THE FUTURE OF BANKING BECOMES LAW: IMPLICATIONS OF THE CONSUMER-DRIVEN BANKING ACT ON FINTECHS, FINANCIAL INSTITUTIONS AND CONSUMERS

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On June 20, 2024, Bill C-69, the Budget Implementation Act, 2024 received royal assent. Among other things, Bill C-69 enacts the Consumer-Driven Banking Act (the “CDBA”) and makes related amendments to the Financial Consumer Agency of Canada Act (the “FCAC Act”). Together, these changes establish Canada’s first legislative framework for consumer-driven banking.

We recently published a pair of bulletins introducing the legislation and summarizing the key aspects of the CDBA, providing for a useful general overview of the new legislative framework.

What is Consumer-Driven Banking

Consumer-driven banking (also known as “open banking”) empowers individuals and small businesses to direct financial institutions to share their data with participating entities of their choice. This marks a transformative shift in the financial services sector. Traditionally consumers had limited control over their banking data, and had to rely on risky methods such as screen-scraping to share their data with financial service providers. With consumer-driven banking, consumers can manage and control their data more than ever before, with the comfort of knowing that the sharing of their data will be subject to rigorous technical safeguards.

Implications for Fintechs, Financial Institutions and Consumers

The new legislative framework carries significant implications for financial technology companies (“Fintechs”), financial institutions, and consumers.

For Fintechs, the CDBA presents an opportunity to integrate innovative services into the consumer banking landscape, leveraging secure data-sharing to enhance service offerings. However, Fintechs will also need to navigate compliance requirements and make sure to implement robust data security measures to align with the forthcoming technical standards. This may require substantial investment of time and resources.
Financial institutions will face both opportunities and challenges. The new legislative framework promotes greater consumer data portability, potentially disrupting traditional banking models by fostering increased competition. Banks and other financial institutions will need to adapt by enhancing their digital platforms and integrating with third-party services, all while maintaining compliance with the new regulatory standards. This shift may also drive more strategic partnerships between traditional banks and Fintechs, fostering innovation but also requiring careful management of data security and customer trust.

For consumers, the CDBA promises increased control over personal financial data, enabling more personalized and competitive financial services. Enhanced data portability can facilitate better financial management and more informed decision-making.

**Looking Forward**

Many operative aspects of the new legislative framework will come into force on a day or days to be fixed by order of the Governor in Council.

As we discussed in our previous bulletin, several critical questions regarding the CDBA remain unanswered, including the exact meaning of small business and what constitutes derived data. While the framework for consumer-driven banking is now established, the operational aspects of the CDBA and the FCAC Act hinge on forthcoming regulations to be determined by the Governor in Council. These regulations will define the scope of data covered under the CDBA and outline violations under the FCAC Act. Notably, the Minister retains discretion in designating the technical standards body.

For more information on this topic or any questions about open banking, please reach out to the McMillan financial services team.

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**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.

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