

**2018 ICSC CANADIAN LAW CONFERENCE
BREAKFAST ROUNDTABLE TUESDAY, MAY 1, 2018 AT 8:15 a.m.**

SECURITY FOR LEASES – LETTERS OF CREDIT, INDEMNITY AGREEMENTS, GUARANTEES AND SECURITY DEPOSITS: *Michael H. Lieberman – Norton Rose Fulbright Canada LLP,*
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1. Why obtain security for leases?

- Protects landlords against defaulting tenants by securing performance of tenants' obligations under lease agreements by way of financial security.

2. What are some of the characteristics of various forms of security?

• **Letters of Credit:**

- Provided by financial institutions (rather than tenants) that can be drawn on by landlords if certain conditions met.
- Relatively landlord-friendly as they are generally resistant to creditors' claims.
- Landlords will likely try to negotiate for minimal (if any) conditions surrounding the third parties' obligations to pay.
- Landlords should ensure that the letter provides for automatic renewal in order to protect against the possibility of the letter expiring prior to the lease.

• **Indemnity Agreements:**

- Provided by third parties (rather than tenants) "indemnifiers" to induce landlords to enter into leases.
- Relatively landlord-friendly as indemnifiers have primary liability following tenants' defaults under lease agreements.
- Enable landlords to launch actions against indemnifiers directly.

• **Guarantees:**

- Provided by third parties (rather than tenants) – "guarantors".
- Less landlord-friendly as guarantors have secondary liability following tenants' default under lease agreements.
- Enable landlords to launch actions against guarantors but only after first commencing actions against tenants.

• **Security Deposits:**

- Cash security provided by tenants (rather than third parties) upon entering into leases and returned to tenants upon completion of the lease terms if certain conditions met.
- Often supplementary to rent deposits for first and last month's rent.
- May be vulnerable to seizure by tenants' secured creditors and / or trustees in bankruptcy.