

Earthquake Update

31st March 2011

Key Issues Covered

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Canterbury Business Recovery Group

Canterbury Business Recovery Group (CBRG) is a joint initiative by Canterbury Employers Chamber of Commerce and Canterbury Development Corporation. CBRG are there to help businesses and get them back up and running to full capacity so that Christchurch rebuilds and is prosperous again.

CBRG has the recently announced Canterbury Business Recovery Trust Fund of which the Government has kick started with \$2.5 million.

The Canterbury Business Recovery Trust Fund is a collective fund managed by the CBRG to provide cash injections into strong but earthquake-affected businesses to ensure their survival through this crisis.

Uses of the fund include, but are not limited to, such things as:

- Temporary location expenses
- Permanent relocation costs
- Connection to essential services such as telecommunications
- Restoration of damaged ICT hardware and files
- Access to expert advice and assistance



If you are facing difficulties with funding the above or need assistance to recover this fund is for you. Applications open 1st April and need to be made as soon as possible as the Trust Fund has limited money available.

To lodge an application contact either Kerry or Rachael with details of how the assistance will be used and they will assist with lodging the application. Do NOT delay if you wish to lodge an application or you may miss out on the funding available.

Insurance Claims

Have you lodged an insurance claim as a result of the earthquakes? We are assisting a number of clients and it is proving a significant challenge to progress claims. Based on our experience we offer the following observations:

Read insurance policy carefully and be familiar with it

Business interruption insurance not usually triggered by depopulation

Don't believe everything insurance company says

- Some policies exclude events such as earthquake.
- Read your insurance policy documents very carefully as each policy is different.
- Business interruption insurance normally triggered when damage to premises and reduction in turnover as result.
- Depopulation (loss of customers) affecting turnover not usually covered by business interruption.
- Level of damage triggering business interruption varies from policy to policy. Identify what damage triggers your policy.
- Prevented access to premises may trigger business interruption but not all policies do and if they do it is usually capped as percentage of sum insured.
- Watch the indemnity period – you may not notice the effects now but may occur later. Consider lodging a claim now to cover the future?
- Do not believe everything that insurance companies / assessors tell you. They expect you to negotiate and challenge every decision.
- Some policies will cover the cost of advisors to prepare insurance claim and/or negotiating on your behalf.
- Do NOT sign any insurance discharge / full & final settlement if you have an indemnity period. If you do then opportunity to cover further losses later may be jeopardised.
- If you are offered a settlement try and keep claim open for full indemnity period to cover future issues you may encounter.
- Payments for business interruption have different types of extra costs covered. Make sure you know what extra costs you have.
- If in doubt about your policy seek professional advice.

Termination of Lease of Premises

If there was ever going to be a legal minefield as a result of the earthquake this is the one. Lawyers are working their way through leases, legislation and court cases to determine how & when leases can be terminated.

If you want or need to terminate a lease be extremely careful as walking away from the building may cause more problems especially if you have given personal guarantees. We strongly recommend seeking legal advice before entering into or terminating a lease.

There are three common ways that a lease can be terminated as follows:

1. Landlord and tenant come to mutual agreement to terminate lease with no repercussions.
2. Law of frustration – an event makes lease different to what is expected from that lease. This is extremely rare and hard to prove.
3. Breakout Clause – if an event occurs and that event fits exactly to the clause in the lease.

Breakout clauses is the mechanism that a number of tenants will be relying upon to terminate lease. However this clause comes with its own issues including:

- Most leases will say property untenable. No real definition for this and very few court cases.
- The premises must be unfit for the permitted use.
- The earthquake is the event that has made the premises unfit not anything else.
- Damage cannot be temporary – must be more of a permanent nature.

As stated you should seek legal advice before doing anything with regards to a lease. This is a high risk area and you do not want to be facing legal action.

A common question we are receiving is “do we have to keep paying rent when we cannot access premises?” The answer to this question is what is the extent of damage to the premises? If undamaged then you will be required to keep paying rent. If damaged the payment of rent will depend upon extent of damage but it is likely you will have to keep paying rent. However you may be entitled to a rent abatement under your lease.

*Seek legal advice
before entering into or
terminating a lease*



*May have to keep
paying rent even if no
access to premises*

Bank Funding

A number of the banks are offering special earthquake relief packages and if you are facing cashflow issues you should consider making use of them. Each package has a number of facilities including short term interest free loans and extended overdrafts.

Banks do not want to see businesses fail. They want to work with businesses, help them recover and see the Canterbury province prosper.

Banks have indicated that businesses should not be waiting until they are facing trouble. They need to be looking ahead and anticipating whether they will have cashflow issues in the future. This applies to those not only directly affected by the earthquake but also businesses who have customers affected by the earthquake.

Banks are giving preference to those businesses where the professional advisors such as lawyers and accountants are working closely with the business owners. Those in difficulties who have not made use of their professional advisors will be encouraged to seek advice about business viability.

Some banks may underwrite or cover legal and accounting costs and you should make use of this. Ask your bank whether they will assist with such costs. The use of accountants and lawyers is more important now than ever before. We are here to help.

The information that the banks want (preferably from an accountant) for any proposal is:

- One page summary with bullet points detailing key issues that the business is facing. Long explanations are not required. They want to make the application process as easy as possible.
- Profit & Loss showing when business will return to breakeven and preferably in a two or three month period.
- Cashflow forecast detailing the next twelve months anticipating everything that may occur with that business.

Banks want to work with businesses and help them recover

Banks preferring customers making extensive use of lawyer and accountants

We can undertake an Earthquake Survival Analysis of Your Business – Enquire Now
