Bennett Jones

COVID-19: New Programs to Access Capital

Overall federal government strategy

Individuals: Relaxed terms of employment insurance, income support for those not eligible for employment insurance, wage supplement for those working in health care and other essential service workers, tax deferral, work-sharing programs, supplemental employment insurance for quarantined or sick or providing child care, extra child care benefits, and mortgage deferrals

Businesses: Reductions in notice or pay in lieu for short-term layoff periods, tax deferral, wage supplements, duty and customs tariff relief and extension of time for repayment credit insurance, accessing capital through guarantees, loans, grants and credit programs, commercial rent relief.

Specific business sectors or groups of individuals: Programs vary by sector, e.g., oil and gas, tourism, transport, retail, aviation, broadcasting, agriculture, northern business, tech and innovation sector and/or by composition of individual groups, e.g., Indigenous, seniors, students, homeless, women, caregivers, health care workers.

THIS BLOG EXPANDS ON PANDEMIC-RELATED PROGRAMS THAT CAN PROVIDE ACCESS TO CAPITAL

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1. Interest free loans under Canada Emergency Business Account for small businesses (CEBA)

- CEBA provides loans to employers with between 20,000 and $1.5 million in total payroll in 2019.
- If a business has a payroll less than $20,000, and eligible non-deferrable expenses of between $40,000-1.5 million, then it is also eligible for CEBA.
- Sole proprietors who receive income directly from their business, businesses that rely on contractors and family-owned corporations that pay employees through dividends are also eligible.
- As of November, 2020, companies that do not have a business account but do have a CRA account can apply for CEBA.
- Under this program, private financial institutions will provide **up to $60,000 with 0% interest if the loan is re-paid by December 31, 2022, and with up to $20,000 being forgiven. Note that the forgiven portion is taxable income in the year the loan was received.**
- If loan is not repaid by December 31, 2022, the amount outstanding will be converted to a three-year loan at 5%.

2. BDC Programs (a) Small Business Loan Guarantee Program

- The BDC loan guarantee is available from your financial institution. Financial institution to structure, underwrite, document and authorize the loan.
- The loan can only be used for operational and liquidity needs including interest on existing debt. This loan guarantee can be stacked with other loans.
- Loans are interest free for first 12 months. The term of the loan can be up to 10 years.
- **BDC will guarantee up of 80% of loan Total maximum of loan is $6.25 million with up to $5 million guarantee from BDC.** Business must have been financially viable before COVID-19.
- Available until June 2021.

2. BDC (b) Mid Market Loan Guarantees

- This loan is provided to mid market firms and is to be used for operating cash flow.
- Businesses must have annual revenues in excess of $100 million.
- Companies had to be financially viable and in good standing prior to COVID-19.
- 24-75% of loan guaranteed to the financial institution.
- Commercial interest rates.
- Credit available is between $12.5 million-$60 million per borrower.
- Program extended to June 2021.

2. BDC (c) BDC Co-Lending

BDC will co-lend with your financial institution.

Co-loans are up to $12.5 for SMES for operating expenses.

- This program can be stacked. Principal payments can be delayed up to 12 months
- Funds can be used to pay debt that existed prior to pandemic as well as during the pandemic.
- Terms and conditions largely set by your private financial institution based on commercial risk assessments.
- Program now available up to June 2021.
- Anecdotal evidence is that private financial institutions are not keen on providing these loans. Nevertheless, Bennett Jones counsel have experience in obtaining co-loans.

2. BDC (d) Working Capital Loans

- Smaller loans intended to supplement an existing line of credit.
- **Up to $2 million with flexible terms and principal payment postponement.**
- Can be used to cover fixed assets, fund marketing or start-up fees, a franchise purchase or advisory services.
- Reduced from market rates.
- Fast turnaround on approvals. No study fees.
- Available from BDC directly, and anecdotal evidence is that these loans are not difficult to obtain

3. EDC Programs (a) Mid- Market Loan Guarantees

- **Guarantee of 75% of total loan from private financial institutions. Guarantees are from $16.75 to a maximum $80 million.**
- **Company must have revenues between $50 and $300 million.**
- **EDC fee is 1.8% per annum paid quarterly with ability for some deferral.**
- Mid-market guarantee fund is available for exporters, international investors and businesses that sell their products or services within Canada.
- Maturity date of 12 months with option to renew for an additional 12 months.
- Repayment requires ongoing interest payment and 100% of capital due at maturity.
- To be eligible, company will have to meet specific requirements, e.g., Canadian-based.
- Money to be used for operational expenses, e.g., rent, payroll but not for dividend payouts, shareholder loans, bonuses, stock buy-back, option issuance, increases in executive compensation or bonus.
- Business must have been revenue generating prior to COVID-19 outbreak.
- Simplified administration. Online application to EDC to confirm eligibility and once eligibility confirmed, financial institution to decide on terms of loans.
- Your financial institution should be ready to provide this loan but experience is that actual money might not flow for several months. The due diligence process can be cumbersome. As a result, few companies have taken advantage of this program.

3. EDC Programs (b) Expansion of Existing Programs

- Under the Export Guarantee Program, EDC will provide additional working capital and a temporary liquidity injection of a six-month deferral for all existing customers and new ones who qualify under the new federal EDC guarantee program.
- **For those existing clients of the EDC credit insurance program:**
  - will provide payment relief on an as needed basis and will move expeditiously;
  - will increase appetite for risk with new policies;
  - will make allowances where there has been credit deterioration; and
  - with credit insurance, can seek further loan from financial institution.

3. EDC Existing Programs (c) Letters of Credit

- EDC provides 100% guarantee on a letter of credit.
- There is no risk to a bank and operates instead of a surety.
- Process is two step: obtain letter from EDC and then use it to secure a loan from financial institution.
- This is a useful tool, especially if private lender does not want to share risk of a co -lending or partial guarantee program. It can be obtained expeditiously and used to secure other loans.
- Bennett Jones counsel have experience obtaining significant letters of credits

3. EDC Guarantee - Oil and Gas

- EDC has committed to backstop up to 75% of a bank loan to a maximum of $100 million for the oil and gas sector. There has not been extensive take-up of this program.
- The program targets companies that pump 100,000 barrels of oil or less per day.
- Available to small and midsized oiled service companies and firms that ship, process and store are also eligible.
- EDC has indicated it will guarantee a portion of loans that are no longer covered by the reserve value.

4. Large Employer Emergency Financing Facility (LEEF)

- Program to help large businesses defined as having “significant operations” in Canada, with a “significant workforce" in Canada and approximately **$300 million or more in annual revenues.**
- **Not sector specific**but financial institutions not eligible for a LEEF loan.
- Companies will have to commit to minimizing loss of employment and sustaining domestic business and will have to show that the LEEFF funds are part of an overall plan to return to financial sustainability.
- Intended as a **bridge loan** and not a bailout. Therefore company had to be financial stable prior to COVID-19. Must be **seeking $60 million or more** in loans/guarantees and not be in active insolvency proceedings.
- Actual loan size will be based on cash flow needs for the next year.
- Program to be **managed by the Canada Enterprise Emergency Funding Corporation**, a subsidiary of Canada Development Investment Corporation, (same organization that manages Trans Mountain and Hibernia), in cooperation with the Department of Finance and Department of Innovation, Science and Economic Development.
- Company will have to demonstrate how it **maintains active business** and will be subject to an assessment on its international structure and financing arrangements. It will also have to disclose its financial records and impose limits on dividends and executive pay.
- Not available to companies convicted of tax evasion.

4. LEEFF Continued…

Each file will be dealt with on a case-by-case basis. Additional terms could include:

- Two types of loans: an unsecure loan equal to 80% of aggregate and a secured loan equal to 20% of aggregate.
- The interest rate on the unsecured facility is 5% per annum and will increase each year thereafter. Interest may be paid in kind for first two years on the unsecured facility. The maximum duration will be five years.
- For the secured portion, interest rate tied to existing secured debt and duration will be same as existing loans.
- Restrictions to be placed on operations relating to dividends, capital distributions, share repurchases and executive compensation.
- Borrower will be subject to affirmative covenants relating to: pension plans, collective agreements, climate change disclosures that demonstrate company is managing climate-related risks and contributing to Canada's commitments under the Paris Agreement and the goal of net zero in 2050.
- The lender reserves the right to appoint an observer to the board.
- Waivers may be required from existing lenders or bondholders of the borrower.
- Additional requirements to compensate lender. For Canadian public companies and private subsidiaries of a Canadian public company, there will be additional requirement to issue warrants that can be converted to shares that would enable the government to share in the upside of the borrower's recovery. Non publicly traded companies will be required to provide fees at a level commensurate to the value of warrants had it been a public company.

- **AS A RESULT OF ALL THE ABOVE CONDITIONS, FEW COMPANIES APPLIED AND THOSE THAT DID WERE INVOLVED IN A CUMBERSOME PROCESS.**

- **IN NOVEMBER 2020, GOVERNMENT ANNOUNCED IT IS EXPLORING OPTIONS TO ENHANCE THE LEEF PROGRAM TO "RESPOND TO SPECIFIC LIQUIDITY NEEDS OF A GREATER NUMBER OF LARGE CANADIAN BUSINESSES."**

- **BENNETT JONES COUNSEL HAVE ACTED FOR PRIVATE COMPANIES THAT HAVE OBTAINED THESE LOANS IN THE ENTERTAINMENT AND NATURAL RESOURCE SECTORS**

5. Other Programs (a) Regionally-Based Relief Funds

- To be delivered by the six regional economic development offices. **Additional funds provided by the government to this program in the Fall Economic Update.**
- Intended to provide loans and grants that target small - and medium-sized businesses that are unable to access other supports.
- **Total support is at $2 billion for federal regional development agencies and the Community Futures Network of Canada. An addition $3 million will be available to the Canadian Northern Economic Development Agency.**
- Canada has indicated this fund will be particularly helpful for SMEs in tourism, seasonal industries and entertainment sectors as well as rural businesses.
- For those with an existing relationship with their regional economic development agency, there will be possibility of deferral of payments and additional funding.

5. Other Programs (b) CMHC and Mortgage Relief

- Canada has purchased $50 billion of insured mortgage pools through the Canada Mortgage and Housing Corporation (CMHC).
- As a result, CMHC is permitting financial institutions to allow for payment deferral, loan re-amortization and special payment arrangements on mortgages.
- This program applies to multi-unit insured clients.
- There was extensive take-up of the mortgage deferral program in the spring of 2020. By fall 2020, however, the rate had fallen to approximately 5% of all CMHC loans are being deferred. Alberta has highest deferral rate at 10%.

5. Other Programs (c) Commercial Emergency Rent Subsidy (CERS)

- **The prior rent relief program ended October 31, 2020.** It provided 50% of rent with tenants and owners making up the balance. Rent relief was for up to three months. The application had to be made by landlord.
- **Under the new program, CERS, the government provides both tenants and property owners the right to make an application.**
- **Subsidized rent is available, on a sliding scale,** up to a maximum of 65% of rent where there has been a 70% decline in business. There are 2 formulas depending on the amount of lost revenue , with one formula for those that experienced a 50%-69% decline in revenue and a second for a 1%-49% decline in revenue.
- **The subsidy is available for three months rent and is only available for eligible expenses** which includes rent, property taxes, insurance, interest on commercial mortgages.
- There is an expenses cap of $75000 per property and an overall cap of $300,000.
- For those organizations that have been significantly restricted due to public health authority orders, t**here is another 25% rent support** (lockdown support) for an additional three periods.
- CERS is available retroactively for the period from September 27, 2020.
- Tenants can apply for relief up until June 2021.

5. Other programs: (D) New Sectoral Supports Announced in the Fall Economic Update (November 2020)

1. **Highly affected sectors credit availability program** to address sectors such as hospitality, arts, entertainment and tourism. Loans to be offered on more generous terms than other programs, e.g. 100 percent government guaranteed with interest rates at lower than market rate. The loans will be up to $1 million, up to ten years for maturity. This program will be delivered by financial institutions. but details of the program not yet available.

2. **Arts and Culture Program** enables arts-related organizations to apply for grants. The overall fund is $181.5 million. In addition, there are fee waivers for local television and radio stations. The government also announced a $50 million fund to compensate the film industry where there had been production interruptions.

3. **The Strategic Innovation Fund** for large scale transformative projects that have high intellectual property value received an additional $110 million over 5 years beginning in 2021. This fund has been used for vaccine development.

4. **The Transportation Sector** received additional support of $796 million, mostly for regional air transportation, airport infrastructure and waiver of airport rent relief. As well, government provided funding $188 million to Via Rail.

6. Private Investors

- Bennett Jones can experience and can assist in helping to match clients with **private investors in both Canada and the United States.**
- **Private equity investors** can invest via an all out buy-out transaction or through majority or minority share investments. The terms of the investment are flexible and can involve buying common equity or preferred shares or requiring seats on boards or veto rights on certain transactions.
- **Private debt investors** will extend credit to companies although some terms may not be as favourable as posted rates from traditional lenders. Such terms can include higher interest, a second lien on security or seats on boards. Nevertheless, there is greater flexibility and creativity available in terms of the availability of the loan.

7. Conclusion: Strategic Considerations

1. The programs are primarily designed **to relieve immediate liquidity problems rather than longer term capital deficiencies.**
2. **Smaller loans** can be accessed very quickly (e.g., CEBA, BDC small operating loans).
3. The more recent approach of the government is to focus on **sector specific programs for those sectors most impacted by the pandemic.**
4. For mid-sized firms, the **government is encouraging the use of BDC or EDC loan guarantees as an initial step.**
5. It is also possible to apply under a pre-pandemic **EDC program** as these will be available more expeditiously than new programs.
6. Private financial institutions are responsible for **joint loan/guarantee programs with EDC and BDC**. These programs provide the largest potential pool of capital for small- and medium- businesses. **The amount of the loan/guarantee is up to $60 million for a co-loan and $80 million for a guarantee.**
7. Experience of firms is that **obtaining a co-loan can be cumbersome** although less so if the firm is an existing EDC or BDC client.
8. Some of the **programs can be stacked**. It is possible, for example, to obtain both a letter of credit and a loan.
9. For large firms, the **LEEF program has been a disappointment due to the number of limitations. The government has announced it is considering reforms.** Given size of these loans, however, there will likely continue to be significant oversight.
10. For companies prepared to re-consider their corporate structure or pay higher interest on loans, **private equity and private debt** is an option.
11. If none of the above programs fits a client's needs, then the **regional economic development office** has been allocated substantial funds to provide to local businesses. The terms of the funds will typically mirror mainstream programs.