CMHC COMMENTS ON THE CANADA EMERGENCY COMMERCIAL RENT ASSISTANCE PROGRAM

by Andrew J. Skinner and Jacky Cheung

The Canada Mortgage and Housing Corporation published a notice today with further information on the previously announced Canada Emergency Commercial Rent Assistance Program ("CECRA"). Dickinson Wright's initial Client Alert on the CECRA can be found here:

HIGHLIGHTS:

- In addition to the requirements for landlords previously announced by the Federal and Ontario Governments, landlords must have declared rental income on their tax returns for 2018 and/or 2019 to qualify.
- The Government loans are only forgivable to the landlord if the landlord complies with all applicable program terms and conditions, including the requirement not to seek to recover rent abatement amounts after the Program is over.
- The Government loans to the landlord will cover 50% of the gross rent owed by a qualifying small business tenant during April, May, and June 2020.
- Landlords can apply retroactively for this Program provided that the landlord can prove eligibility during April, May, and June 2020. However, landlords must refund any amounts paid by the small business tenant for that period. The refund can be a credit for future rent if agreeable by the tenant and the landlord.
- The deadline to apply is August 31, 2020. The Ontario Government previously announced the deadline was September 30, 2020.
- CMHC has introduced additional requirements for small business tenants to qualify:
  - The $50,000 maximum in monthly gross rent is per location and defined in a valid and enforceable lease agreement; and
  - The small business cannot generate more than $20 million in gross annual revenues calculated on a consolidated basis (at the ultimate parent level).

There are still many unanswered questions concerning this Program. It will be interesting to see whether landlords will be inclined to participate in the CECRA, given that their contribution is 25% of gross rent which could likely include mortgage payments, utility costs, realty taxes, etc. and the fact that landlords appear to be prohibited from recouping the 25% of gross rent "loss" after COVID-19 and once the economy for small businesses stabilizes.

To the disappointment of many commercial businesses who are hurting and looking for some relief from a Government program, they may be disappointed by the fact that the Program as formulated to this point does not help commercial landlords, who may also be hurting in this environment. It may be that the Program makes sense in extreme distress situations. However, one questions the equitable balance of a program where a small business could choose to close in the current COVID-19 environment and may qualify according to the financial parameters with a reasonable expectation that, for example, with pent up demand and an improving economy see their revenues spike and essentially keep them whole once the outbreak ends. This is an extreme example. However, it appears that in most circumstances, the Government has dangled an enticing carrot to both landlord and tenant which neither will be able to take advantage of.

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