

Collateral Matters

A Banking Law Newsletter

AIRD & BERLIS LLP
Barristers and Solicitors

Budget 2017: Financial Sector Update

By Alyssa Gebert

On March 22, 2017, the Federal government (the “Government”) tabled the 2017 federal budget (the “2017 Budget”). The 2017 Budget provides guidance on the Government’s plan to introduce legislation in a number of areas directed at the financial services sector in Canada, namely: strengthening the bank resolution regime and the deposit insurance framework; increasing oversight of financial market infrastructures; enhancing the Canadian anti-money laundering and anti-terrorist financing regime; supporting financial technology; and introducing a new retail payments oversight framework.

Enhancing the Bank Resolution Regime

Following the 2008 financial crisis, a number of countries, including Canada, began implementing bank recapitalization or “bail-in” regimes. Bail-in regimes aim to reduce tax-payer liability in the event that a domestic systemically important bank (“D-SIB”) is unviable by requiring certain stakeholders to support the viability of such an institution by conversion of their instruments into the common equity of the financial institution. In 2016, the Government introduced legislation aimed at the creation of a bail-in regime.¹ While not yet in force, the key feature of this legislation is that, where a D-SIB is failing, at the direction of the Government, the Canada Deposit Insurance Corporation (the “CDIC”) has the power to temporarily control and convert certain shares and liabilities of the financial institution into common shares.

While the Government continues the process of introducing a federal bail-in regime, in the 2017 Budget, the Government proposes to introduce legislative amendments to:

- designate the CDIC as the resolution authority for banks;
- clarify the treatment of eligible financial contracts in a bank resolution process; and
- strengthen the powers of the Superintendent of Financial Institutions to set and administer minimum loss capacity requirements.

Deposit Insurance Review

In 2016, the Government launched a deposit insurance review consultation with three broad policy objectives: streamlining deposit categories; updating the scope of eligible deposits; and addressing the complexity of trust deposits. Upon the conclusion of this ongoing review, the Government confirmed its intent in the 2017 Budget to introduce legislation to update and enhance the Canadian deposit insurance framework.

Financial Market Infrastructures (“FMIs”)

The Government has signaled its intention to introduce legislative amendments to expand and improve the oversight powers of the Bank of Canada, pursuant to the *Payment Clearing and Settlement Act*. These proposed amendments to the *Payment Clearing and Settlement Act* would enhance the Bank of Canada’s ability to identify and respond to risks to FMIs, as well as implement an FMI resolution framework to enable the Bank of Canada to intervene in instances of potential FMI failure.

¹ An Act to implement certain provisions of the budget tabled in Parliament on March 22, 2016 and other measures, SC 2016, c 7.

Anti-Money Laundering and Anti-Terrorist Financing Regime

The Government plans to introduce legislation to amend the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (the "PCTFA"). The goal of these amendments will be to expand the list of disclosure recipients to include the Department of National Defence and the Canadian Armed Forces, as well as support better intelligence regarding beneficial ownership information. Proposed amendments also include a variety of changes to enhance the PCTFA framework, support compliance and strengthen the ability of reporting entities to operationalize the PCTFA, while ensuring that the statute functions as intended.

New Retail Payments Oversight Framework

In addition to confirming the Government's commitment to and support of financial technology, the Government

has indicated that it will release a consultation paper on a new retail payments oversight framework in 2017. Based on the results of this consultation, the Government will introduce legislation to implement a retail payment oversight framework.

While the 2017 Budget does not provide detailed provisions, a number of significant legislative amendments are likely to affect the Canadian financial sector. Financial institutions should take note as the Government moves to introduce the various regulatory and legislative amendments proposed in the 2017 Budget.

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