Cassels

New Year; No Criminal Interest Rate for Commercial Loans

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As previously announced in our Cassels Comments (see our articles from March 29, 2023; January 17, 2024; and August 1, 2024), effective January 1, 2025, Canada has implemented new rules regarding the criminal interest rate under the Criminal Code (the Code). A key change provides that the criminal rate of interest will be lowered from an effective annual rate (EAR) that exceeds 60% to an annual percentage rate (APR) that exceeds 35%. Note that in addition to the change in the rate, there is a change in calculation from an EAR to an APR.

With these changes come certain key exemptions, including certain exemptions for commercial loans which eliminates the former 60% criminal interest rate for commercial loans.

Commercial Loans Exemption

A commercial loan is defined as one where the borrower is not a natural person, the agreement or arrangement is entered into for business or commercial purposes, and either:

- The amount of the credit advanced is more than $10,000 but less than or equal to $500,000 and the APR of interest does not exceed 48% on the credit advanced; or
- The amount of the credit advanced is more than $500,000

With respect to loans above $500,000, the Government has concluded that these transactions "represent a level of sophistication that does not require protection through the criminal interest rate provisions." Therefore, if the agreement or arrangement matches any of these criteria, the new lower criminal interest rate of 35% APR does not apply. Any commercial loan in an amount less than $10,000 will be subject to the new 35% APR. Given that few commercial loans are valued below $10,000, this change is expected to have minimal cost impact on lenders and commercial borrowers.

Implications on Canadian Commercial Lending Transactions

As discussed in our previous Cassels Comment, Canadian credit agreements or arrangements typically contain provisions relating to Section 347 of the Code to ensure that the rate of interest does not exceed the criminal rate of interest. Once the Regulations come into force and effect, the use of such provisions for loans over $500,000 may no longer be required. Additionally, with the elimination of the criminal interest rate for loans over $500,000, lenders may view Canada as a more desirable jurisdiction for providing financing arrangements in the commercial lending space in amounts exceeding $500,000.

As this is new legislation, the Cassels team will continue to review how the application of the revised provisions are interpreted. If you have any questions about the new criminal rate of interest and how it may impact your business, please reach out to Carla Potter, Lauren Grossman, Daniel Cipollone or any member of the Cassels Banking & Specialty Finance team.
