Financial Restructuring Alert

Akin Gump
STRAUSS HAUER & FELD

UK Government Backed Financing 2.0: Coronavirus Large Business Interruption Loan Scheme for UK Businesses Now Live

April 23, 2020

Further to the Chancellor's announcement on April 3, 2020, of the introduction of the Coronavirus Large Business Interruption Loan Scheme (**CLBILS**), the CLBILS that is aimed at larger U.K. businesses is now live and the following further details have been provided / confirmed by the U.K. government:

- The U.K. government will provide accredited lenders with a guarantee of 80 percent of the outstanding balance of loans up to (i) £25m in relation to qualifying U.K. businesses with an annual turnover of between £45m and £500m and (ii) £50m in relation to qualifying U.K. businesses with an annual turnover in excess of £500m—helpfully, in the final terms of the CLBILS, the U.K. government removed the initially announced £500m turnover cap such that there is now no upper turnover limit and increased the loan amount to £50m for businesses over the £500m turnover threshold.
- As expected, CLBILS will be available through the British Business Bank's 40+ accredited lenders (which includes all the leading banks) in a similar manner to the Coronavirus Business Interruption Loan Scheme (**CBILS**) (being the U.K. government financing scheme aimed at U.K. small and medium-size enterprises (**SMEs**) that has been operating since March 23, 2020 and, as at April 15, 2020, had provided finance of approximately £1.1 billion via over 6,000 loans).
- Again, as expected, the CLBILS will not provide cover for the first 12 months of interest payments (and lender fees) as like under the CBILS.
- Finance is available in the form of loans, asset finance facilities, revolving credit facilities (including overdrafts) and invoice finance facilities with repayment terms of between three months and three years.
- Larger eligible businesses can elect to apply for assistance via CLBILS or, if eligible and subject to its requirements, the COVID-19 Corporate Financing Facility (**CCFF**) (being the U.K. government scheme aimed at investment-grade companies that has been operating since March 23, 2020 and, as at April 15, 2020, had provided approximately £7.6 billion of financing)—however, firms opting to participate in the CCFF are not eligible for CLBILS.

Contact Information

If you have any questions concerning this alert, please contact:

Lois Deasey
Partner
lois.deasey@akingump.com
London
+44 20.7661.5417

Amy Kennedy
Partner
amy.kennedy@akingump.com
London
+44 20.7012.9868

Shaun Lascelles
Partner
shaun.lascelles@akingump.com
London
+44 20.7012.9839

Liz Osborne
Partner
liz.osborne@akingump.com
London
+44 20.7661.5347

Sebastian Rice
Partner
srice@akingump.com
Lodnon
+44 20.7012.9618

James Roome
Partner
james.roome@akingump.com
London
+44 20.7661.5317

Overview of Key Terms of Each of CCFF, CLBILS and CBILS

A high-level overview of the key terms of each of the schemes and details on who is eligible to participate is set out in the Annex to this alert. As shown in that overview, and subject to the other relevant eligibility criteria and requirements, access to CLBILS, CCFF and CBILS based on business turnover only is now as follows:

Business size	Turnover <£45m	Turnover >£45m	Investment grade
CBILS	X		
CLBILS		X	X
CCFF			X

Calculation of Turnover Thresholds

Generally, the turnover thresholds are calculated on a group basis (rather than an individual borrower basis) based on the preceding 12 months. After the initial announcement of the CLBILS, there were still a large number of potential borrowers who would have struggled to get under the £500m turnover cap (particularly those backed by private equity where, anecdotally, some banks were looking up to the private equity fund to calculate group revenue). The removal of the cap on the CLBILS (and confirmation by the British Business Bank that private equity portfolio companies will have their turnover assessed as a separate business) is positive news and means that the “group” turnover eligibility requirement is likely to be of less relevance. It also means that many larger businesses (including publicly listed companies) that were not investment grade pre-COVID-19 (and therefore could not access CCFF) will be able to benefit from government-backed financing.

If you have any questions around access to U.K. government support finance packages or the other schemes announced to date or in the future, Akin Gump is tracking and is available to assist.

Simon Rootsey
Partner
simon.rootsey@akingump.com
London
+44 20.7012.9838

Barry G. Russell
Partner
barry.russell@akingump.com
London
+44 20.7661.5316

Emma Simmonds
Partner
Emma.simmonds@akingump.com
London
+44.20.7661.5420

Rebecca Carwood Barron
Associate
Rebecca.CarwoodBarron@akingump.com
London
+44 20.7661.5327

Annex: High-level Key Terms of CLBILS, CBILS and CCFF

1. *CLBILS*

What companies can benefit?	*UK businesses* • In short, businesses that are “UK based in [their] business activity” with an annual turnover of over £45 million—there is no upper turnover limit. *Sectors* • Any sectors, except (i) banks and building societies, (ii) insurers and reinsurers (but not insurance brokers) and (iii) public-sector organizations (including U.K. government-funded primary and secondary schools).

Borrower Viability Test and impact of COVID-19

- CLBILS can be used when the borrower has a viable business proposition assessed according to a lender's normal commercial lending criteria.
- Borrowers must have a borrowing proposal that the lender would consider viable were it not for the current COVID-19 pandemic, and the lender must believe that the provision of finance will enable the business to trade out of any short-term to medium-term difficulty.
- Borrowers must self-certify that they have been impacted by COVID-19.

Must not be a "business in difficulty" as at December 31, 2019

- Unless a business is less than three years old, if a business has accumulated losses greater than half of its subscribed share capital as at December 31, 2019, it will not be eligible for CLBILS. In practice, this means that certain fast-growth businesses may not be eligible for CLBILS—this is linked to EU state aid rules.

Other

- Borrowers must not have used the CCFF.
- As previously announced, a criterion that borrowers must be "unable to secure regular commercial financing" does not apply.

What financing is potentially available?

Amount

- Facilities of up to £25 million for businesses with a turnover in excess of £45 million.
- Facilities of up to £50 million for businesses with a turnover in excess of £250 million.
- The amount borrowed should not exceed an amount equal to the higher of (i) double the borrower's annual wage bill for the most recent year available and (ii) 25 percent of the borrower's total turnover for the most recent year available—however, subject to appropriate justification and based on self-certification of the borrower, this amount may be increased to cover a borrower's liquidity needs for the next 12 months.

Government partial guarantee

- U.K. government will provide the lender with a guarantee of 80 percent of the outstanding balance (plus, we assume, any lender fees).

No 12-*month* interest and lender levied fees payment

- Unlike the CBILS, this will not be covered by CLBILS.

Term/*type* of facilities

- Similar to CBILS, a wide range of finance products, including short term loans, overdrafts, invoice finance and asset finance—however, also specifically includes revolving credit facilities.
- Repayment terms from three months to up to three years (noting that CBILS was potentially available for up to six years for certain term and asset finance facilities).

Interest rate, security/guarantees and underlying *principles* of lending

- The U.K. government has specifically referenced that facilities made available under CLBILS will be offered at "commercial rates of interest," i.e., interest proposed to be charged to borrowers for facilities offered under CLBILS should be reasonable and based on the lender's normal pricing framework.

Security

- British Business Bank expects lenders to follow their normal credit policy when assessing security generally.

Timing

- Launched April 20, 2020.
- Will run for an initial period of six months through to October 20, 2020.

Process

- CLBILS will be available through the British Business Bank's 40+ accredited lenders (these include all the leading banks) in the same manner as the CBILS.

2. *CBILS*

What companies can benefit?

UK businesses

- In short, businesses that are "UK based in [their] business activity" with an annual turnover of £45 million or less.

Sectors

- Most sectors are covered (save for certain exclusions, in whole or in part, in the financial services, insurance, education and care sectors).

Borrowing proposal and impact of COVID-19

- Borrowers are required to have a borrowing proposal that the eligible lender would consider viable if it were not for the current COVID-19 issues.
- Borrowers must self-certify that they have been adversely impacted by COVID-19.
- Must not be a "business in difficulty" as at December 31, 2019.

Must not be a "business in difficulty" as at December 31, 2019

- Unless a business is less than three years old, if a business has accumulated losses greater than half of its subscribed share capital as at December 31, 2019, it will not be eligible for CBILS.

What financing is potentially available?

Amount

- Maximum value of facilities is £5 million.

Government partial guarantee

- Government will provide the lender with a guarantee of 80 percent of the outstanding balance (plus any lender fees).

Term/type of facilities

- Term and asset finance facilities with terms of up to six years.
- Overdraft and invoice facilities with terms of up to three years.

Security

- Insufficiency of security is no longer a condition.

Interest / Pricing

- U.K. government will make a "Business Interruption Payment" to cover the first 12 months of interest payments and any lender-levied charges.
- Pricing is as negotiated with the relevant lender. However, the Chancellor and Bank of England have requested banks "to support small and medium-sized enterprises in any way they can. This included ensuring interest rates offered to struggling businesses are reasonable and to pass on the benefit of the [UK government] guarantee to those borrowing under the [CBILS]"—this is in response to anecdotal evidence/media reports suggesting that some banks in certain instances may have been seeking to charge relatively high rates of interest on loans backed by CBILS.

Underlying principle

- The Chancellor has announced that, to maximize the support available, CBILS should be available to SMEs affected by COVID-19 and not just those unable to secure regular commercial financing, i.e., CBILS is now less of a "last resort" option after seeking to access commercial financing has been exhausted, i.e., CBILS is now open to businesses who previously would not have been eligible for CBILS because they met the requirements for a standard commercial financing.

Timing

- CBILS went live on March 23, 2020 and will initially run for six months.

Process

- CBILS is available through the British Business Bank's 40+ accredited lenders—these include all the leading banks, and many alternative finance lenders are, or are becoming, accredited under the scheme.

3. *CCFF*

What companies can benefit?

UK businesses

- U.K.-incorporated companies (including those with foreign-incorporated parents) and with a "genuine business in the UK" will normally be regarded as making a "material contribution to economic activity in the UK."

- The Bank of England will take into account the following factors when determining if a company has "genuine business in the UK": (i) significant employment in the U.K., (ii) headquartered in the U.K., (iii) significant revenues in the U.K., (iv) serves a large number of customers in the U.K. and (v) a number of operating sites in the U.K.
- Leveraged investment vehicles and companies within groups that are predominantly banks, investment banks, building societies or are regulated by the Bank of England or Financial Conduct Authority are excluded.

Sound financial health pre-COVID-19

- Existing credit rating: The CCFF is aimed at investment-grade companies, so accepted ways of proving this is if a company has (i) a minimum short-term credit rating of A-3/P-3/F-3 /R-3 or above or (ii) a long-term rating of BBB-/Baa3/BBB- or above from at least one of Standard & Poor's, Moody's, Fitch or DBRS Morningstar as at March 1, 2020 (i.e., assessing the pre-COVID 19 position) (**Note: If a company has a split rating and one is below the above minimums, the company will not be eligible**).
- No existing credit rating: Two main options: (1) companies request confirmation of whether their bank internally would consider the company to be equivalent to investment grade (and this information is then passed on to the Bank of England for consideration) or (2) companies seek a credit rating from one of the major credit rating agencies in a form that can be shared with the Bank of England, i.e., including private indicative ratings or credit assessments (typically, this takes four to six weeks, but the Bank of England is in discussions with the major credit rating agencies to significantly reduce this time when companies are seeking one for the purposes of utilizing the CCFF).

What financing is potentially available?

Type of instrument

- GBP denominated commercial paper (**CP**) (being a type of short-term unsecured promissory note) issued by the relevant company to the Bank of England via a dealer (or purchased by the Bank of England in the secondary market).

- Issued directly into Euroclear and/or Clearstream, so a paying agent will be required.

Amount

- £1 million minimum (subject to limits per issue that will only be advised by the Bank of England direct to the company upon request).

Maturity date

- One week to 12 months.

Security/guarantee and ranking

- If CP is issued by a finance subsidiary, a guarantee will be required from the primary entity in the group.
- CP to rank at least *pari passu* with unsecured and unsubordinated indebtedness of the group—however, the "Eligibility Form" contemplates that the CP will benefit from any guarantee or similar arrangements that have been provided by the group for the benefit of the issuer's other creditors. This will potentially impact the utility of the CCFF for already-leveraged borrowers or issuers (subject to a detailed review of relevant existing financing arrangements).

Terms

- Bank of England may not approve commercial paper with certain non-standard features—two specific examples given are: (i) subordination and (ii) extendibility.
- The "Eligibility Form" also requires confirmation that (i) there are no financial covenant breaches or defaults under existing facility agreements (and none likely to occur as a result of issuing the CP) and (ii) the CP will not result in any breach of borrowing limits.
- The terms of the CP requires various representations and warranties to the Bank of England (in some instances with qualifications due to the COVID-19 shock).

Pricing

- Comparable pricing to those prevailing in the markets pre-COVID-19.
- Primary market purchases: Bank of England will acquire CP at a spread above a reference rate

based on the current GBP overnight index swap (**OIS**) rate—credit ratings will impact the amount of the relevant spread.

- Secondary market purchasers: Bank of England will acquire CP at the lower of (i) amortized cost from the issue price and (ii) the equivalent price using the primary market purchase methodology. The Bank of England will apply an additional small fee (currently set at 5bps and subject to review) for use of the secondary facility, payable separately.

Timing

- CCFF went live on or about March 23, 2020, and will close to new issuers on December 31, 2020 (and secondary purchases on March 23, 2021).
- In terms of accessing the CCFF, it will be easier for those companies that already have existing CP programs in place as (i) it is more likely that they contemplate the issuance of CP as part of their existing capital structure, (ii) they will have an existing credit rating and (iii) they are more familiar with the documentation/process.
- While the CCFF is available to companies who have not previously issued CP, additional work will be required by them including: (i) in many instances, obtaining a credit rating; (ii) more detailed analysis of their existing financing arrangements (and potentially existing lender consents); and (iii) potential preparation of an information memorandum (although this requirement is currently unclear).

Process

- CCFF is being run by the Bank of England.
- Relevant documentation has been published by the Bank of England and the Bank of England has indicated that it (i) will accept CP issuing International Capital Market Association standard documentation and (ii) may accept simplified versions of such documentation.
- Companies wanting to use the CCFF should speak with relevant banks (who would act as dealers) in the first instance.

akingump.com