

UPDATES TO THE BAIL-IN REGIME: INTRODUCTION OF BILL C-15

Posted on May 10, 2016

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In April, we published a [bulletin](#) describing the federal Liberal government's 2016 budget proposal to introduce a bank bail-in regime. Subsequently, the government has taken the proposal one step further by introducing Bill C-15 entitled *An Act to implement certain provisions of the budget tabled in Parliament on March 22, 2016 and other measures to*, among other things, implement the proposed regime.

Bail-in regimes shift some of the responsibility for restoring a failing bank to financial health from taxpayers to shareholders and bondholders by converting the bank's eligible long-term debt into common shares to recapitalize the bank.

Highlights of the Bail-in Regime in Bill C-15

Canada Deposit Insurance Corporation ("CDIC")

The crux of the bail-in regime is that if the Office of the Superintendent of Financial Institutions ("**OSFI**") determines that a domestic systemically important bank ("**D-SIB**") has ceased, or is about to cease to be viable, then the federal government can appoint CDIC as receiver of such D-SIB. Under the proposed regime, the federal government has the statutory power to direct CDIC to convert certain debt of the D-SIB into common shares. CDIC will have the power to set the terms and conditions, including timing, of the conversion, subject to any regulations. As soon as possible following the conversion, a notice shall be published in the Canada Gazette and on the D-SIB's website.

Regulations made in respect of the conversion power will only apply to shares and liabilities that are issued or originated on or after the date the regulations come into force, or liabilities that were issued or originated before the regulations came into force, but whose term is extended.

Duty to Pay Compensation

One aim of the bail-in regime is to ensure that no shareholders or bondholders end up worse off than they would have been had the D-SIB been liquidated under the *Winding-up and Restructuring Act*. In the event any shareholders or bondholders are worse off, they are entitled to be compensated. CDIC may decide whether to

pay the compensation in cash or in any other appropriate form, such as shares. The amount of compensation will be determined by CDIC in accordance with the not-yet-prescribed regulations and by-laws.

Amendments to the *Bank Act*

Pursuant to the proposed amendments to the *Bank Act* under Bill C-15, OSFI will have the power to designate a bank as a D-SIB, unless the Minister of Finance is of the opinion that it is not in the public interest to do so. The designations must be published in the Canada Gazette and on OSFI's website. To date, OSFI has designated the "Big Six" (Bank of Montreal, Bank of Nova Scotia, Canadian Imperial Bank of Commerce, National Bank of Canada, Royal Bank of Canada, and Toronto-Dominion Bank) as D-SIBs.

OSFI, along with the Governor in Council, may set a D-SIB's minimum capacity to absorb losses, and may take specified measures in the event a D-SIB is not maintaining its minimum capacity.

Concerns with the Bail-In Regime

In our April 2016 bulletin, we discussed concerns over whether consumer deposits would be part of the eligible debt responsible for bailing-in a bank. For the moment, these concerns remain unanswered; the types of liabilities subject to the bail-in regime are not set out in Bill C-15. Instead, they will be specified in regulations to the *Canada Deposit Insurance Corporation Act*, which have yet to be prescribed. When the bail-in proposals were first proposed by the previous Conservative Government, communications from the Minister of Finance denied that depositors' accounts would be subject to the bail-in regime.

Next Steps

Bill C-15 must continue through the House of Commons and the Senate and receive Royal Assent before the bail-in regime will come into force. Regulations setting out the specifics of the bail-in regime will be introduced at a future date. There is currently no timetable for implementation.

by Pat Forgione, Rob Scavone, Darcy Ammerman and Jennifer Allman, Student-at-Law

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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