GIDE
GIDE LOYRETTE NOUEL

CLIENT ALERT

UK GOVERNMENT MEASURES TO HELP AND SUPPORT BUSINESS DURING COVID-19 - AN UPDATE

This Client Alert is an update of part of a document first published on 25 March 2020.

The UK has introduced a series of measures to help support people, jobs and businesses in the face of COVID-19.

This Client Alert provides an overview of some of steps taken by the **UK Government** ("**the Government**") and outlines how those steps are expected to work in practice.

Following an announcement on 10 May 2020, the UK Government began the tentative roll-out of a series of initiatives aimed at loosening the lockdown in England and across the United Kingdom. Those measures so far have been practical, rather than legislative, and are therefore not considered further below.

For information on **Judicial and Regulatory Measures** and **Tax Measures** please see our separate client alerts on each of these topics.

The Government has launched a tool to help businesses and the self-employed to identify what financial support is available to them: Government Business Coronavirus Support Finder

The Government has now published a status table relating to the provisions of the Coronavirus Act 2020 (the Coronavirus Act). Part One of the Coronavirus Act facilitates legislative and regulatory changes to support the UK's response to the pandemic. Part Two makes provision for 'switching off' provisions when they are not needed, and for suspending and subsequently reviving provisions. The table indicates which powers have been activated and which are currently in force: Coronavirus Act 2020 Status

Coronavirus Business Interruption Loan Scheme (CBILS)

Lenders[1] accredited with the British Business Bank may provide:

- an overdraft (up to 3 years),
- a term facility (up to 6 years),
- an invoice finance facility (up to 3 years), and
- an asset finance facility (up to 6 years),

… for up to £5 million.

The Government will pay the interest and any lender fees for the first 12 months.

[1]For accredited lenders, please see CBILS Accredited Lenders

To be eligible under CBILS a business must:

- carry out business activity in the UK, with turnover of no more than £45 million[2] a year; of which more than 50% must arise from trading activity;
- be seeking support for trading "primarily" in the UK;
- operate within an eligible sector[3];
- have a borrowing proposal which, were it not for the COVID-19 pandemic, would be considered viable by the lender; and
- self-certify that it has been adversely impacted by COVID-19.

At the discretion of a lender, unsecured lending is possible for facilities of £250,000 and under. Otherwise, a lender may seek a personal guarantee, but that guarantee may not include a principal private residence and will cap recovery under a personal guarantee at 20% of the balance outstanding after the application of the proceeds from the disposal of the assets of the business. From 6 April 2020, there is no need to show that, were it not for the CBILS, the borrower has insufficient security to raise finance.

The CBILS terms, as summarised above, are applicable from 6 April 2020; a facility offered between 23 March 2020 and 6 April 2020 will benefit retrospectively from the enhanced terms.

While the CIBLS is in place, where a business was previously supported by the Enterprise Finance Guarantee (EFG) any refinancing will be governed by the CIBLS (and new EFGs will not be entered into).

The Government will underwrite this scheme, initially for a 6-month period.

CBILS for "large business" (CLBILS)

This is an extension of the CBILS, available from 20 April 2020, where a company or group has an annual turnover over £45 million.

Where annual turnover is not more than £250m, funding of up to £25 million is available; where turnover exceeds £250 million, funding of up to £50 million may be obtained.

Businesses with turnovers in excess of £500m were originally not eligible for the scheme but it has now been extended to include them.

COVID-19 Corporate Finance Facility (CCFF)

The Bank of England (**BoE**) will (via a dealer) acquire commercial paper (**CP**) issued directly into Euroclear and/or Clearstream, with a term of up to 1 year, "on terms comparable to those prevailing in markets in the period before the COVID-19 economic shock", from any company

---

[2] More than one company in a group can apply for support under the CBILS, provided that the consolidated group turnover does not exceed £45 million.

[3] This excludes insurers, reinsurers (not insurance brokers), public sector bodies, grant-funded further education establishments and state-funded primary and secondary schools.

that can demonstrate it had or would have qualified for an investment grade rating on 1 March 2020.

Eligibility decisions will be made by the BoE's risk management staff, taking into account a number of different factors.

A UK-incorporated company, including with a foreign-incorporated parent and with a genuine business in the UK, will normally be regarded as potentially being eligible.

A company with significant employment in the UK or with its headquarters in the UK would normally be eligible.

The BoE will also consider whether a company generates significant revenues in the UK, serves a large number of customers in the UK or has a number of operating sites in the UK.

Commercial paper issued by banks, building societies, insurance companies and other financial sector entities regulated by the BoE or the Financial Conduct Authority is not eligible.

In evaluating an offer to purchase CP, the BoE will look:

- where available, at issuers with a minimum short-term credit rating of A-3 / P-3 / F-3 / R3 from at least one of Standard & Poor's, Moody's and Fitch, and DBRS Morningstar as at 1 March 2020;

- where a short-term rating is not available, at issuers with a long-term rating of BBB- / Baa3 / BBB- / BBB low or above by at least one of the major credit ratings agencies, or at an assessment by the BoE of the issuer's financial strength; and

- at whether firms have different ratings from different agencies, and if one of those is below investment grade, the commercial paper will not be eligible.

For an Issuer Eligibility Form, Issuer Undertaking and Confidentiality Letter, Guarantee (for where the Issuer is not the primary entity in the group) and Legal Opinion, Application Forms (and further guidance) see: BoE Covid Corporate Financing Facility

If a company does not already have an established CP programme it will need to establish a CP programme to participate in the CCFF, standard form ICMA-based documentation is available.

The scheme will remain open to new issuers until 31 December 2020.

Future Fund

Where a UK-based business has raised at least £250,000 equity investment over the last five years from third party investors, a convertible working capital loan with a term of up to 36 months, of between £125,000 and £5 million and carrying a minimum coupon of 8%, will be made available by HM Government and the British Business Bank on a matched funding basis.

The working capital loan will convert, at a minimum discount rate of 20% ('**Discount Rate**'), when the company next raises equity capital at least equal to the aggregate amount of the bridge funding of which the Government-backed convertible loan forms part (a 'qualifying funding round'). On a sale or IPO, the loan will, depending which route provides the highest return to the bridge funding lenders, either convert into equity at the Discount Rate to the price set by the most recent non-qualifying funding round, or be repaid at a redemption premium equal to 100% of the principal amount of the bridge funding.

The fund will be available between May and September 2020.

Bounce-Back Loans (BBLs)

From 4 May 2020, a small business will be able to apply to an accredited lender, using a simple online form, for a loan of between £2,000 and £50,000. It is understood that a lender will not have to perform a forward-looking test, which has hindered take-up of the *CBILS*, of a business' viability.

A BBL will be 100% guaranteed by HM Treasury which will pay any fees and interest for the first 12 months (after which interest will be due at a low standardised level of interest to be agreed between lenders and HM Treasury). No repayments will be due during the first 12 months.

In a letter sent on 1 May 2020 to accredited lenders under the CBILS the Chancellor set an interest rate of 2.5% for BBLs and outlined legislative and regulatory changes to support the delivery of the scheme. The Bank of England will be providing participants in the Term Funding scheme with additional incentives for SMEs to extend the term of some of the funding they access via Term Funding to align with the 6-year term of loans made through the BBL scheme. Banks subject to the UK leverage ratio will be able to exclude BBLs from the leverage ratio exposure measure.

Coronavirus Job Retention Scheme

"Any employer" will be able to apply to HM Revenue and Customs (HMRC) for a grant to cover up to 80% of each furloughed employee's wages of up to £2,500 per month (plus associated employer national insurance contributions and pension contributions (up to the minimum automatic enrolment employer pension contribution).

An employee must either be on PAYE payroll and notified to HMRC on a RTI submission:

(a) on or before 19 March 2020, or

(b) as of 28 February 2020 and then (i) made redundant or stopped working between 28 February 2020 and 19 March 2020 and (ii) reemployed by that employer and put on furlough.

Grants will be backdated to 1 March 2020. The Government have now confirmed that furloughed workers planning to take paid parental or adoption leave will be entitled to pay based on their usual earnings rather than a furloughed pay rate, if their period of family-related pay begins on or after 25 April. This will apply to Maternity Pay, Paternity Pay, Parental Bereavement Pay and Adoption Pay.

The Scheme operates under a Direction issued on 15 April 2020 to HMRC by the Chancellor of the Exchequer using powers conferred by the Coronavirus Act 2020.

The Government has now published a step by step guide to the scheme for employers: Government Coronavirus Job Retention Scheme Step-by-step Guide for Employers

On Tuesday, 12 May 2020 the Chancellor announced that the job retention scheme will remain open until the end of October. From the beginning of August, furloughed workers will be able to return to work part time with employers being asked to pay a percentage towards the salaries of furloughed staff. The employer payments will substitute the contribution the government is currently making, ensuring staff continue to receive 80% of their salary up to £2,500 a month. To date, the scheme has protected the jobs of 7.5 million workers in almost 1 million businesses. More specific details of the changes will be made available by the end of this month.

On 14th and 15th May the Government provided further guidance for both employers and employees on the Job Retention Scheme: Government Advice on Coronavirus Job Retention Scheme

Self-employment Income Support (SEIS) Scheme

A grant may be claimed by a self-employed person who has submitted an income tax self-assessment tax return for the tax year 2018-19, traded in the tax year 2019-20, is trading when an application is made (or would be trading except for COVID-19), intends to continue to trade in the tax year 2020-21, has lost trading/partnership trading profits due to COVID-19, whose self-employed trading profits are less than £50,000 and who obtains more than half of his or her income from self-employment.

A grant may be up to £2,500 per month, for three months, of 80% of the person's average profits over three tax years (where applicable) the first of which began on 6 April 2016 and the last of which ended on 5 April 2019.

Payment is not expected to be made until June 2020 and will be made in a single lump sum to those HMRC deems eligible.

The SEIS scheme operates under a Direction issued on 1 May 2020 to HMRC by the Chancellor of the Exchequer using powers conferred by the Coronavirus Act. The Direction sets out the method of calculating SEIS: SEIS Scheme Direction

Reimbursement of Statutory Sick Pay

An employer with under 250 employees on 28 February 2020 may reclaim up to two weeks' statutory sick pay per eligible employee who has been off work due to sickness absence because of COVID-19.

Corporate Insolvency and Governance Bill

Although this Bill has not yet been published, we understand from announcements made by the Department for Business, Energy and Industrial Strategy (BEIS), the Financial Conduct Authority (FCA) and Financial Reporting Council (FRC) on 14 May 2020, that the Bill will:

- introduce a moratorium during which no legal action can be taken or continued against a company without leave of the court;

- suspend *ipso facto* (Termination) clauses which allow a supplier to stop (or threaten to stop) supplying a company that has entered a restructuring or insolvency process; these rights are to be suspended, subject to safeguards to ensure that continued supplies are paid for, and suppliers can be relieved of the requirement to supply if it causes hardship to their business;

- remove, from 1 March 2020 to 30 June 2020, the threat of personal liability arising from wrongful trading for directors who continue to trade a company through the coronavirus pandemic with the uncertainty that the company may not be able to avoid insolvency in the future;

- introduce a new "restructuring plan" (which in the case of regulated firms is expected to include a safeguarding role for the FCA and Prudential Regulation Authority);

- suspend the ability to petition for the winding-up of a company (from 27 April 2020 to 30 June 2020);

- void statutory demands (from 1 March 2020 to 30 June 2020);

- permit a company that is under a legal duty to hold an AGM or general meeting to hold a meeting by other means even if its constitution would not normally allow that alternative means; and

- confer power on the Secretary of State to further extend deadlines for making filings at Companies House (Companies House has already used to the full the flexibility available to it using its power under the current law).

The FCA expects that the moratorium, the suspension of *ipso facto* termination clauses and the suspension of the wrongful trading regime will not be available to a bank, investment firm, insurer, payment and e-money institution or certain market infrastructure bodies. Furthermore, a firm that safeguards client money is expected to not be able to take advantage of the moratorium or the suspension of the wrongful trading regime.

Measures to Protect UK High Street from Aggressive Rent Collection and Closure

The Government is to introduce measures to safeguard the UK high street. Some landlords are thought to have been putting tenants under undue pressure by using aggressive debt recovery tactics. To stop this there will be a temporary ban on the use of statutory demands (made between 1 March 2020 and 30 June 2020) and winding up petitions presented from 27 April to 30 June, where a company cannot pay its bills due to coronavirus.

The Government is also providing tenants with more breathing space to pay rent by preventing landlords using Commercial Rent Arrears Recovery (CRAR) unless they are owed 90 days of unpaid rent.

Business Rates Holiday

Retail, hospitality, leisure businesses and nurseries in England will be granted a holiday from business rates for the 2020 to 2021 tax year.

A business rates re-evaluation planned for 2021 has been postponed, and rateable values will now remain unchanged until 2022 to reduce uncertainty for firms.

Insurance Claim

Where a policy is activated, or cover is excluded, by reference to a "notifiable disease", the relevant clause may have been triggered on 5 March 2020 when COVID-19 was made a "notifiable disease".

Medical advice issued by HM Government on 17 March 2020 is, according to HM Government, sufficient to enable a claim to be made if a company has an insurance policy that covers both pandemics and government-ordered closure.

The closure of premises (including most workplace canteens) on 21 March 2020 by virtue of the Health Protection (Coronavirus, Business Closure) (England) Regulations 2020 may also ground an insurance claim.

Trade Credit Insurance (TCI)

TCI insures suppliers selling goods against the risk of purchaser default, giving businesses the confidence to trade with one another. As of April 2020 there was over £171 billion business activity insured, covering transactions between around 13,000 suppliers and 650,000 buyers. Due to Coronavirus many businesses are struggling to pay bills, and risk having credit insurance withdrawn or premiums increasing to unaffordable levels. To prevent this, the Government is temporarily guaranteeing business to business transactions currently supported by TCI, ensuring the majority of insurance coverage will be maintained across the market. The guarantee will be delivered through temporary insurance agreements with insurers currently operating in the market, and will cover both domestic businesses and exporters. It is hoped that agreements with insurers will be in place by the end of this month. The guarantee will be temporary and will provisionally last until the end of the year. It will be followed by a review of the TCI market to ensure it can continue to function.

Small Business Grant Funding (SBGF) ,Hospitality, Leisure and Rental Grant Funding (HLRGF) and Local Authority Discretionary Grants Fund (LADGF)

£10,000 for each business in receipt of small business rate relief or rural rate relief is available under the SBGF scheme, and £25,000 where the rateable value of business premises is between £15,000 and £51,000, under the HLRG scheme.

On 2 May 2020, the Government announced that the LADGF had been set up to accommodate certain small businesses outside the scope of the SBGF scheme. Up to £617million will be made available, an additional 5% uplift to the £12.33 billion funding previously announced for the SBGF and the HLRGF

On 13th of May 2020 the Government published more details of the LADGF. Local authorities may disburse grants to the value of £25,000, £10,000 or any amount under £10,000. The grants are primarily aimed at small and micro businesses, businesses with relatively high on-going fixed property-related costs, and businesses which occupy property with a rateable value or annual rent or mortgage payments below £51,000. They will have to demonstrate that they have suffered a significant fall in income due to the COVID-19 crisis.

The Government has asked local authorities to prioritise certain types of businesses such as small businesses in shared offices or flexible workspaces, regular market traders with fixed building costs, such as rent, who do not have their own business rates assessments, bed and breakfasts which pay council tax instead of business rates and charity properties.

LADGF is only available to businesses that are not eligible for other support schemes but they may still apply for the Coronavirus job retention scheme. Grant income received by a business is taxable, but only businesses which make an overall profit once grant income is included will be subject to tax. It is anticipated that the first payments under LADGF will be received by businesses by early June.

UK Debt Management Office (DMO)

HM Treasury has revised the DMO's financing remit for 2020-21, and increased the planned gilt issuance schedule for May to June 2020 to £180 billion.

Support for Freight and Passenger Services

The UK Government has agreed a joint commitment with France and the Republic of Ireland to 'strengthen partnership and share best practices' to ensure the continued movement of freight across the continent during the pandemic. Up to £17 million will be available for critical routes between Northern Ireland and Great Britain and further funding will be available for 26 routes between Britain, France, Belgium, Spain, The Netherlands, Denmark, Germany, Norway and Sweden, including Eurotunnel.

The Government has announced £5.7 million funding to safeguard air passenger services between Great Britain and Northern Ireland. Londonderry/Derry City Airport (DCY) and Belfast Airport will both receive support and Aer Lingus and Loganair will receive subsidies to keep the Belfast to London and DCY to London routes open.

FAQs

The Government has published a list of FAQs providing considerable detail on permissible behaviour during the lockdown: Coronavirus Outbreak What You Can and Can't Do FAQs

Immigration

The Home Office has published the latest guidance to individuals affected by travel restrictions associated with coronavirus. If an individual's 30 day visa to travel to the UK for work, study or to join family has expired, or is about to expire, individuals can request a replacement visa with a revised date free of charge until the end of this year.

Travel between the UK and France

The Government has published guidance for UK nationals travelling to or within France, as to which attestation forms should be used: Attestation Forms for Travel to and Within France

Dairy Farming

The Government has announced a new fund to provide financial support to dairy farmers in England. Demand for milk and milk products has declined dramatically since the closure of cafes and restaurants. Eligible farmers will be entitled to receive grants to cover 70% of their lost income during April and May, up to a maximum of £10,000 each.

The Government had already relaxed certain elements of UK competition law for the industry to enable retailers, suppliers and logistics services to work together. Now they have also launched a £1 million marketing campaign to boost milk consumption and help producers to reduce their surplus stock.

Transport for London (TfL)

The government has agreed a £1.6 billion funding and financing package for TfL to protect key services with the mayor of London, Sadiq Kahn. The funding is made up of a grant of £1.095 billion and a loan of £505 million and runs until October 2020.The agreement includes increasing service levels as soon as possible to ensure people comply with social distancing guidelines while on the network. The package contemplates the re-introduction of fares on buses and the reinstatement of the congestion charge. Concessions for the over 60s and under 18s will be suspended, and the mayor has also agreed to increase fares next year by one percent above inflation. The whole financial position and structure of TfL will be the subject of a wholesale review, and two Government representatives will be appointed to TfL's Board, finance committee and programmes and investment committee to monitor value for money for the taxpayer.

Infection control fund

A new £600 million infection control fund has been introduced to tackle the spread of COVID-19 in care homes, in addition to £3.2 billion of financial support made available to local authorities to support key public services since the start of the crisis. The fund, which is ring fenced for social care, will be given to local authorities to ensure care homes can continue to halt the spread of coronavirus by helping them cover the costs of implementing measures to reduce transmission.

Other Measures

We will endeavour to keep you informed of any new measures that are adopted in the coming days and weeks.

CONTACTS

MARGARET BOSWELL
boswell@gide.com

COLIN GRAHAM
colin.graham@gide.com

GERALD MONTAGU
gerald.montagu@gide.com

JAMES CASEY
james.casey@gide.com