

Geneva, 25.04.2023

1. References

1.1 Sources

- > Canadian federal budget 2023:
<https://www.budget.canada.ca/2023/pdf/budget-2023-en.pdf>
- > Consultation on Fighting Predatory Lending by Lowering the Criminal Rate of Interest:
<https://www.canada.ca/en/departement-finance/programs/consultations/2022/...>
- > Guideline on Existing Consumer Mortgage Loans in Exceptional Circumstances:
<https://www.canada.ca/en/financial-consumer-agency/corporate/transparency/...>

1.2 Country Manuals

CM PB	CM EAM	CM Products	CM AM	CM Credits	CM Trustee	CM InsDist
No	No	No	No	No	No	No

1.3 Topics

Credit Services; Consumer Protection

1.4 Key Words

Consumer Credit; Mortgage Credit

2. Context

Through the *Canadian Federal Budget 2023*, the Canadian government has announced its intention to introduce new measures to further **protect consumers in relation to credit and tackle “predatory lending” activities**.

The document sets out several proposed actions:

- > Reduce the interest rate which is considered criminal;
- > Adjust the exceptions to which payday credits are subject;
- > Support vulnerable customers with their mortgages in exceptional times;
- > Limit unjustified charges, defined as “junk fees”.

2.1 Reduction of the criminal interest rate

In accordance with a *Consultation Paper* published in 2022, one of the measures is to **reduce the interest rate considered reprehensible under the Criminal Code (Section 347) to an annual rate of 35% against 47% currently**. This would bring the criminal rate in line with the

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maximum level foreseen in the Quebec regulation for consumers. It is also the opportunity to abandon the calculation of the effective annual rate (EAR) of loans in favour of solely the annual percentage rate (APR) in order to unify and simplify comparisons between interest rates.

2.2 Conduct with respect to existing mortgages

In parallel with the document, the Canadian government also published *Proposed Guideline on Existing Consumer Mortgage Loans in Exceptional Circumstances*. It sets out its expectations for regulated institutions to **help consumers cope with their mortgages in extraordinary circumstances**, as is now the case with the combined effects of debt, high rates, inflation and Covid residuals.

In this regard, credit institutions must put in place **policies and procedures** to identify early signs of difficulty that an individual might encounter. Institutions should also **establish relief measures** based on the principles of equity, appropriateness and accessibility. These may include extending amortizations after 25 years and allowing lump sum payments. These issues are currently subject to a consultation before being adopted.

3. Comments

The rules apply primarily to Canadian institutions as well as to licensed foreign banks. These developments highlight the Canadian government's **broader approach** to better protecting consumers at a federal level, whereas this matter is normally regulated at the provincial level.

3.1 Cross-border impact

Cross-border credit activities (which do not involve Canadian securities) should not trigger an authorisation requirement if there is no substantial connection with Canada to conclude that the activity is taking place within Canada, i.e.:

- > There are no marketing activities in Canada;
- > The foreign bank does not act through agents or nominees in Canada;
- > The foreign bank does not focus/develop its activities in Canada;
- > The foreign bank is generally carrying on its activities outside of Canada;
- > Funds are available in the client's account abroad.

However, the **following issues must be kept in mind**. As regards the criminal interest rate, since this is a criminal matter, the Canadian judge has jurisdiction to punish anyone who imposes a usurious rate in Canada. Similarly, in the presence of a Canadian consumer, it is possible that, despite a choice of forum and law, the Canadian judge will declare himself competent and apply his own law regarding, for example, a foreign institution that would not be tolerant towards a vulnerable mortgage borrower in exceptional circumstances.

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4. Practical Implications

4.1 Immediate Action

Foreign credit institutions should assess their relations in Canada and their need to comply with local consumer requirements, as well as check the interest rate charged.

4.2 Follow-up Action

Any future development in this field needs to be followed up.

This will be part of the BRP BRAIN monitoring.

We are at your disposal for any questions you may have.

Best regards,

BRP Bizzozero & Partners SA

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