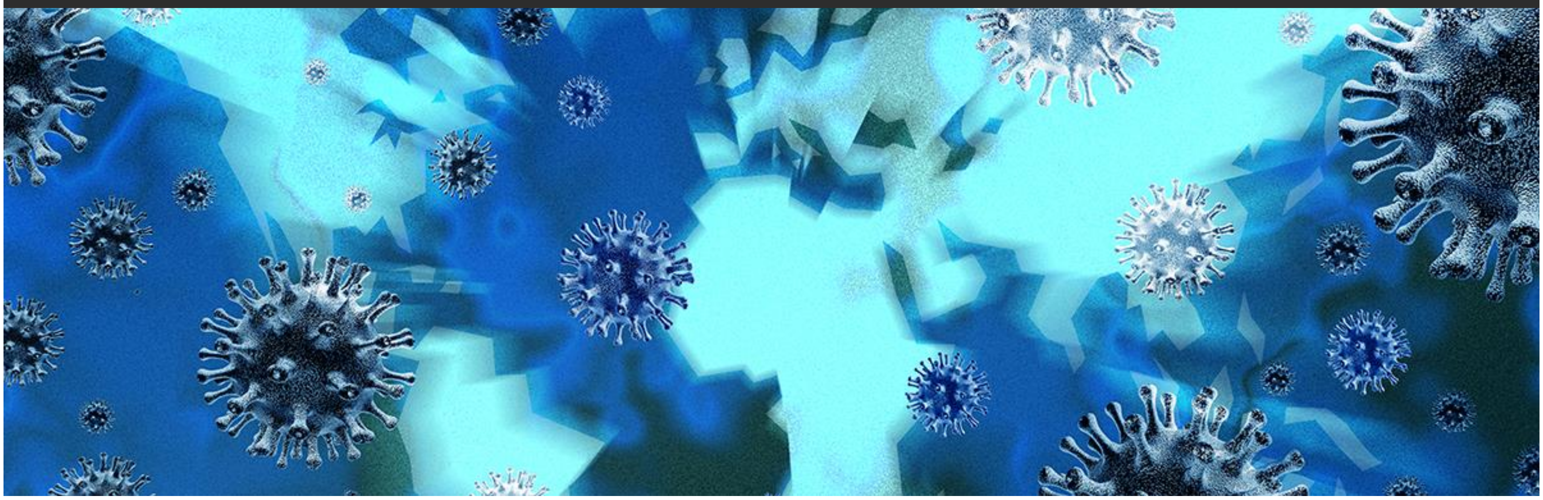
Advisory | Health Emergency Preparedness Task Force: Coronavirus Disease 2019



28 April 2020

COVID-19: Government Financial Support for UK Businesses

As part of the UK Government’s business finance and support response to the Coronavirus Disease 2019 (COVID-19) pandemic, it has implemented several schemes enabling businesses to access state-backed bailout loans.

This GT Advisory focuses on the following schemes:

(i) the Coronavirus Business Interruption Loan Scheme (**CBILS**) for small and medium sized businesses (**SMEs**). A SME can be a sole trader or a partnership, as well as a limited company;

(ii) the Bounce Back Loan scheme for SMEs (**BBLS**);

(iii) the Coronavirus Large Business Interruption Loan Scheme (**CLBILS**) for large businesses;

(iv) the COVID-19 Corporate Financing Facility (**CCFF**) for large businesses; and

(v) the Coronavirus Future Fund for SMEs.

Other grant schemes (i.e., not state backed loans) are available, including:

(i) the Retail, Hospitality and Leisure Grant Fund; and

(ii) the Small Business Grant Fund, both of which are delivered by Local Authorities.[1]

What financial support is available to SMEs?

1. CBILS

Key characteristics:

a. Commencing 23 March 2020, and for an interim period of currently six months, CBILS is available to SMEs with an annual turnover of up to £45 million to access finance support of up to £5 million as follows:

   i. term loans and asset finance facilities: up to six years; and

   ii. overdrafts and invoice finance facilities: up to three years.

b. CBILS is delivered through 40 plus accredited lenders and backed by the Government owned British Business Bank. It operates by British Business Bank giving lenders a government backed guarantee of 80% of each loan lent. However, on 24 April 2020, the Treasury announced that the Government was considering guaranteeing 100% of loans up to £25,000. The borrower remains liable for the debt.

c. As part of CBILS, British Business Bank will pay, by way of a business interruption payment, the upfront costs usually incurred by a borrower, comprising of the first 12 months of interest payments together with any lender levied fees (although, this period may be shorter for firms in the fishery, aquaculture and agriculture sectors). This means smaller businesses will benefit from no upfront costs and lower repayments.

d. In terms of security, under the scheme, personal guarantees will not be taken for facilities below £250,000. For facilities above £250,000, personal guarantees may still be required, at a lender's discretion, but:

   i. recoveries are capped at a maximum of 20% of the outstanding balance of the CBILS facility after the process of the business assets have been applied; and

   ii. a person's principal private residence cannot be used as security to support a personal guarantee or CBILS backed facility.

Eligibility:

a. A SME is eligible if:

   i. the business is based in the UK. This means that the entity is trading in the UK (not just selling into the UK and that its core business operations are in the UK) and the use of the funding is to support its business activity in the UK. A SME which is

[1] Further information relating to these grants is available here.
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/878082/small-business-grant-and-retail-leisure-hospitality-grant-guidance-for-businesses-v2.pdf

foreign owned can still access funds, as can a SME which has UK ownership but is registered abroad. At least 50% of its turnover must be generated from trading activity;

ii. the business has an annual turnover of no more than £45 million. For applicants acting as part of a group or are controlled (by reference to majority of voting rights, directly or indirectly or otherwise by virtue of being able to exert dominant influence), the calculation of turnover is on a consolidated basis;

iii. it has a business which the lender would consider feasible but for COVID-19. The guidance is clear that any accredited lender is not obliged to provide financing; all lending decisions remain fully delegated to the accredited lender although if an applicant is rejected by one lender, that does not preclude it applying to another;

iv. the applicant self certifies that its business has been adversely impacted by the coronavirus outbreak; and

v. if applying for a loan of £330,000 or more, not have been classed as a "business in difficulty" on 31 December 2019.[2]

b. Certain businesses cannot apply, including: banks, insurer and reinsurers (but not insurance brokers), public-sector bodies, further education establishments who are relying on grant funding and state-funded primary and secondary schools.

c. Where an applicant has been granted commercial (non-CIBLS) facilities as from 23 March 2020, the Government has requested that lenders be asked to bring those facilities into the CBILS and changes retrospectively applied as necessary.

2. BBLS

Key characteristics:

a. On 27 April 2020, the Government announced that from 4 May 2020 it would be offering SMEs the opportunity to apply for loans of between £2,000 to £50,000, which will be 100% guaranteed by the Government through the BBLS ("Bounce Back Loans") . Similar to CBILS, the borrower will not need to pay any fees or interest for the first 12 months.

b. Full details have yet to be released but the Government has further confirmed the following in relation to the BBLS:

[2] A 'business in difficulty' is one that, as at 31 December 2019, had:

- accumulated losses of more than half of its subscribed share capital for limited companies, or for unlimited liability companies, its capital (but excluding SMEs that as at 31 December 2019 had existed for less than three years); or
- started, or had fulfilled the criteria to be put into, collective insolvency proceedings;
- previously received rescue aid that was yet to be reimbursed (or, in the case of a guarantee, terminated); or
- received restructuring aid, and was still under a restructuring plan (but excluding any assistance under the Enterprise Finance Guide Scheme); or
- (where it does not meet the SME criteria because it has 250 or more employees) has fallen below solvency ratios for the previous two years.

i. the term will be up to 6 years;

ii. the borrower does not need to make any repayments during the first 12 months of the loan;

iii. the Government will work with lenders to agree a low rate of interest for the remaining term of the loan. It is not clear what that interest rate will be; and

iv. the BBLS will be delivered through a network of accredited lenders.

Eligibility:

a. Similar to CBILS, a SME is eligible for a Bounce Back Loan if:

i. it is based in the UK;

ii. has been negatively affected by COVID-19 (we suspect that as per the CBILS, the SME would be expected to self-certify that it has been negatively affected); and

iii. it was not an "undertaking in difficulty" on 31 December 2019 (again we assume as per the CIBLS).

b. Companies that are not eligible to apply for a CBILS are also not eligible to apply for a Bounce Back Loan. Additionally, a SME who has claimed under CBILS cannot apply for a Bounce Back Loan; however, if that SME has already received support under the CBILS, then it can apply to transfer that financing to a Bounce Back Loan directly with their lender until 4 November 2020.

What financial support is available to large businesses?

1. CLBILS

Similar in nature to the CBILS and operates via the British Business Bank except that it is available to businesses with an annual turnover of over £45 million. The Government guidance stresses, however, that the CLBILS is not simply an extension of CBILS but for speed of access will utilise the same infrastructure and delivery mechanism that supports CBILS.

Key characteristics:

a. The CLBILS is aimed at businesses:

i. with an annual turnover of over £45 million (but less than £250 million), who can apply for up to £25 million; and

ii. with an annual turnover of over £250 million, who can apply for up to £50 million,

provided that in each case the amount borrowed should not be greater than (i) double the applicant's annual wage bill for the most recent year available, or (ii) 25% of the applicant's total turnover for the most recent year available, or (iii) with appropriate justification and based on self-certification of the applicant, the amount may be increased to cover their liquidity needs for the next 12 months.

b. As with the CBILS, the Government will give lenders a guarantee of 80% of each loan lent.

c. The maximum repayment term is three years.

d. Unlike CBILS, business interruption payments will not be made for CLBILs. However, the 80% guarantee will cover interest and fees as well as principal.

Eligibility:

a. A business is eligible if:

   a. it is based in the UK;[3]

   b. has an annual turnover of over £45 million;[4]

   c. its business has a borrowing proposal which the lender would consider feasible but for COVID-19;

   d. the business has not received financial help under the CCFF; and

   e. the business believes the financial assistance will enable it to trade out of any short to medium term difficulty.

b. As with CBILS, certain businesses cannot apply, including: banks, insurer and reinsurers (but not insurance brokers), public-sector bodies, further education establishments who are relying on grant funding and state-funded primary and second schools.

2. **CCFF**

Key characteristics:

a. Under this scheme, the Bank of England and HM Treasury aim to provide liquidity to larger firms by purchasing their short-term debt in the form of commercial paper (unsecured short-term debt instrument issued by a company).

b. Under the scheme, lenders will purchase sterling denominated commercial paper with the following features:

   i. the commercial paper has a maturity of one week to twelve months;

   ii. where available, the borrowing company has a public investment grade rating of: (i) a short term credit rating of A-3 / P-3 / F-3 / R3 from at least one of S&P's, Moody's, Fitch and DBRS Morningstar as at 1 March 2020; or (ii) a long term rating of BBB- / Baa3 / BBB- / BBB low or above by at least one of S&Ps, Moody's, Fitch and DBRS Morningstar;

[3] The same principles will apply here as for CBILS
[4] In calculating annual turnover, the same principles will apply here as for CBILS.

iii. if a company does not have a credit rating, the Bank of England will accept:

1. banks' internal ratings of corporates to asset credit status. However, to be considered as having investment grade status, the company will have to provide at least three investment grade bank ratings and no speculative grade bank ratings as at 1 March 2020. Yet, the Government has confirmed that they will not exclude companies with speculative grade bank ratings provided the average bank rating available is at least BBB / Baa2 / BBB / BBB by one of the abovementioned credit rating agencies. They will also accept only two bank ratings as satisfactory proof where the company has a strong bank rating, i.e. BBB+ / Baa1 / BBB+ / BBB(High) or above from one of the abovementioned credit rating agencies; or

2. an assessment of credit quality from one of the major credit rating agencies as at 1 March 2020 in a form that can be confidentially shared with the Bank of England and HM Treasury. Helpfully, if a company gets downgraded after 1 March 2020, it can still apply to the CCFF;

iv. the commercial paper is issued directly into Euroclear and/or Clearstream;

v. the commercial paper is governed by English law and subject to the jurisdiction of the English courts. However, to help companies seeking to set up commercial paper quickly, the Bank of England will accept simplified versions of the commercial paper documentation, based on the ICMA market standard documentation and which are available at the Bank of England's website[5]; and

vi. the minimum size of an individual commercial paper that the CCFF will purchase from an individual company is £1 million.

c. Each CCFF will be priced as follows (and on market terms prior to the pandemic):

i. **Primary market purchases**: The Bank of England will purchase commercial paper at a spread above a reference rate, based on the current sterling overnight index swap rate (**OIS**). The OIS rate will be determined at 9.45 a.m. on the date of the operation; and

ii. **Secondary market purchases**: The Bank of England will purchase the commercial paper at the lower of the primary market purchase price and the amortised cost from the issue price, plus a fee of 5bps (which is subject to change).

d. The Government has announced that this scheme will operate for at least 12 months.

e. The amount that companies can borrow will vary depending on their credit rating, but the Bank of England has confirmed that this may change so companies are encouraged to set out how much they wish to borrow in their applications.

[5] Approved and simplified commercial paper documentation is available at the : https://www.bankofengland.co.uk/news/2020/march/the-covid-corporate-financing-facility

f. Companies are initially asked to reach out to their current lenders to see whether they are taking part in the scheme. If not, UK Finance has provided a list of banks that are able to assist.[6]

Eligibility:

a. Eligible businesses must demonstrate that they were in sound financial health prior to the impact of COVID-19 (this can be demonstrated by looking at a company's credit rating, if available). However, companies do not need to have issued commercial paper before.

b. Companies must have made a material contribution to the UK economy prior to the pandemic (this would include UK incorporated companies, foreign incorporated parents with a genuine business in the UK, companies with significant employment in the UK and firms with their headquarters in the UK). However, the Government has stated that they would also consider firms that generate significant revenues in the UK, serve a large customer base in the UK or have several operating sites in the UK.

c. Housing associations can apply. However, commercial paper issued by banks, building societies, insurance companies and other financial sector entities regulated by the Bank of England or the Financial Conduct Authority are not entitled to apply. Likewise, commercial paper issued by public bodies are not eligible.

Future financial support for SMEs: The Coronavirus Future Fund

The Future Fund (which will launch in May 2020 in partnership with British Business Bank) will involve the Government co-investing with venture capital and private investors through the issuance of convertible loan notes (CLN) by way of bridging loans, of between £125,000 to £5 million to innovative companies facing financial difficulties due to COVID-19. Full details have yet to be published, but it is aimed at early stage companies in the digital, biotech, and life sciences sectors, which may be by their nature loss making and therefore are not eligible for CBILS or CLBILS. The scheme will initially be open until the end of September and the initial investment of the UK Government is £250 million. Accessing the Future Fund may be a suitable option for businesses that rely on equity investment and are not able to access the CBILS or CLBILS.

Key characteristics:

a. The key factor about The Future Fund is that the CLNs are subject to at least equal match funding from private investors (but there is no cap on the amount a private investor can lend). Governmental investment, however, is limited to 50%.

b. The CLN can only be used for working capital purposes, but not repaying existing debt, funding dividends, or bonus payment to staff, management, shareholders, or consultants, or in respect of the government funded portion, pay any advisory or placement fees or bonuses to external advisors.

[6] A List of participating banks was published by UK Finance: https://www.ukfinance.org.uk/covid-19-corporate-financing-facilities

c. Some of the key terms of the CLN include:[7]

i. **Conversion**:

1. The CLN shall automatically convert on the company's next qualifying funding round[8] at a minimum conversion discount of 20% (the **Discount Rate**) to the price set by that funding round with a company repayment right in respect of accrued interest. The Discount Rate will be higher if a higher rate is agreed between the company and the matched investors. On a non-qualifying funding round, at the election of the holders of most of the principal amount held by the matched investors, the bridge funding shall convert into equity at the Discount Rate to the price set by that funding round.

2. On a sale or IPO the convertible loan shall either convert into equity at the Discount Rate to the price set by the most recent non-qualifying round or it shall be repaid with a redemption premium (equal to 100% of the principal of the bridge funding) whichever will provide the higher amount for the lenders.

3. On maturity of the loan, the loan shall, at the option of the holders of a majority of the principal amount held by the matched investors (i) be paid by the company with a redemption premium (being a premium equal to 100% of the principal of the bridge funding); or (ii) convert into equity at the Discount Rate to the price set by the most recent funding round provided that the Government's loan shall convert unless it requests repayment in respect of its loan.

ii. **Valuation cap**: The Government shall not set a valuation cap on the price at which the loan converts into equity on the company's next funding round. Where the matched investors have agreed a valuation cap with the company, the Government shall be entitled to those same terms.

iii. **Interest rate**: The Government shall receive a minimum of 8% p.a. (non-compounding) interest to be paid on maturity of the loan. The interest rate shall be higher if a higher rate is agreed between the company and the match investor.

iv. **Term**: The loan shall mature after a maximum of 36 months.

v. **Most favoured nation**: If the company issues further CLN to investors (including any new or existing investors which are not matched investors)

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[7] Extracts from the "Headline Terms" in relation to the Future Fund and published by the Government are available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/880119/Convertible_Loan_Key_Terms_-__Final_Version_.pdf

[8] A "qualifying funding round" shall take place where the company raises an amount in equity capital (excluding any shares issued on conversion of the bridge funding or to employees/consultants on exercise of any options) equal to at least the aggregate amount of the bridge funding. A "non-qualifying funding round" shall take place where the company raises less in equity capital than the amount required for a "qualifying funding round."

with more favourable terms, those terms shall apply to the bridge funding provided under the scheme.

vi. **Negative pledge**: The company shall not permit the creation of any indebtedness that is senior to the loan other than any bona fide senior indebtedness from a person that is not an existing shareholder or matched investor. Other than that, the terms will be "covenant- lite."

vii. **Transfer**: The Government is entitled to transfer the loans and following conversion, any of its shares without restriction to an institutional investor which is acquiring a portfolio of the Government's interest in at least 10 companies owned in respect of the Future Fund, and without restriction to do internal transfers within Government and to entities wholly owned by central government departments.

Eligibility:

A SME is eligible if:

a. it is an unlisted UK registered company (so it is narrower in scope than a SME under the CBILS);

b. it must have a substantive economic presence in the UK and if part of a group, only the ultimate parent company, if a UK registered company, is eligible to receive the loan;

c. it can procure equivalent matched funding from third party private investors; and

d. it has previously raised at least £250,000 in equity investments from third party investors in the past 5 years.

What are other practical considerations for potential borrowers?

1. **Satisfactory diligence**: As with any financing, lenders must still act as a prudent lender and will need to be satisfied that an applicant can still repay the loans, as well as ensuring the applicant is eligible to access the relevant scheme. So, any applicants will likely need to provide at a minimum: latest management accounts, cash flow forecast, business plan, historic accounts (typically for the last three years) and details of assets.

2. **Existing financing**: It is not clear from the schemes as to how they interact with existing financing with private lenders. If the borrower has existing financing, the terms of those financings need to be checked in case it precludes them from borrowing under the above schemes without the lender's prior written consent. For instance, many loan agreements contain restrictions on incurring additional financial indebtedness and granting any security without the prior written consent of the lender.

3. **Security**: It is not clear whether all the Government backed loans and guarantees would be secured. However, it is expected that lenders will follow their usual practices when assessing the need for security. If security is required, consideration will need to be given as to how such security would rank with existing security and whether that creates any intercreditor issues.

4. **Future cashflow**: As with any loan, each of the schemes will need to be repaid in due course, albeit in the medium to long term. Companies should have due regard to the sectors in which they operate

and their cashflow forecasts for the medium to long term to consider whether such facilities can be repaid in due course.

5. **Accessing funding is not a given**: In relation to both the CBILS and CLBILS, ability to access fund depends ultimately on ability and willingness of the accredited lenders to lend. The Government guidance recommends approaching existing relationship lenders first (assuming they are accredited), but not all accredited lenders are able to offer every facility technically available under a scheme. The British Business Bank website has an integrated tool which enables an applicant to search to check this.

6. **Speed of access**. The impact of COVID-19 is evolving daily, as is the Government's response and any applicant should check the British Business Bank website for latest updates. One of the issues to-date has been the ability of lenders to process and deal with the sheer volume of applications, at a time when its own operational processes have been impacted by the lock-down. It is therefore business critical for any applicant to appraise whether it is eligible for a specific scheme as well as ensuring, as best it can, that all information requested by a lender is provided in a timely manner and in the form and substance requested.

Conclusion

Each of the CBILS, BBLS, CLBILS, CCFF, and the Future Fund is intended to help UK businesses during the short to medium term. Some of the aspects of the latest schemes builds upon pre-existing machinery. For example, the state backed guarantee seen in CLBILS, BBLS and CBILS is also a feature of the Enterprise Finance Guide Scheme (which has been temporarily replaced by CBILS), but the Future Fund marks a novel approach in the UK Government policy, a reflection of the unprecedented impact of COVID-19.

A key concern is whether the implementation can be fast enough to save many businesses from insolvency; whilst the latest data indicates the amount of lending is increasing week by week, the proportion of loans made to applications received is still relatively small. As of 21 April, £2.8 billion has been lent under the CBILS, of which £1.45 billion was lent in the week from 14 April to 21 April. That lending represents only 46% of all completed applications, however.

Industry bodies, such as the CBI have been urging the need for greater action and the UK Government appears to be listening, with the Treasury announcing on 27 April it is offering 100% guarantees on loans up to £50,000 under the BBLS..

Another key development is the enlargement of the pool of accredited lenders, which may in turn assist the speeding up of implementation. Whilst current data indicates the vast majority of successful applications to-date have been processed through high street commercial lenders, a number of challenger banks and fintech lenders (online lending platforms and peer-to-peer lending groups) have obtained approval to join the Government rescue schemes. COVID-19 may represent an opportunity for such lenders to increase and accelerate their market share.

For further details of each scheme, including information on how to apply, please see:

https://www.gov.uk/government/collections/financial-support-for-businesses-during-coronavirus-covid-19

For more information and updates on the developing COVID-19 situation, visit GT's Health Emergency Preparedness Task Force: Coronavirus Disease 2019.

** This GT Alert is limited to non-U.S. matters and law.*

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