COVID-19: GOVERNMENT FUNDING SCHEMES

As the Government continues to look to lenders to support businesses to get through the economic problems caused by Covid-19, we have been extremely busy advising on the implementation of the various funding schemes and are ready to support lenders in implementing future schemes and in managing the risks of existing ones. We have advised on:

- **BBLS** - Bounce Back Loan Scheme
- **CBILS** - Coronavirus Business Interruption Loan Scheme
- **CLBILS** – Coronavirus Large Business Interruption Loan Scheme
- **CCFF** – Covid Corporate Financing Facility
- **The Future Fund**

Our quick reference guide provides a useful snapshot of key points for each of the funding schemes: [Comparing the 5 government lending schemes.]

These are undoubtedly extremely challenging times for businesses. Here, we have provided a brief summary of two of those schemes that are available for businesses: CBILS and CLBILS.

WHAT IS THE CBILS?

Through the CBILS, the Government aims to make access to funding easier for small to medium-sized businesses which would otherwise struggle to obtain funding on normal commercial terms. It does this by providing participating lenders with a Government-backed guarantee for 80% of the amount borrowed by an eligible business thereby making the decision to lend easier for the lender. Businesses will be able to borrow up to £5 million under the CBILS and the first 12 months of interest payments will be free. The CBILS will initially run for six months and supports a wide range of finance products including overdrafts, term loans, invoice finance and asset finance, with a term of up to six years.

On 6 April, a key change to the CBILS was announced to remove both the requirement for businesses to have been unable to access a loan on normal commercial terms prior to accessing the scheme and the requirement for the lender to establish a lack, or absence, of security for loans over £250,000.

Whilst a lender must still establish the business is viable in the longer term and the loan will enable the business to trade out of short-term difficulties caused by Covid-19, the change means that it should now be easier for lenders to offer loans under the CBILS as they do not need to first offer an alternative or make an assessment of the available security prior to accessing the scheme.

A further important clarification was also made to the scheme on 6 April which restricts where personal guarantees can be taken by the lender in addition to receiving the Government guarantee:

- for loans of up to £250,000, lenders are not permitted to take personal guarantees; and
- for loans over £250,000, lenders are permitted to take personal guarantees (at their discretion) but the Government has stated that these must be limited to 20% of any amount outstanding on the CBILS lending after any other recoveries from business assets.

Although the position on personal guarantees will be welcomed by the smallest of businesses seeking loans under £250,000, business owners seeking loans over £250,000 will still need to consider if they are willing to provide a personal guarantee if required to do so by the lender.

Lenders can still however take other security over the business which may be available to them (although they are restricted from taking security over an individual's principal private residence). Therefore, businesses will need to be mindful that a lender may ask for further security and still need to be examining how accessing further funding will impact on their existing financing arrangements as we examined in our previous briefing.

For further detail about this scheme and the CCFF, please read our briefing, here.

WHAT IS THE CLBILS?

CLBILS was launched on 20 April 2020 and, as with the CBILS, the CLBILS provides lenders participating in the scheme with a Government-backed guarantee for 80% of the amount borrowed by an eligible business in order to make the decision to lend easier for the lender.

The announcement of the CLBILS was welcome news for the mid-market businesses who previously found themselves in limbo not being eligible for the CCFF nor the CBILS.

Eligible businesses with a group turnover of up to £250 million are able to borrow up to £25 million and those with a group turnover greater than £250 million will be able to borrow up to £50 million. In each case the amount borrowed should not be greater than:

- double the borrower's annual wage bill for the most recent year available; or
- 25 per cent of the borrower's total turnover for the most recent year available

However, with appropriate justification and based on self-certification of the borrower, the amount may be increased to cover its liquidity needs for the next 12 months.

Unlike the CBILS, there is no interest free period being offered under the CLBILS and the maximum repayment term is 3 years rather than 6 years.

Businesses must meet the following criteria to be eligible to participate in the CLBILS:

- be UK-based in its business activity with a turnover of more than £45 million per annum;
- self-certify that it has been adversely impacted by Covid-19;
- not have received a facility under the Bank of England's Covid Corporate Financing Facility; and
- have a borrowing proposal which the lender considers viable in the longer term (meaning that the lender believes the provision of the finance will enable the business to trade out of any short –to-medium term difficulties).

Businesses in the following sectors are not eligible to participate in the CLBILS: credit institutions, insurers and reinsurers (but not insurance brokers) and public sector bodies (including further-education establishments, if they are grant-funded and state-funded primary and secondary schools)).

The CLBILS is provided directly by lenders who are accredited partners of the British Business Bank (these range from high street lenders to challenger banks to specialist lenders and details of those participating have now been published on the British Business Bank's website). It is important to note that the funding under the CLBILS is at the discretion of the lender approached to provide the required financing.

On 19 May 2020, HM Treasury announced that, from 26 May 2020, the size of loans available under the CLBILS will be increased from £50 million to £200 million so that large firms which do not qualify for the Bank of England's CCFF will have access to enough finance to meet cashflow needs during the pandemic.

However, companies borrowing more than £50 million through the CLBILS will be subject to certain restrictions, which will also apply to those companies participating in the CCFF scheme who wish to borrow money beyond 12 months from 19 May 2020.

The restrictions include that borrowers, during the period of the loan:

- cannot make any dividend payments other than those which have already been declared;
- must agree not to make any share buybacks; and
- cannot pay any cash bonuses or award any pay rises to senior management (including the board) except where they were: (a) declared before the CLBILS loan was taken out; (b) are in keeping with similar payments made in the preceding 12 months; and c) do not have a material negative impact on the borrower's ability to repay the loan.

Further, on 19 May 2020, the Bank of England announced that businesses which have drawn under the CCFF can now repay their drawings early if they choose to do so. In order to make the scheme more transparent, HM Treasury and the Bank will also start publishing the names of businesses that have drawings under the CCFF, as well as the amounts borrowed, every Thursday from 4 June 2020.

WHAT DO BUSINESSES NEED TO BE THINKING ABOUT?

A key consideration for businesses which already have existing financing arrangements in place is whether accessing funding under the CCFF, CLBILS or CBILS is permitted under those existing arrangements.

As mentioned in a briefing we published in early March 2020, thinking ahead, examining those existing arrangements and having those discussions early is crucial. For example:

- Are there any undrawn funds already available to you which can be drawn down now (such as under a revolving credit facility or an accordion facility)?
- Are any "clean-down" periods in any working capital facilities on the horizon which can be satisfied now rather than in a few weeks' time when cash may be more limited?
- Are any waivers or consents required as flagging them early will often give lenders more time to consider and respond to the request? It is important to present the case for consents and waivers with as much reasonable opinion and pragmatic information as possible.
- Is extending your existing financing arrangements an option available to you?

Our experience on advising on Government funding schemes means that we can expertly guide our clients through the processes and requirements. If you have any questions or require any support, please do not hesitate to get in touch with your usual AG contact or one of the lawyers listed below.

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