

INTERESTING CHANGES TO INTEREST RATES

Posted on July 11, 2023

Categories: [Insights](#), [Publications](#)

On June 22, 2023, the *Budget Implementation Act, 2023, No. 1* ("**Bill C-47**"), which includes a number of major commitments the government announced in its [Budget 2023](#), received Royal Assent. One of the notable sections of Bill C-47 for lenders is the reduction in the maximum interest rate under Section 347 of the *Criminal Code* (Canada) (the "**Criminal Code**"), which aims to combat predatory lending practices and promote fair lending conditions for borrowers.

Understanding Bill C-47

Bill C-47 amends the Criminal Code and changes the criminal rate of interest from an effective annual rate ("**EAR**") to an annual percentage rate ("**APR**"). EAR has been used as the reference rate since 1980 when the criminal rate was first introduced. One notable difference between EAR and APR is that APR is based on simple interest, while EAR takes compound interest into account. Bill C-47 also lowers the threshold for a "criminal rate" of interest which is currently 60% EAR, or 47% APR. Under Bill C-47, a "criminal rate" of interest is defined as "an **annual percentage rate** of interest calculated in accordance with generally accepted actuarial practices and principles that **exceeds 35 per cent** on the credit advanced^[1]". Note that the Criminal Code broadly defines "interest" as including the aggregate of all charges and expenses, such as fees, fines, penalties or commissions (or similar charges or expenses), including those paid or payable for the advancing of credit under a credit agreement. Reducing the maximum interest rate to 35% APR aligns the Criminal Code with stricter maximums currently in effect for consumers in the Province of Quebec.

The proposed changes under Bill C-47 will not apply to existing credit agreements entered into before the changes come into force, a date for which has not been set.

Implications for Credit Agreements

Lenders most likely impacted by the changes outlined in Bill C-47 above are non-prime lenders and non-bank lenders who generally offer more risky credit at higher rates of interest. Borrowers accessing these sources of credit typically cannot obtain prime rate financing and seek third-party credit at a higher rate of interest. With interest rates at a 20 year high^[2], the delta between the criminal rate of interest and those typically offered by private lenders is more suppressed than usual. While credit agreements entered into prior to the changes

coming into force will not be impacted, private lenders should carefully consider new credit agreements in light of the potential impact these changes may have on their facilities and their ability to generate margins commensurate with the level of risk they are taking on. Generally, credit agreements contain standard clauses specifying that any interest payments made under the agreement that exceed the maximum allowed under the Criminal Code are retroactively reduced to the maximum allowed. However, if the agreement does not contain such provisions and the applicable interest rate rises above the criminal rate, the obligations to pay interest would be unenforceable and the lender may be liable to a fine of up to \$25,000 or, if an individual, to imprisonment of up to five years.^[3] Although the protection of Canadians is at the heart of the changes, the amendments may significantly impact the availability of credit for those who would prefer “expensive” financing to no financing at all.

Two key takeaways for lenders are to:

- ensure new arrangements take into account the lower criminal rate of interest; and
- review any new credit agreement to confirm it contains provisions that deal with potential criminal rate issues.

Should you have any questions regarding this newsletter or require further information, please do not hesitate to contact one of the authors or a member of McMillan’s Financial Services group.

[1] Bill C-47, *An Act to implement certain provisions of the budget tabled in Parliament on March 28, 2023*, 1st Sess, 44th Parl, 2023, cl. 610(1).

[2] [Canada Interest Rate graph](#).

[3] *Criminal Code*, RSC 1985, c C-46, s 347(1).

by [Steven Marmer](#) and [Darcy Ammerman](#)

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

© McMillan LLP 2023