COVINGTON

UK Government's Coronavirus Financial Support for Businesses

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Finance

The UK government has introduced a range of measures to help businesses in response to the Coronavirus crisis. This briefing note focusses on the main schemes which are intended to allow established businesses to continue to have access to loan and other financing facilities. The UK government has also announced a convertible loan scheme (the "Future Fund") for "innovative companies" which are dependent on equity financing; that scheme is the subject of a separate note.

The loan support offered by the UK government has evolved since the beginning of the crisis. This note describes the main provisions of:

- the Covid Corporate Financing Facility;
- the Bounce Back Loan Scheme;
- the Coronavirus Large Business Interruption Loan Scheme ("CLBILS"); and
- the Coronavirus Business Interruption Loan Scheme ("CBILS").

Progress So Far and Early Criticism

The UK government plans to publish, as from 4 June 2020, the names of the companies who have accessed the Covid Corporate Financing Facility and the amounts they have issued. As of 20 may 2020, it was reported that £14.2 billion had been lent under the Bounce Back Loan Scheme, only £590 million under CLBILS and £7.25 billion under CBILS. Both CLBILS and CBILS were heavily criticised since the government only guaranteed 80% of the loans and banks therefore had to run their usual tests and procedures before accepting the risk on the 20% that was unguaranteed. Not only did this take time, but many applicants failed to meet the banks' requirements[1].

The government responded to this criticism by introducing the Bounce Back Loan Scheme which bears many hallmarks of the scheme introduced by the Swiss government weeks earlier. Under the Bounce Back Loan Scheme, the government guarantees 100% of the loans. £2

[1] According to the *Financial Times* of 10 May 2020, surveys by the British Chambers of Commerce found that banks were rejecting at least 40% of CBILS applicants.

billion was lent by banks under the Bounce Back Loan Scheme on its first day of operation alone.

In a tacit acknowledgement that CLBILS and CBILS were not appropriate for many UK businesses, companies who borrowed up to £50,000 under either of those two schemes are permitted to transfer those loans into the Bounce Back Scheme. It seems clear that, moving forward, the Bounce Back Loan Scheme will be the scheme of choice for small businesses and possibly also for many medium-sized businesses.

The size of the financial support potentially on offer is considerable. Rishi Sunak, the UK's Chancellor of the Exchequer, said when announcing the original schemes that would add up to a total of £330 billion of potential support.

Scheme for Investment Grade (or Equivalent) Businesses—Covid Corporate Financing Facility

This scheme is for investment grade businesses that make a "material contribution" to the UK economy. It aims to facilitate the provision of finance at pre-Coronavirus rates of interest to such businesses through an HM Treasury and Bank of England joint facility that has been established to purchase short term debt in form of sterling-denominated commercial paper with a maturity of up to 1 year.

The conditions for a business to be able to access this scheme are:

- it makes a material contribution to the UK economy. This will include businesses that are companies incorporated in UK (including those with non-UK parent company) with a "genuine business" in UK, companies employing significant numbers of people in the UK, businesses with their headquarters in UK, businesses generating significant revenue in UK, businesses serving large number of customers in UK, and businesses having a number of operating sites in UK;
- it had a short- or long-term investment grade credit rating (or equivalent – see below) as at 1 March 2020. A business would be meet the requirement for an investment grade rating if it had a short-term rating of A-3/P-3/F-3/R3 or a long-term rating of BBB-/Baa3/BBB-/BBB from at least one of Standard & Poor's, Moody's, Fitch and DBRS Morningstar and no ratings from any of them below this level. If a business's credit rating has fallen below that level after 1 March 2020 it will still be able to access the scheme subject to HM Treasury approval; and
- it is not a bank, building society, insurer, reinsurer, other financial sector entity regulated by the Bank of England or the Financial Conduct Authority, another business that is predominantly subject to financial sector regulation, a leveraged investment vehicle, or a public sector organisation.

Eligibility decisions will be made by the Bank of England's risk management staff. Where a business does not have a credit rating but would otherwise qualify, the Bank of England recommends that the business contact its own bank in the first instance. Where that bank confirms that the business met internal criteria which were equivalent to investment grade as at 1 March, 2020, that business can approach the Bank of England to see whether the Bank of England will determine whether it will deemed as equivalent to having a public investment grade rating and be able to access the Covid Corporate Financing Facility.

Under the Covid Corporate Financing Facility, purchases will be made of sterling-denominated commercial paper issued on standard terms into Euroclear or Clearstream with a maturity of up to 1 year. It is not required that businesses have issued commercial paper prior to accessing this scheme.. The amount of financing that will be available for each business under this scheme will be subject to certain limits that will be based on different factors, including its credit rating; the minimum amount of commercial paper purchased in each case would be £1 million. At the same time it would seem amounts of financing available could be substantial: as an indicative guide, HM Treasury initially stated that up to £1 billion could be available for top-rated investment grade businesses. Financing made available under this scheme will be at pre-Coronavirus rates of interest. Purchases of commercial paper under the scheme will take place each business day. Businesses will need to apply to the Bank of England, the administrator of the scheme, in order to sell commercial paper under it. The Bank of England will require businesses to execute a confidentiality agreement.

It was initially announced that this scheme would run for at least a 12 month period. However, in a sign that this availability period may be extended, it has recently been announced that, if a company makes use of the scheme for more than one year, it will be subject to additional restrictions until all amounts borrowed under the scheme have been repaid. These additional restrictions will (subject to limited exceptions):

- prevent any dividend payments (unless the dividend is already declared);
- prevent any management, advisory or other fees being paid to any shareholder;
- not allow share buybacks; and
- impose certain limitations in respect of executive pay.

The Bounce Back Loan Scheme

This scheme is aimed at smaller businesses, although the only limit by reference to turnover is in the size of the loans (see below). In fact, a business is eligible for this scheme simply if it:

- is based in the UK;
- was established before 1 March 2020;
- has been adversely impacted by the coronavirus;
- is not:
  - a bank, insurer or reinsurer (insurance brokers are eligible);
  - a public sector body; or
  - a state-funded primary or secondary school; and
- is not already receiving assistance under any of the other schemes described in this note (though see above in relation to transferring a loan of not more than £50,000 to the Bounce Back Loan Scheme).

However, businesses who were in financial difficulties as of 31 December 2019 may not be eligible.

Eleven lenders are participating in the scheme and applications for loans under the scheme are made to them by filling in a simple form on the banks' websites. If a business is turned down by one lender, it can apply to another.

The government will guarantee 100% of any loans made under the Bounce Back Loan Scheme and will pay all fees and interest for the first 12 months. After the first 12 months, the interest rate will be a fixed 2.5% p.a.. Businesses can borrow up to 25% of their turnover with a maximum loan amount of £50,000. The length of a loan is 6 years but businesses can repay early without paying a fee.

Businesses taking out loans under this scheme will remain legally responsible for repaying them. Banks will be required to seek recovery from their borrowers before claiming on the government guarantee.

Scheme for Large Businesses—Coronavirus Large Business Interruption Loan Scheme

This scheme is for UK-based businesses that have an annual turnover of over £45 million. It aims to facilitate provision of finance at commercial rates of interest to such businesses by the UK government providing lenders to such businesses with an 80% guarantee. After the scheme was initially announced changes have been made to the amount of finance that would be available to businesses further to this scheme. The current position is businesses with an annual turnover of over £45 million can apply for up to £200 million of finance.

The conditions for a business to be able to access this scheme are:

- its business activities are UK-based;
- it is not a bank, building society, insurer, reinsurer or public sector organisation;
- its annual turnover is over £45 million;
- it has not received a facility under Covid Corporate Financing Facility, which is described above in this briefing memorandum;
- it must be unable to secure regular commercial financing;
- it has a financing requirement that:
  - a lender would have considered viable if it were not for the Coronavirus pandemic; and
  - would enable that business to trade out of any short- to medium-term difficulty; and
- if it applies for finance of more than £50 million it would be subject to additional restrictions until all amounts available under the scheme are repaid, and these additional restrictions would (subject to limited exceptions):
  - prevent any dividend payments (unless the dividend is already declared);
  - prevent any management, advisory or other fees being paid to any shareholder;
  - not allow share buybacks; and
  - impose certain limitations in respect of executive pay.

In addition, a business must self-certify that it has been affected by Covid-19.

A wide range of financings should be available through this scheme, including overdrafts and invoice financing. Financings under this scheme will be available for up to 3 years and at commercial rates of interest. This scheme will be administered by the 12 lenders that are participating in it, and so businesses will need to apply to them in order to access it. If a business is turned down by one lender, it can apply to another.

Businesses taking out financings further to this scheme will remain legally responsible for repaying the financing as well as other amounts due under it and otherwise complying with its terms. Personal guarantees are not required if the financing is under £250,000. If the financing is above £250,000 personal guarantees are capped at 20% of the financing (i.e. the part not guaranteed by UK government). If any businesses default on such financings under the scheme, their lenders will be covered by the UK government's 80% guarantee.

Scheme for Small and Medium-sized Businesses—Coronavirus Business Interruption Loan Scheme

This scheme is similar to the Coronavirus Large Business Interruption Loan Scheme (CLBILS) described above for large businesses with distinctions between the two schemes reflecting that they are designed for businesses of different sizes.

This scheme is for UK-based businesses that have an annual turnover of up to £45 million. The scheme aims to facilitate the provision of finance of up to £5 million for up to 6 years to such businesses by the UK government providing lenders to such businesses with an 80% guarantee as well as certain other support (see below).

The conditions for a business to be able to access this scheme are:

- its business activities are UK-based;
- it is not a bank, building society, insurer, reinsurer or public sector organisation;
- its annual turnover is not more than £45 million; and
- it has a financing requirement that:
  - a lender would have considered viable if it were not for the Coronavirus pandemic; and
  - would enable that business to trade out of any short- to medium-term difficulty.

In addition, a business must self-certify that it has been affected by Covid-19.

A wide range of financings of up to £5 million should be available through the scheme, including overdrafts and invoice financing. Financing will be available for up to 6 years for term loans and asset finance, and up to 3 years for overdrafts and invoice finance facilities. Over 50 lenders are participating in CBILS (backed by the British Business Bank (which is owned by the UK government)). Those lenders are administering the scheme and so businesses will need to apply to them in order to access it. If a business is turned down by one lender, it can apply to another. It is understood that CBILS will run for an initial 6 month period.

Businesses taking out financings further to this scheme will remain legally responsible for repaying the financing as well as other amounts due under it and otherwise complying with its terms. However, the UK government will cover the first 12 months of interest payments and any initial fees in respect of the financing. Personal guarantees are not required if the financing is under £250,000. If the financing is above £250,000, personal guarantees are capped at 20% of the financing (i.e. the part not guaranteed by UK government) and exclude a person's home. If any businesses default on such financings under the scheme, their lenders will be covered by the UK government's 80% guarantee.

The UK government's summary of all the support it is offering to UK businesses can be found here.

More details on the Covid Corporate Financing Facility can be found here.

Covington has a number of lawyers with wide experience of finance transactions in the UK. Any client or potential client requiring assistance with any of the UK government's support packages should contact any of the following lawyers in the first instance:

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