

MORTGAGE INVESTMENT CORPORATIONS

Staff have been receiving enquiries as to whether the registration requirements under The Mortgage Brokers Act (the “Act”) apply to mortgage investment corporations and similar entities that have been created to lend monies using mortgages as security to the public.

While each situation will depend on its facts this notice is intended to provide some general guidance with respect to some of the factors that will be considered by staff in determining whether the registration requirement will apply.

The general objective of the Act is to protect the public by setting standards for individuals and businesses conducting activities contained in the definition of “mortgage broker” in the Act. Registration is required when the business or individual doing one or more of the activities described in the definition of mortgage broker is receiving remuneration for these activities.

A mortgage investment corporation (“MIC”) is a legal entity (usually a corporation) created to lend monies to individuals or businesses. Often these loans are secured by way of a mortgage. The owners of the MIC receive a return on their investments by way of a profit generated from those loans.

The sale of securities such as shares of the MIC are governed under The Securities Act.

The shareholders of the MIC are passive investors to the extent that they are providing monies to the MIC with an expectation that the activities of the MIC will generate a return on investment. The shareholders are not actively involved in the operations of the MIC, including any mortgage broker activities conducted by the MIC. Often the MIC will retain the services of a manager or other entity in order to conduct mortgage broker activities. These activities include the identification of potential loans using the security of a mortgage, as well as ongoing administration of those mortgages.

In most cases the owners of the MIC (whether they are shareholders of the corporation or have another form of ownership such as units of a trust or limited partnership) would not be required to be registered under the Act as those individuals are not conducting mortgage brokerage activities and are not involved in the active management of the MIC.

A manager or other business or individual hired by the MIC to conduct the mortgage broker activities by way of a contract or other form of payment would be required to be registered under the Act. These businesses and/or individuals are in contact with potential borrowers and either arrange mortgages on behalf of a MIC as well as potentially administering those mortgages. As a result the protections of the Act are necessary to ensure that these businesses operate in a manner that does not pose a risk to the public.

In situations where there is no manager or third party carrying out the operations of the MIC, each case would need to be reviewed on its facts. In situations where the MIC lends its own money without any remuneration being paid for the mortgage broker activities the registration requirement of the Act would not apply. However, if any form of remuneration (directly or indirectly) is being paid by the MIC for the arranging or administering of the mortgages, it is the view of staff that registration may be required.