Public consultation: Proposed new measures for the banking sector and consumer protection

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Entering the third phase of the review of Canada's federal financial institutions laws concerning banks, insurance companies, and trust and loan companies, the Department of Finance (Finance Canada) has launched a public consultation considering several banking and consumer protection measures, including the following measures.

Allowing Canadian banks to lease motor vehicles to consumers

Currently, federally regulated financial institutions (FRFIs) in Canada, such as banks, are prohibited from leasing motor vehicles with a gross weight of less than 21 tonnes to consumers. Recognizing developments in Canada's auto leasing market, Finance Canada is considering permitting banks to engage in leasing "light" motor vehicles to consumers, subject to prescribed measures.

Preventing consolidation among large banks

On the heels of several consolidations in the banking sector, Finance Canada is considering enacting laws to prohibit the acquisition of control of a large bank by another large bank and the amalgamation of the two entities, subject to prudential or financial stability exemptions. Large banks are banks with equity of $12 billion or more.

Ministerial approvals for banks

Finance Canada is considering legislative measures to address the Ministerial approval process, requires the approval of the Minister of Finance for certain FRFI matters including entry into Canada, amalgamation, and change in ownership of FRFIs.

The proposed legislative measures include requiring public consultations in respect of applications that raise material public interest considerations (e.g., considering competition or regional issues) and clarifying the authority of the Minister of Finance to take into consideration an applicant's compliance with applicable domestic or foreign regulatory requirements when deciding on whether to approve an application (e.g.,

compliance with obligations related to anti-money laundering and taxation) and that the Minister of Finance's authority to impose terms and conditions or require undertakings as part of an approval extends to matters related to employment.

Certain transactions require approval of the Minister of Finance or the Superintendent of Financial Institutions, Finance Canada is considering measures that would provide, on request, a written update to an applicant if no decision has been made within 120 days of receiving a complete application.

Preventing banks from control of deposit broker subsidiaries

Finance Canada is considering amending the *Bank Act* to prevent large banks from exercising control over their deposit broker subsidiaries in a manner that unduly limits small-and-medium sized banks access to the distribution channel for brokered deposits.

More federal credit unions

Finance Canada is considering methods to grow and expand federal credit unions. Currently, there are three federal credit unions and other credit unions operate nationally.

Preventing financial fraud

Financial fraud is a pressing issue in Canada, and fraud schemes have become more sophisticated and not easily identifiable. Recognizing the role of banks, as to their unique role in the financial sector, Finance Canada is considering whether the banks should be required to prevent or delay transactions they believe to be fraudulent and/or associated with a scam and the circumstances the banks would be required to exercise this function. Additionally, Finance Canada is seeking views on whether the banks should be required to permit consumers to have the ability to turn off or adjust account capabilities to prevent fraud (e.g., the ability to complete wire transfers).

Liability protection for unauthorized transactions and requiring banks to collect data related to fraud and scams

There are liability protections for unauthorized transactions including under the *Bank Act*. The *Bank Act* provides a maximum liability of $50 for unauthorized credit card transactions. To address the new methods being used to perpetrate fraud, Finance Canada is considering:

- Requiring the banks to implement policies and procedures to detect fraud and scams and prevent consumers from being victimized that meet or exceed a regulated standard;
- Introducing a maximum liability threshold for account holders who are victims of unauthorized transactions, regardless of how the account funds were access

(e.g., by wire transfer, a credit card payment, or an electronic funds transfer) and the circumstances the consumer should be liable for lost funds due unauthorized transactions;
- What constitutes an unauthorized transaction and how such transactions should be defined; and
- Whether banks should be required to collect and report anonymized, aggregated data related to the nature of fraud and scams targeting their clients, and whether the banks should be required to report the data to the Financial Consumer Agency of Canada.

Branch closures

Notice of closure

Finance Canada is seeking input on requiring banks to include, in their notices to the public and to the Financial Consumer Agency of Canada, any intention to close a branch or cease opening retail deposit accounts or teller-based cash disbursals, including:

- A detailed rationale for the decision;
- An assessment of the likely impacts of the decision for the impacted community;
- Additional data about the impacted branch, for example, the volume and value of transactions at the branch and the number of annual in-person visits to the branch; and
- How that data compares to a bank's branch average volume and value of transactions and number of in-person visits.

Finance Canada is also considering requiring banks to publish notices to the public about upcoming branch closures on their websites and requiring banks that are closing branches to facilitate customer account transfers and to waive associated transfer costs.

Reporting on branch networks and closures

Large banks must publish an annual public statement including the addresses of branches opened and closed during the publication year. Finance Canada is seeking views on expanding this data-reporting requirement to include reporting annual data respecting:

- The number of branches maintained by the bank;
- How many branches are in urban and rural locations;
- Which branches have been closed or opened in the past year; and,
- The average volume and value of transactions processed at its branch locations.

Clarifying rules for opening deposit accounts outside of bank branches

Finance Canada is considering whether retail deposit account-opening requirements that currently apply to branches and physical points of service should also apply when banks offer access through digital channels, and under what circumstances.

Immediate access to funds deposited by cheque

Banks place holds on funds deposited by cheque until the funds clear and release the funds within the period prescribed in the *Bank Act* (four to seven business days, barring exceptional circumstances, though cheque holds may be longer if funds are deposited using certain methods such as an automatic teller machine (ATM) or through the bank's mobile application. Banks are also required to immediately provide access to the first $100 of funds deposited by cheque when deposited in person with an employee at a branch, or the following business day if deposited in any other manner, in each case barring exceptional circumstances.

Finance Canada is considering increasing the amount of funds immediately available when cashing a cheque in person and setting out an amount of funds to be made immediately available when cashing a cheque by other means, such as an ATM or a bank's mobile application. Additionally, consideration is given to lowering maximum cheque hold periods and whether the maximum time for cheque holds should depend on the amount of funds deposited or the manner the cheque funds are deposited.

Modernizing the financial sector framework

Prohibiting or restricting interlocking directorates in the financial sector

As described in the consultation, an interlocking directorate is when a director of one firm is an employee, executive, partner, owner or member of the board of directors of another firm or has another interest in the business of the second firm. Finance Canada is considering prohibiting or restricting interlocking directorates.

Public holding requirement thresholds

FRFIs above a certain size threshold must have 35 per cent of their voting shares publicly listed on a recognized stock exchange, Finance Canada is considering updating the equity threshold for the public holding requirement (currently set at $2 billion) at which the public holding requirement is triggered.

Updating financial institution statutes to address statutory thresholds

Finance Canada is considering measures to update key statutory thresholds under FRFI legislation, including identifying what these thresholds should be and whether certain thresholds are better suited to be regulatory guidelines as opposed to legislative requirements:

- Increasing limits on specialized financing activities;
- Limits on investment powers; and
- Under the *Insurance Companies Act,* the ownership of farmland, timberland and similar assets.

Financial sector risks and national security

Finance Canada is reviewing measures to enhance the oversight of financial sector risks related to integrity and security, including national security, and the creation by statute of a committee to facilitate consultations among members on how to address such risks and provide authorities for the exchange of information with necessary safeguards.

Finance Canada is also considering expanding the Office of the Superintendent of Financial Institutions (OSFI) direction of compliance authority to include an act that may threaten the integrity or security of an FRFI and the affairs of an FRFI, and expanding the authorities of the Minister of Finance and the Superintendent of Financial Institutions that refer to an FRFI's policies and procedures to protect itself against threats to its integrity or security to include a reference to the adherence by an FRFI to these policies and procedures.

Artificial intelligence

Considering the anticipated impact of artificial intelligence in the financial sector, Finance Canada is seeking views on which areas should be a priority in its effort to strengthen the safe and responsible use of artificial intelligence in the financial sector.

By

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