

CORONAVIRUS

UK Government Financial Support – 25 April

OVERVIEW – UK GOVERNMENT FINANCIAL SUPPORT

LOANS	CASH	DEFERRED PAYMENTS	TECHNICAL
SME Business Interruption Loan Scheme (CBILS)	Employee Furlough Scheme – please see our Q&A here	VAT payable to 30/06/20	Wrongful Trading Suspension
Large-Cap Business Scheme Interruption Loan (CLBILS)	SSP Reimbursement for SMEs	Self-Assessed Income Tax to 31/7/20	Extension for Audit filing
Investment Grade Corporate Financing Facility (CFF)	Rates Relief for retail, hospitality and leisure sectors	Time to Pay Tax Arrangements.	Protection from eviction & winding-up for commercial tenants
SME Term Funding Schemes	Grants for retail, hospitality and leisure businesses with a rateable property value of <£51k		New Insolvency Laws – please see our legal update note here

Please see the details of [financial](#) and [operational](#) support in other European jurisdictions.

LOAN “SUPPORT”

Liquidity relief through loans from commercial lenders are the main part of the UK Government’s financial support package. This is not currently giving UK businesses cash flow relief. Very few loans have been approved so far. The main issues are:

- Loans are from commercial lenders – not the Government. Therefore the banks are going through their usual credit assessments on each business. Businesses are being turned down because they either have “too much” cash to borrow or because they did not have enough profits in 2019.
- Loans are on “usual commercial terms.” Lenders are asking for high interest rates (12%+ in some cases) and full security packages to reflect the current risk profile. The 80% Government guarantee is not enough to fully mitigate the lenders’ risk assessment on the loans.
- Process of getting a loan is slow as lenders are overwhelmed and want assurance from the Government that a loan will be covered by the guarantee before they will lend. The British Business Bank is not equipped to deal with the volume of queries.
- Until recently, PE controlled businesses could not borrow under any of these loans. The Government has now said that the turnover threshold for a PE controlled business does not include the turnover of the PE fund’s other investments. The security requirements and the restrictions in any borrowing they currently have still will cause obstacles to borrowing.

CORONAVIRUS

UK Government Financial Support – 25 April

- Current financial situation of many businesses means that it is not legally possible to take on more borrowings.

UNDERTAKING IN DIFFICULTY

The EU Commission's Temporary Framework (TF) sets out the conditions under which Governments – including the UK – can give business support measures that would otherwise contravene EU state aid rules.

As a result, loans of £30,000 or more must not be made to a borrower who was an “Undertaking in Difficulty” on 31 December 2019. This includes:

- SMEs¹ in existence for 3+ years with accumulated losses or more than ½ their subscribed share capital (including any share premium)
- SMEs who previously received (i) rescue aid and have not reimbursed any loan or terminated any guarantee received as part of this rescue aid; or (ii) restructuring aid and remain subject to a restructuring plan
- an enterprise² whose book debt to equity ratio was greater than 7.5:1 and EBITDA interest coverage ratio was below 1:1 for the past two years.

It is expected that this restriction will also extend to the CLBILS but it has not been approved by the EU Commission yet.

SME BUSINESS INTERRUPTION LOAN SCHEME – CBILS

The British Business Bank will support certain banks/lenders providing up to **£5 million** of lending to SMEs³ by guaranteeing 80% of the loan if it meets the criteria. This is just a guarantee – the whole loan still remains the business' liability.

This is not new money from the Government – it just assists lenders in approving borrowing.

Up to **£5 million** can be borrowed through the scheme. Different types of financing are available – term loans, asset backed financing, invoice discounting etc.

¹ A separate criteria applies for SMEs – businesses with <250 employees and no more than £45 million annual turnover.

² Enterprises which employ 250+ people.

³ If a business was not an “Undertaking in Difficulty” on 31 December 2019, lenders then just use the £45 million annual turnover test to assess which businesses are SMEs for the CBILS. The number of people employed by the business is no longer relevant. This turnover test includes linked enterprises, but specifically excludes PE investors and their other investments.

CORONAVIRUS

UK Government Financial Support – 25 April

WHO CAN BORROW?

SMEs⁴ who:

- are UK based in their business activity
- have **no more than £45m turnover** in 12 months before application
- generate 50+% of revenue from a trading business – rather than investments or real estate
- will use the loan to support primarily UK trading
- have a borrowing proposal that the lender thinks is viable, if not for COVID-19. The lenders are asking for management accounts, cashflow projections and business plan, 2019 EBITDA figures etc. If a business has cash reserves lenders are reluctant to lend
- self certify that business has been adversely affected by COVID-19.

Linked enterprises (UK or otherwise) are being aggregated for these tests. But a business will be treated as standing alone from its PE investor. When assessing the £45 million turnover the PE investor and its other investments will not be included. The £5 million maximum loan ceiling only applies to that business.

You cannot access the loan if you are subject to collection proceedings or collective insolvency proceedings. In any event, before taking a loan each company (and its directors) will need to decide that they are in a legally financially viable position and can pay back any borrowings.

WHAT ARE THE TERMS OF THE CBILS?

There is no standardisation of commercial terms. The key commercial terms we are seeing from lenders are.

Term:	Up to 6 years for term/asset backed loans. Up to 3 years for invoice finance facilities and overdrafts.
Interest Rates:	Variable – depending on lender's assessment of risk. We have seen interest rates of 12%+.
Interest Repayment:	No interest payments for 12 months - the Government pays it. To be confirmed that the Government will not reclaim this interest at the end of the loan.

⁴ The usual SME criteria does not apply. The only “SME” test is the £45m turnover test

CORONAVIRUS

UK Government Financial Support – 25 April

Fees:	The Government pays any arrangement fee. To be confirmed that the Government will not reclaim this fee at the end of the loan.
Security on business's assets?	Yes. Over <u>full</u> amount borrowed - not just the 20% not guaranteed by Government.
Personal Guarantees from shareholders etc.?	Only on lending above £250k and only on 20% of loan Lenders are asking for support letters from PE investors
Security for personal guarantees?	No personal guarantees can be secured against primary residential residences

Each lender is applying different terms to each loan depending on their assessment of risk.

I AM CONTROLLED BY A PE FUND. CAN I BORROW?

Yes. When assessing the £45 million turnover test, your business's turnover is not added to that of your PE investor or its other investments. The other eligibility criteria still apply.

WHO DECIDES IF I CAN BORROW?

The lenders make the decision. But lenders are not approving loans unless the Government confirms that the guarantee will cover it. Due to the vague and incomplete guidance, lenders do not have clarity to make decisions. So getting confirmation from the Government on each loan is taking some time.

LARGE BUSINESS INTERRUPTION LOAN SCHEME - CLBILS

A further Business Interruption Loan Scheme was introduced by the British Business Bank on 20 April for mid-sized and larger UK businesses with a turnover of above £45 million. There is no cap on the size of business or its turnover. The scheme has just started so not all details are known.

WHAT ARE THE KEY TERMS OF THE CLBILS?

There are separate lending limits for mid-sized and larger businesses.

Businesses with a turnover **from £45 million to £250 million** can borrow up to **£25 million**.

Businesses with a turnover of **over £250 million** can borrow up to **£50 million**.

CORONAVIRUS

UK Government Financial Support – 25 April

But the amount borrowed should not be greater than:

- double the borrower's annual wage bill for the most recent year available, or
- 25% of the borrower's total turnover for the most recent year available, or
- with appropriate justification and based on self-certification of the borrower, the amount may be increased to cover their liquidity needs for the next 12 months.

It is assumed the wages/turnover of the borrower's group will be aggregated together but wages/turnover of their PE investor and its investments will be excluded.

The maximum repayment term under the scheme is **3 years**.

Unlike the CLBIS, the Government will **not** cover your interest payments for the first 12 months or pay any arrangement fees. Instead the 80% guarantee under the CLBILS covers interest and fees in addition to principal.

WHO IS ELIGIBLE?

The business must:

- be UK based in its business activity, with turnover of more than £45 million per year
- confirm that it has been impacted by Coronavirus
- have a borrowing proposal which, were it not for the current pandemic, would be considered viable by the lender, and for which the lender believes the provision of finance will enable the business to trade out of any short to medium term difficulty.

If you participate in CFF Scheme you can not participate in this CLBILS.

I AM CONTROLLED BY A PE FUND, CAN I BORROW?

The BVCA and other industry participants believe the same approach will apply to CLBILS as the CBILS for the purposes of assessing turnover thresholds. No guidance has been issued yet for CLBILS but as there is no cap now on amount of turnover it should not be relevant.

The issue of making this borrowing work with existing borrowing and how to give security if you already have borrowings remains.

CORPORATE FINANCING FACILITY (CFF)

Commercial Paper ("CP") is an unsecured debt security issued by a company (a bit like a bond) which usually has simpler terms and conditions than typical finance facilities. The CP will trade through Euroclear and Clearstream.

CORONAVIRUS

UK Government Financial Support – 25 April

The CP will mature after **1 year**. You can roll drawings while the CFF is open if you are still eligible. The CP won't accrue interest but will be issued at a discount to its face value. At least £1million of CP must be issued by a company – so this is only for the largest companies.

Companies can access the CFF if they make a “material contribution to economic activities in the UK”. The Bank of England will determine if companies meet this criteria but the following non-financial companies are expected to be eligible:

- UK incorporated companies with genuine business in the UK – even if they have a foreign parent.
- Companies with significant employment in the UK
- Companies with UK headquarters

It looks like it will be enough if subsidiaries of the company issuing the CP meet this criteria – but not yet clear. If you (i) generate significant revenues in the UK; or (ii) serve a large number of UK customers; or (iii) have a number of operating sites in the UK - you may still qualify. All very subjective.

Leveraged investment vehicles will not qualify. We are expecting that the Government will not include PE portcos as investment vehicles – but will distinguish between the fund and the operating companies.

The biggest block for businesses in using this facility is the “investment grade rating requirement”. Only the largest businesses will have these ratings. If a business does not have a rating, the Bank will decide if the business has “equivalent financial strength”. It looks like most leveraged portcos will not have these ratings or be able to demonstrate such financial strength. Industry bodies are trying to get this criteria relaxed but as the Bank of England is a Central Bank which usually only buys investment grade paper, we are not sure the Bank can.

It looks like subordination of the CP is not allowed. There are no details on this yet – e.g. whether this just prohibits contractual subordination behind prior ranking secured debt. It may be possible to borrow through a holding company outside your secured banking net but the need for a parental guarantee may prevent that. Also if you have financing facilities already that are secured against your assets you will probably need your current lenders permission to borrow through this scheme. We think the Bank will also struggle administratively to approve you as a borrower if you have complex financial facilities with cross guarantees and intercreditors etc.

This scheme favours businesses who already issue debt securities in this way and have the processes and systems set up to trade them on the market. If you do not have this (and most businesses do not) a lot of time and expense will go into setting this up. You will need to appoint dealers and process agents etc.

TERM FUNDING SCHEME WITH ADDITIONAL INCENTIVES FOR SMES (TFSME)

The existing Term Funding Scheme for SMEs opened on 15 April.

CORONAVIRUS

UK Government Financial Support – 25 April

This scheme allows eligible lenders to access 4-year funding of at least 10% of participants' stock at rates very close to the prevailing Bank of England rate. The scheme is to incentivise eligible lenders to provide credit to businesses and households to bridge through the COVID-19 crisis. This scheme gives incentives to lenders who provide credit to SMEs - additional funding will be available for banks that increase lending to SMEs.

For this scheme, SMEs are private non-financial corporates with an annual debit turnover of less than **£25 million** on their business account.

This scheme is not likely to be available to PE controlled portcos.

CASH SUPPORT

EMPLOYEE FURLOUGH GRANTS

Businesses can claim under the Coronavirus Job Retention Scheme for wages and payroll taxes for employees on payroll at 28 February which have been put on temporary leave ("furlough") because of COVID-19.

You can claim cash from HMRC equal to 80% of furloughed employees' usual monthly wage costs capped at £2,500 a month. Additional claims can be made for payroll taxes and employee NICs.

Please find further details on the furlough grants in our Q&A [here](#).

SSP REIMBURSEMENT FOR SMEs

Small businesses can reclaim employees' COVID-19 related statutory sick pay for up to 2 weeks through the Coronavirus Statutory Sick Pay Rebate Scheme (the "SSP Scheme"). The SSP Scheme covers full time, part time, zero hours or flexible contract employees and employees on agency contracts.

The repayment will cover up to 2 weeks starting from the first day of sickness if an employee cannot work because they either have COVID-19 or because they are self-isolating at home.

You can reclaim the current rate of SSP that you pay to current or former employees for periods of sickness starting on or after 13 March 2020. If you are an employer who pays more than the current statutory rate of SSP (£95.85 per week) you can only claim the current rate amount. There is currently no end date for claims to be made under the SSP Scheme.

Employees do not have to provide a doctor's sick note for you to make a claim.

CORONAVIRUS

UK Government Financial Support – 25 April

The SSP Scheme is available to employers which:

- Are claiming for an employee who is eligible for sick pay due to COVID-19
- Had a PAYE payroll scheme on 28 February 2020
- Had fewer than 250 employees on 28 February 2020

You must keep records of all the SSP payments that you want to claim from HMRC, including:

- The reason why an employee could not work
- Details of each period when an employee could not work, including start and end dates
- Details of the SSP qualifying days when an employee could not work
- National Insurance numbers of all employees paid SSP

Please note that you now must pay statutory sick pay to employees who are self-isolating and cannot work as a result – even if they are not sick.

RATES RELIEF FOR RETAIL, HOSPITALITY AND LEISURE SECTORS

Businesses in the retail, hospitality and leisure sectors in England will not have to pay business rates for the 20/21 tax year.

This is an extension of the existing relief and applies regardless of rateable value. It only covers properties which are (i) occupied; and (ii) being used wholly or mainly as shops, restaurants, cafes, drinking establishments, cinemas, live music venues, for assembly or leisure or as hotels or accommodation. It does not cover a businesses' offices, warehouses etc.

Properties that have to close temporarily due to "government advice on COVID-19" will be treated as occupied and therefore are still eligible for relief. It remains unclear whether "government advice on COVID-19" encompasses properties that are not specifically mandated to close but have nonetheless decided to close due to the ongoing crisis.

Multi-site businesses can also benefit from this relief - with each property being assessed for its eligibility on an individual basis by its relevant local authority. Local authorities are running each local scheme and determining each individual case.

The discount is applied on a day-to-day basis. So if a new property is created as a result of a split or merger during the year, or there is a change of use, the property will be considered afresh for the discount on that day.

RETAIL, HOSPITALITY AND LEISURE GRANTS

Businesses in these sectors with a property with a rateable value of between £15k and £51k could be eligible for a £25k grant. Eligible recipients can receive a grant for each property. Properties with a rateable value of £51k+ are not eligible for this scheme.

CORONAVIRUS

UK Government Financial Support – 25 April

This scheme only applies to businesses based in England.

Local authorities will get in touch directly if a business is eligible so there is no need to apply.

PROTECTION FROM EVICTION & WINDING UP

Landlords cannot evict commercial tenants between 26 March to 30 June 2020 if they default on their rent because of COVID-19. The tenant is still liable to pay the applicable rent after this period.

Protections are also in place for commercial tenants to delay winding up petitions.

This measure does not preclude a landlord from taking enforcement action based on other breaches of a lease – such as issuing a winding up petition. So this measure is of little practical help.

DEFERRED PAYMENTS

VAT PAYABLE TO 30 JUNE 2020

If you're a UK VAT registered business and have a VAT payment due between 20 March 2020 and 30 June 2020 you have the option to defer payment until 31 March 2021. You do not need to tell HMRC that you are deferring your VAT payment.

If you normally pay by Direct Debit you should contact your bank to cancel your Direct Debit as soon as you can or cancel online if you're registered for online banking.

VAT payments due following the end of the deferral period will have to be paid as normal.

SELF-ASSESSED INCOME TAX TO 31 JULY 2020

The Self-Assessment payment on account that is due to HMRC by 31 July 2020 can be deferred until January 2021.

You do not need to apply to defer. No penalties or interest for late payment will be charged.

“TIME TO PAY” TAX ARRANGEMENTS

All businesses and self-employed people in financial distress may be able to defer other tax payments. You should contact HMRC's Time to Pay service to discuss. These arrangements are agreed on a case-by-case basis and are tailored to individual circumstances and liabilities.

ROPES & GRAY

CORONAVIRUS

UK Government Financial Support – 25 April

To access this relief you will need to reach out to HMRC.

ROPES & GRAY

CORONAVIRUS

UK Government Financial Support – 25 April

For further information, please contact:

Private Equity



Will Rosen
Partner
will.rosen@ropesgray.com
+44 20 3201 1644



Elizabeth Todd
Partner
elizabeth.todd@ropesgray.com
+44 20 3201 1578



Helen Croke
Partner
helen.croke@ropesgray.com
+44 20 3847 9035



Kiran Sharma
Partner
kiran.sharma@ropesgray.com
+44 20 3201 1647



John Newton
Partner
john.newton@ropesgray.com
+44 20 3201 1640

Loans



Malcolm Hitching
Partner
malcolm.hitching@ropesgray.com
+44 20 3847 9030



Carol Van der Vorst
Partner
carol.vandervorst@ropesgray.com
+44 20 3201 1515



Alexander Robb
Partner
alexander.robb@ropesgray.com
+44 20 3201 1572

High Yield



Michael Kazakevich
Partner, Co-head of global finance practice
michael.kazakevich@ropesgray.com
+44 20 3201 1634



Jane Rogers
Partner
jane.rogers@ropesgray.com
+44 20 3201 1643



Robert Haak
Partner
robert.haak@ropesgray.com
+44 20 3201 1532



Aditya Khanna
Partner
aditya.khanna@ropesgray.com
+44 20 3201 1545