



**This Web page has been archived on the Web.**

[Home](#) > [Part II: Official Regulations](#) > [2011-11-09](#)

Vol. 145, No. 23 — November 9, 2011

Registration

SOR/2011-230 October 21, 2011

INTEREST ACT

## **Prescribed Entities and Classes of Mortgages and Hypothecs Regulations**

P.C. 2011-1235 October 20, 2011

His Excellency the Governor General in Council, on the recommendation of the Minister of Finance, pursuant to subsection 10(3) ([see footnote a](#)) of the *Interest Act* ([see footnote b](#)), hereby makes the annexed *Prescribed Entities and Classes of Mortgages and Hypothecs Regulations*.

### **PRESCRIBED ENTITIES AND CLASSES OF MORTGAGES AND HYPOTHECS REGULATIONS**

Prescribed entities, mortgages and hypothecs

1. For the purposes of paragraph 10(2)(b) of the *Interest Act*,
  - (a) the following entities are prescribed:
    - (i) partnerships,
    - (ii) trusts settled for business or commercial purposes,
    - (iii) unlimited liability corporations as defined in the *Business Corporations Act*, R.S.A. 2000, c. B-9,
    - (iv) unlimited liability companies as defined in the *Business Corporations Act*, S.B.C. 2002, c. 57, and
    - (v) unlimited companies as defined in the *Companies Act*, R.S.N.S. 1989, c. 81; and
  - (b) the prescribed class of mortgages and hypothecs consists of those issued after January 1, 2012.

Coming into force

2. These Regulations come into force on January 1, 2012.

### **REGULATORY IMPACT ANALYSIS STATEMENT**

*(This statement is not part of the Regulations.)*

#### **Issue and objectives**

The *Interest Act* (the Act) sets out mandatory mortgage prepayment terms for mortgages of more than five years. Under the Act, the mandatory prepayment terms provide the ability to pre-pay the full amount of the mortgage after five years, subject to a penalty of three months' interest. The Act also provides an exemption for mortgages granted to corporations and joint stock companies, which allows them to negotiate prepayment terms directly with their lender.

Some business and commercial entities, not structured as corporations or joint stock companies, have had difficulties in accessing long-term mortgage financing because the prepayment terms for their mortgages are prescribed by the Act. Some mortgage lenders may not be willing to provide them significant long-term funding with a mandatory mortgage prepayment penalty limited to three months of interest. Furthermore, the courts have ruled that, given the current legislative wording, mandatory prepayment terms cannot be negotiated by these borrowers and must be included in all long-term mortgages.

As modern commerce and finance have evolved, negotiating the prepayment terms is important for businesses securing long-term loans to match the lifespan of the asset. In practice, some, but not all, commercial enterprises may be able to restructure their affairs in order to qualify for long term mortgages without mandatory prepayment privileges.

The Government expanded the list of entities that can negotiate their own prepayment terms. The Act was amended in 2008 to provide the Government with the regulation-making authority to prescribe entities and associated classes of mortgages, hypothecs and debentures, in order to exempt them from the mandatory prepayment terms and allow all business entities to have equal opportunities in accessing long-term funding while ensuring that mandatory prepayment terms remain in place for individuals and non-business interests.

### ***Description and rationale***

The Government retains the original policy objective of giving all commercial entities the ability to negotiate prepayment terms, by making the *Prescribed Entities and Classes of Mortgages and Hypothecs Regulations* (the Regulations) that identify unlimited liability entities, partnerships, as well as trusts settled for business or commercial purposes as prescribed entities under the Act.

Partnerships are prescribed under the Regulations, as they exist for the purpose of conducting business and generating business income.

Trusts can be used to carry out a wide range of purposes including personal, charitable, and education affairs, as well as for business or commercial purposes. Thus, in line with the original policy objective, only trusts that are settled for business or commercial purposes are prescribed. Unlimited liability entities that are defined under provincial companies or corporations legislation are prescribed under the Regulations. Similarly to partnerships, unlimited liability entities exist for the purpose of conducting business and generating business income.

### ***Consultation***

The Government released a consultation paper in August 2010 to consult broadly on which business entities should negotiate prepayment privileges on their own. Comments were received from key industry and real estate stakeholders, such as the Canadian Bankers Association, the Canadian Bar Association, the Canadian Life and Health Insurance Association (CLHIA), several notable law firms, and individual Canadians. Overall, the comments were supportive of the proposal.

The Regulations were published in the *Canada Gazette*, Part I, on July 2, 2011, and no comments were received. As a result, no changes were made to the Regulations.

### ***Implementation, enforcement and service standards***

The Regulations apply to mortgages on real property or hypothecs on immovables entered into after January 1, 2012.

### ***Contact***

Jane Pearse  
Director  
Financial Institutions Division  
Department of Finance

L'Esplanade Laurier, East Tower, 15th Floor  
140 O'Connor Street  
Ottawa, Ontario  
K1A 0G5  
Telephone: 613-992-1631  
Fax: 613-943-1334  
Email: [finlegis@fin.gc.ca](mailto:finlegis@fin.gc.ca)

[Footnote a](#)

S.C. 2008, c. 28, s. 155

[Footnote b](#)

R.S., c. I-15

**NOTICE:**

The format of the electronic version of this issue of the *Canada Gazette* was modified in order to be compatible with extensible hypertext markup language (XHTML 1.0 Strict).

Date Modified: 2011-12-13