

OVERVIEW OF GOVERNMENT FUNDING PROGRAMS FOR U.S. BASED BUSINESSES OPERATING IN CANADA AND THE U.K.

ROBERTO ABURTO, COLIN GREEN
JONATHAN CHAMBERLAIN, STEPHAN SMOKTUNOWICZ



AGENDA

Overview of Canadian Federal Programs (CEWS and CERB)

Risks Management: Program abuses and potential penalties in Canada

Overview of the UK Government's funding schemes

- a) Larger business**
- b) Smaller business**

LEGAL DISCLAIMER

- The presentation today is not intended as legal advice.
- Because this is a high level overview, it is impossible to cover all relevant details, and available rights and remedies will depend on the unique facts of each situation.
- For specific advice, please consult with your qualified legal counsel before making any decisions or taking any action.
- As you know, the situation is extremely fluid and is changing on a daily basis. As things evolve, your best course of action could also evolve. Follow up to date and reliable sources for your information. **This information is up to date as of June 16, 2020.**
- Every jurisdiction has its own legal regime; our focus today is primarily on the Canadian Federal Programs and U.K Programs.

WHAT SUPPORT PROGRAMS ARE AVAILABLE?

Our selection of the most relevant government policy releases:

- 1. 75% Wage Subsidy (Canada Emergency Wage Subsidy (“CEWS”))**
- 2. Canada Emergency Response Benefit (“CERB”)**
- 3. Work-Sharing Program**
- 4. Canada Emergency Commercial Rent Assistance (“CECRA”)**
- 5. Canada Emergency Business Account Loans**
- 6. Tax Return Deadline Extension**

1. 75% TEMPORARY WAGE SUBSIDY (CEWS)

- CEWS is different from the previously announced 10% Wage Subsidy
- CEWS is a cash subsidy paid by the government to employers vs. a reduction of payroll remittances employer is obliged to make to the government.
- Eligible employers can apply for both CEWS and previously announced 10% subsidy. However, assistance received under the 10% subsidy will reduce amount an eligible employer can receive under CEWS.

1. 75% TEMPORARY WAGE SUBSIDY (CEWS)

- **Key difference:**
 - the 10% wage subsidy program is more limited in application – it provides for a \$25,000 max per employer.
 - CEWS does not have an employer max.
 - If you qualify for the 10% wage subsidy, you will automatically receive it (reducing CEWS by 10%).

1. 75% TEMPORARY WAGE SUBSIDY (CEWS)

- **Eligible employers are given (i) a temporary wage subsidy of 75% of remuneration paid for a period of three months up to max of \$847 per week per employee or (ii) or (ii) 75% of the employee's pre-crisis weekly remuneration.**
- **Observation: CEWS may actually cover 100% of the eligible remuneration paid to an employee, if that remuneration has dropped from the pre-crisis level.**
 - We are awaiting the release of further information.
- **The wage subsidy is backdated to March 15, 2020**

1. 75% TEMPORARY WAGE SUBSIDY (CEWS)

- **Note: non-arm's length employees limited to \$847 per week or 75% of employee's pre-crisis weekly remuneration.**

1. 75% TEMPORARY WAGE SUBSIDY (CEWS)

- **Eligible remuneration:**
 - **Working in Canada**
 - **Includes non-arm's length employees and employers can put employees back on payroll retroactively to claim CEWS**
 - **Includes salary, wages, and other remuneration, but excludes severance pay, value of stock option benefits, value of non-cash benefits and any salary paid to employee while employee eligible under CERB (i.e. within the 4 week period).**
 - Note: an employer that calls back an employee and commences to pay the employee remuneration may not be able to claim CEWS with respect to the same 4 week period covered by CERB.

1. 75% TEMPORARY WAGE SUBSIDY (CEWS)

- There will be no overall cap on the amount of subsidy that an employer may claim.
- An employer may claim the subsidy in respect of remuneration paid to new employees.
- The CEWS is for remuneration paid to employees and does not extend to payments to independent contractors. Contractors may consider applying for the CERB.

1. 75% TEMPORARY WAGE SUBSIDY (CEWS)

TYPES OF ELIGIBLE EMPLOYERS

- **CEWS is available to any type of employer in Canada, whether an individual, partnership, corporation, non-profit or charity, but excluding public sector entities, such as municipalities, crown corporations, public universities, colleges, schools and hospitals.**

1. 75% TEMPORARY WAGE SUBSIDY (CEWS)

QUALIFICATION REQUIREMENT

- **Employer must attest to reduction of gross revenue of 15% for March and 30% for April or May of 2020 compared to same month for 2019 (or average of Jan/Feb 2020).**
- **Note: the program is structured to run through to the end of August.**
- **Employer encouraged to make best efforts to top up employee's salary to pre-crisis level. This criterion appears flexible.**

1. 75% TEMPORARY WAGE SUBSIDY (CEWS)

APPLYING FOR CEWS

- **CRA *My Business Account* portal will be modified to accept applications.**
- **Timeline: 2 to 5 weeks, with payments to follow.**
- **Goal of CEWS: employers maintain current levels of employment, or re-hire laid-off employees, pay their wages and receive the subsidy in due course.**
- **Challenge: with time lag between payment of wages and receipt of the subsidy, employers must finance the amount of the subsidy**

1. 75% TEMPORARY WAGE SUBSIDY (CEWS)

- **CEWS is included in employer's income (deduction provided for amount of remuneration paid to employees)**

1. 75% TEMPORARY WAGE SUBSIDY (CEWS)

Steps for Employers :

- **Employers should ensure that they are registered with the CRA for direct deposit**
- **Employers should also assemble records to demonstrate the 30% reduction in gross revenues and the amount of remuneration paid to employees.**

1. 75% TEMPORARY WAGE SUBSIDY (CEWS)

Government consultation:

- **The federal government announced a consultation period (closed June 5, 2020).**
- **Changes and structural updates are expected.**
- **No further details or timeline has been released.**

2. CANADA EMERGENCY RESPONSE BENEFIT (CERB)

- CERB ([link](#)) provides \$500 a week for up to 16 weeks.
- Applications opened April 6, 2020
- Applicants re-apply every 4 weeks, up to max of 16 weeks
- Not like to be extended, based on current discussions
- Note: the benefits are taxable

2. CANADA EMERGENCY RESPONSE BENEFIT (CERB)

- **Eligible applicants for CERB:**
 - Have stopped working **because of COVID-19** or are eligible for Employment Insurance regular or sickness benefits (note: no more than \$1,000 income).
 - Had income of at least \$5,000 in 2019 or in the 12 months prior to the date of their application; and,
 - Who are or expect to be without employment or self-employment income for at least 14 consecutive days in the initial four-week period.

2. CANADA EMERGENCY RESPONSE BENEFIT (CERB)

- **The \$5,000 income requirement:**
 - The income of at least \$5,000 may be from any of the following sources: employment; **self-employment**; maternity and parental benefits under the Employment Insurance program and/or similar benefits paid in Quebec under the Quebec Parental Insurance Plan.

2. CANADA EMERGENCY RESPONSE BENEFIT (CERB)

- **How to apply**
 - **Online with CRA My Account (recommended)**
 - **Over the phone with an automated phone service**

RISK MANAGEMENT

- **Tax Planning v. Tax Avoidance v. Tax Evasion**
 1. **Tax planning:** a tax reduction plan that meets specific wording of legislation and is consistent with the spirit of the specific legislation.
 2. **Tax avoidance** can occur even if a tax reduction plan meets specific wording of legislation but is inconsistent with the overall spirit of the law.
 3. **Tax evasion** occurs when an individual or business ignores tax laws to avoid paying taxes.
 - Tax evasion, unlike tax avoidance, has criminal consequences. Tax evaders face prosecution in criminal court.

RISK MANAGEMENT

- **Canada Revenue Agency Tax Avoidance Penalties Generally**
 1. **Punitive**
 - Penalties may be from 50% to 200% on top of the amount of tax that was avoided
 - Fines of \$1,000 to \$25,000 and up to one year in prison for **evasion**

CEWS – CRA MONITORING

- The CRA is using combination of:
 1. Automated queries;
 2. A third party complaint line (i.e. for reporting cheaters);
 3. Follow-up phone calls; and
 4. Post-payment reviews or audits.
- The employer will be required to repay amounts paid under the wage subsidy if they do not meet the eligibility requirements

CEWS – CRA MONITORING

- The CRA expects:
 1. Maintain adequate records to support your claim / eligibility
 2. Assumptions should be included in written records that support CEWS claims
 3. Include an analysis of the nature of the remuneration (dividends, other ineligible remuneration should be recognized)
 4. Maintain a signed attestation, and record of any elections made for the purposes of determining your qualifying revenue

CEWS – ANTI-AVOIDANCE RULES

- Due to a specific anti-avoidance rule, an employer will not be eligible to claim the wage subsidy if the employer participates in a plan that has one of the main purposes of effectively reducing the employer's qualifying revenues for the current reference period to qualify for the subsidy.
- Where this anti-avoidance rule applies, the employer will be liable to:
 1. A penalty equal to 25% of the wage subsidy and pay back the wage subsidy
- If an employer knowingly, or under circumstances amounting to gross negligence makes a false statement or omission in its wage subsidy application for a claim period, the employer is liable to a
 1. Penalty of up to 50% of the difference between the amount of wage subsidy that it claimed in its application and the amount of wage subsidy to which it is actually entitled.
 2. Penalties in fraudulent claims may include fines or even imprisonment.
 3. Third party penalties (for an accountant or tax preparer).

CERB – CRA MONITORING AND PENALTIES

OTTAWA | News

Check your Canada Revenue Agency account for changes, Ottawa police warn, amid CERB fraud claims

Ted Raymond

Published Saturday, June 13, 2020 2:17PM EDT

Liberals fail to win support for latest CERB bill on fraud fines, jail time



BY [AMANDA CONNOLLY](#) · GLOBAL NEWS

Posted June 10, 2020 7:18 am

Updated June 10, 2020 5:23 pm

Canadians have made 190,000 repayments on CERB claims, says CRA

Canada Revenue Agency is also reviewing 600 tips on alleged misuse of emergency aid program

[Kathleen Harris](#) · CBC News · Posted: Jun 10, 2020 10:15 AM ET | Last Updated: June 11

CERB – CRA MONITORING AND PENALTIES

- **More limited potential for penalties**
 1. Criticized by the media and a recent bill recently faced substantial opposition
- **More recently, CRA has implemented a more aggressive approach to compliance**
 1. CRA's portal is open for complaints about CERB

AGENDA – UK COVID-19 BANK FUNDING SCHEMES

- **What are UK COVID -19 bank funding schemes?**
- **What are the main eligibility criteria?**
- **What are the key restrictions?**
- **Practical points to note in accessing the schemes**

WHAT ARE THE UK COVID-19 BANK FUNDING SCHEMES?

SCHEME	AIMED AT	FUNDING LIMIT
CORONAVIRUS BUSINESS INTERRUPTION LOAN SCHEME (CBILS)	BUSINESSES WITH TURNOVER OF UP TO £45 MILLION	£5 MILLION
BOUNCE BACK LOAN SCHEME	BUSINESSES OF ANY SIZE	£50,000
CORONAVIRUS LARGE BUSINESS INTERRUPTION LOAN SCHEME (CLBILS)	BUSINESSES WITH TURNOVER OF OVER £45 MILLION	£200 MILLION
COVID CORPORATE FINANCING FACILITY (CCFF)	INVESTMENT GRADE RATED BUSINESSES	£1 BILLION/£600 MILLION/£300 MILLION (DEPENDING ON CREDIT RATING)

WHEN ARE THE SCHEMES AVAILABLE UNTIL?

SCHEME	AVAILABLE FOR NEW FACILITIES UNTIL	MAXIMUM TERM OF FACILITIES
CORONAVIRUS BUSINESS INTERRUPTION LOAN SCHEME (CBILS)	22 SEPTEMBER 2020	6 YEARS – TERM LOANS AND ASSET FINANCE FACILITIES 3 YEARS – OVERDRAFTS AND INVOICE FINANCE FACILITIES
CORONAVIRUS LARGE BUSINESS INTERRUPTION LOAN SCHEME (CLBILS)	20 OCTOBER 2020	3 YEARS – TERM LOANS, ASSET FINANCE, INVOICE FINANCE AND OVERDRAFTS
BOUNCE BACK LOAN SCHEME	4 NOVEMBER 2020	6 YEARS – ONLY TERM FUNDING AVAILABLE
COVID CORPORATE FINANCING FACILITY (CCFF)	22 MARCH 2021	12 MONTHS – COMMERCIAL PAPER

MAIN ELIGIBILITY CRITERIA – CBILS SCHEME

- **UK based in business activity and generate more than 50% of its income from the sale of goods or services – export businesses are in principle eligible**
- **Maximum turnover of £45 million**
- **Turnover assessed on either a single company basis or group basis depending on the ownership structure – ‘sole enterprise’ and ‘linked enterprise’ tests**
- **Private equity, venture capital companies and business angels may have a stake of up to 50% in the business for a ‘sole enterprise’ basis turnover assessment to be considered – business angel investment must be less than €1.25 million**
- **A private equity investor’s turnover and turnover from its other investments are excluded from the turnover calculation**
- **Must have a borrowing proposal which the lender would consider viable if it were not for COVID-19**
- **Self certification that the business has been adversely impacted by COVID-19**
- **Security/guarantees may be required**

KEY RESTRICTIONS – CBILS SCHEME

- **Turnover test is a strict test**
- **Banks, insurers, reinsurers (but not insurance brokers), public sector bodies and state funded primary & secondary schools are ineligible**
- **State aid tests apply**
- **CBILS accredited lenders have maximum caps on the total amounts they can lend under the scheme in order to qualify for the UK Government's 80% guarantee**
- **See British Business Bank FAQs for more detailed information:**

<https://www.british-business-bank.co.uk/ourpartners/coronavirus-business-interruption-loan-scheme-cbils-2/cbils-faqs-for-smes/>

ELIGIBILITY CRITERIA – BOUNCE BACK LOAN SCHEME

- **Business must be established on or before 1 March 2020**
- **Must be engaged in trading or commercial activity in the UK**
- **No turnover test**
- **More than 50% of group income must be derived from trading activity**
- **Loan must be used to provide economic benefit to the business**
- **Maximum loan amount capped at 25% of turnover**

KEY RESTRICTIONS – BOUNCE BACK LOAN SCHEME

- No repeat applications permitted
- Neither the businesses nor a business in the wider group can have accessed funding via the other schemes, unless the loan is being used to refinance that funding
- Banks, building societies, insurance companies, public sector organisations, state funded primary or secondary schools cannot access the scheme
- The business cannot be in liquidation/bankruptcy or similar process at the time of application
- State aid rules apply
- See British Business Bank FAQs for detailed information:

<https://www.british-business-bank.co.uk/ourpartners/coronavirus-business-interruption-loan-schemes/bounce-back-loans/faqs-for-small-businesses/>

LARGER SCHEMES 1 - CLBILS

MAIN ELIGIBILITY REQUIREMENTS	KEY RESTRICTIONS
UK based in business activity with turnover of more than £45 million	No use of the other bank funding schemes
Must generate 50% of turnover from trading activity	Certain credit institutions, building societies, insurers, reinsurers (but not insurance brokers), public sector bodies and state funded schools are ineligible
Confirmation the business has been impacted by COVID-19	State aid rules apply – lender assessment
Viable borrowing proposal	Borrowing limits apply – double UK wage bill, 25% UK business turnover or 12 months' liquidity needs
Turnover is assessed on an individual or group basis, depending on the ownership/group structure and levels of capital or voting rights	For facilities of up to £50 million – no increase in dividend payments permitted over the duration of the facility
Private equity/venture capital backed businesses are treated as separate businesses for assessing turnover	For facilities over £50 million – prohibitions on dividend/share related payments and senior management pay rises and cash bonuses

LARGER SCHEMES 2 - CCFF

MAIN ELIGIBILITY REQUIREMENTS	KEY RESTRICTIONS
<p>Must make a material contribution to the UK economy (includes UK incorporated companies with overseas parent companies)</p>	<p>Prohibitions on distributions to shareholders and company management pay rises and cash bonuses</p>
<p>Short or long term investment grade rating as at 1 March 2020 - S&P/Moodys/Fitch/DBRS Morningstar:</p> <ul style="list-style-type: none"> • Short term rating: A3/P3/F3/R3 • Long term rating: BBB-/Baa3/BBB-/BBB low <p>Bank internal ratings may be able to be used where no credit rating exists</p>	<p>Public bodies, banks, building societies, insurance companies, financial sector regulated companies, leveraged investment vehicles or companies from groups active in business subject to financial sector regulation are ineligible</p>
<p>Commercial paper documentation requirements</p>	<p>Cannot be used in conjunction with the other schemes</p>
<p>Guarantee & legal opinion (where funded company is not the main group entity)</p>	<p>Sole discretion of Bank of England and HM Treasury</p>

FURTHER INFORMATION ON CLBILS AND CCFF SCHEMES

- **CLBILS scheme:**

British Business Bank Website:

www.british-business-bank.co.uk/ourpartners/coronavirus-business-interruption-loan-schemes/clbils/

- **CCFF scheme:**

Bank of England Website:

www.bankofengland.co.uk/markets/covid-corporate-financing-facility

PRACTICAL POINTS TO NOTE

- Engage early with accredited lender
- Choice of accredited lender
- Funding proposals and financial information
- Documentation
- Security, guarantee and subordination requirements
- Non-COVID funding alternatives
- UK Government information page:
<https://www.gov.uk/government/collections/financial-support-for-business-during-coronavirus-covid-19>

UK EMPLOYMENT SUPPORT (CJRS)

- **Coronavirus Job Retention Scheme**
- **Temporary scheme open to all UK employers until 31 October 2020**
- **'affected by' COVID19**
- **Employees can do no work**
- **Employer can claim 80% of furloughed employees' usual wage costs up to £5k per month plus social security and mandatory retirement plan contributions**
- **BUT now being phased out**

UK EMPLOYMENT SUPPORT (CJRS)

- **Closed to new entrants 10 June**
- **Total number capped at pre 10 June high**
- **Written agreements necessary**
- **From 1 July, employees can do some work**
- **From 1 August, employers pay social security**
- **Sept/Oct – burden shifts by 10% each month**

UK EMPLOYMENT SUPPORT (CJRS)

- **‘Redundancy deferral scheme’**
- **Timing driven by ‘collective redundancy’ [reduction in force] provisions**
- **45 [+] days process: 90 day penalty**
- **Other problems: ‘whistleblower’ claims; ‘unfair’ dismissals**

QUESTIONS?

CONTACT INFORMATION



ROBERTO ABURTO

Partner, Canada

 roberto.aburto@gowlingwlg.com
 +1 613-786-8679



JONATHAN CHAMBERLAIN

Partner, UK

 jonathan.chamberlain@gowlingwlg.com
 +44 (0)370 733 0581



COLIN GREEN

Partner, Canada

 colin.green@gowlingwlg.com
 +1 613-786-0195



STEPHAN SMOKTUNOWICZ

Senior Associate, UK

 stephan.smoktunowicz@gowlingwlg.com
 +44 (0)20 7759 6831



GOWLING WLG