. Among other measures, the FES proposes consumer protection, banking and financial crime measures.

Criminal rate of interest

In connection with the recent amendments to Canada's criminal rate of interest, the federal government has announced additional amendments concerning payday loans. Payday lenders, that satisfy prescribed criteria, are not subject to the criminal rate under the Criminal Code. Provincial payday loan legislation includes measures that, *inter alia*, limit the cost of borrowing for such loans.

In the FES, the federal government proposes to amend the payday lending exemption in the Criminal Code to prohibit the sale of credit insurance products in connection with a payday loan. Additional proposed amendments to the payday lending exemption will require a minimum term on payday loans of 42 days and for payday lenders to accept payment in installments. A transition period of 12 months would be provided for lenders to comply.

Credit card fees

Payment card network operators agreed to reduce interchange fees charged to businesses that accept credit cards payments. The federal government anticipated this measure would benefit small businesses, however, in the FES, the federal government has expressed concerns about the ability of small businesses to benefit from savings because of merchant fees charged by payment processors. The federal government is considering enacting laws to compel payment processors to fully pass credit card transaction fee savings on to small businesses.

Money laundering and terrorist financing

Proposed changes in the FES to Canada's federal anti-money laundering (AML) and anti-terrorist financing (ATF) regime include:

- Universal registration of all reporting entities. Specifically, requiring all reporting entities to register with the Financial Transaction and Reports Analysis Centre of Canada (FINTRAC). Currently, only money services businesses are required to register with FINTRAC.
- Allowing FINTRAC to disclose information to the Office of the Commissioner of Canada Elects to deter and detect illicit financing and foreign interference in Canadian elections.
- Expanding the AML/ATF obligations under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act to company service providers.

Additionally, a new task force is proposed for law enforcement and the financial sector is proposed to exchange and analyze information concerning high-end money laundering schemes, including fentanyl trafficking.

Stronger penalties for AML/ATF financial crimes

The administrative monetary penalty (AMPs) amounts under Canada's federal anti-money laundering and anti-terrorist financing regime will be increased, as to individual AMP amounts, by 40 times the current amount, and an aggregate penalty limit is proposed for all AMPs issued in a single Notice of Violation, such limit being the greater of $4 million for an individual and $20 million for an entity, and 3 per cent of annual worldwide gross revenue.

Additional AMP measures include:

- Increasing fines for all criminal offences by 10 times the current amount.
- Introducing a criminal offence for false, misleading, or incomplete information by a reporting entity to FINTRAC, which would not apply to the passing on of unsuspicious information provided by a client.
- Increasing AMPs for the violation of existing compliance program requirements.
- Enabling the refusal or revocation of registration for an MSB with an outstanding AMP.
- Requiring a reporting entity and FINTRAC to enter into a compliance agreement following the issuance of an AMP, obligating the reporting entity to undertake specific actions to address the deficiencies that led to the AMP.
- Creating a new overarching requirement for reporting entities to establish and maintain an effective, risk-based, and reasonably designed compliance program.
- Introducing a requirement for the Director of FINTRAC to issue a public compliance order if a compliance agreement is not adhered to, with a corresponding AMP of the greater of up to $5 million for an individual and $30 million for an entity, and 3 per cent of annual worldwide gross revenue.

To implement the proposed stricter penalties for financial crimes, the federal government intends to increase the coordinated exchange of regulatory and supervisory information among federal agencies with financial sector responsibilities.

Sanctions

Amendments are proposed to the *Special Economic Measures Act* to allow the federal government to levy a targeted charge against the windfall of profits generated on frozen assets held in Canada, mirroring the European Union's windfall profit mechanism which prevents financial institutions from profiting from their sanction obligations and finances the repayment of loans to Ukraine by the windfall profits from interest accrued on frozen Russian assets.

Consumer-driven banking

The federal government intends to introduce legislation to address the remaining elements of the consumer-driven banking framework, including providing the Minister of Finance with the authority to designate a provincial or territorial authority to supervise prescribed institutions, establishing an intergovernmental advisory committee, and addressing Canada's national security mandate in the context of protecting Canadian's financial information from "hostile actors".

The federal government intends on launching the consumer-driven banking framework in early 2026.

Predatory debt advisors

Monetary penalties and civil remedies, including restitution, for non-compliance with the *Bankruptcy and Insolvency Act* are proposed to address unlicensed debt advisors (also known as lead generators) who falsely market themselves as licensed insolvency trustees regulated by the Office of the Superintendent of Bankruptcy.

Cracking down on hidden fees

In Budget 2023, the federal government its targeting of so-called 'junk fees', defined as "unexpected, hidden and additional fees" charged to consumers for goods and services including in respect of higher telecom roaming charges, event and concert fees, baggage fees, and shipping and freight fees. In Budget 2023, the federal government indicated that it would be working with provincial and territorial regulatory agencies to reduce such fees. Continuing its targeting of these fees, in the FES the federal government is calling on the provinces and territories to address 'hidden fees' in consumer transactions in their jurisdictions including fees associated with concert tickets and sport tickets.

If you have any questions about the consumer protection, banking and financial crime measures proposed in the 2024 Fall Economic Statement, please reach out to the authors or key contacts listed below.

By

Suhuyini Abudulai

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BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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