

To Our Clients and Friends

Memorandum

May 13, 2020

COVID-19 Pandemic: Key UK Government and Bank of England Initiatives to Support Businesses

***Fried Frank published a memorandum titled [COVID-19 Pandemic: Key UK Government and Bank of England Initiatives to Support Businesses](#) on March 30, 2020 (“March 30 Memorandum”) and published an [update](#) to the March 30 Memorandum on April 15, 2020 (the “April 15 Update”). In light of the rapidly developing situation and government response, the April 15 Update has been further updated to include the latest guidance provided by the UK Government, in particular as to employment retention initiatives and loan schemes, and is current as of May 12, 2020.**

The rapid transmission of COVID-19 around the world has had a transformative impact on economies, politics and societies. Europe and the United States, in particular, have now emerged as epicentres of the pandemic. As governments, informed by their public health authorities, implement comprehensive measures to implement social distancing policies, including various forms of quarantine or lockdown, the functioning of economies on a day-to-day basis has become increasingly and severely constrained.

The UK Chancellor of the Exchequer, Rishi Sunak, has stated that the government will do “whatever it takes” to combat the economic impacts of the crisis, and a series of measures that have been announced to date are evidence of that commitment. The Bank of England has similarly adopted a range of measures to stem the financial and economic fallout of the pandemic, as well as to support UK businesses, including cutting interest rates to the lowest level in the central bank’s history and an expanded quantitative easing program pursuant to which it will buy £200 billion of UK financial assets, including UK government debt and investment-grade corporate bonds, along with the other measures described herein. The UK Government and Bank of England have each indicated that further measures are being considered, and have emphasized that they are working closely together so as to coordinate actions to ensure maximum impact.

This memorandum summarizes the key initiatives and measures that have been introduced by the UK government and the Bank of England in response to the COVID-19 pandemic to support UK businesses¹ as of the date hereof, including: (A) employment retention initiatives; (B) lending programs; (C) grants; (D) tax measures; (E) other measures to support the flow of credit; and (F) proposed changes to UK insolvency laws. Certain key details as to how these initiatives will be applied in practice are still yet to come, which we have noted in this memorandum.

¹ Certain business support measures are devolved. This memorandum does not seek to address specific measures for businesses based in Scotland, Wales or Northern Ireland.

It is anticipated that, as the effects of COVID-19 on the UK economy continue to evolve, additional measures will be introduced and the parameters of existing measures further defined. Indeed, the UK government has already indicated, for example, that potential bail-out schemes for firms in particularly affected industries, such as the airline, automotive and steel industries, may be required. We will continue to track further measures as they are introduced by UK authorities.

A. Employment Retention

1. Job Retention Scheme

Key highlights:

- Reimbursement to eligible employers of 80% of the wage costs for each employee² in the United Kingdom that would otherwise have been laid off or made redundant;
- Capped at £2,500 per month, per employee;
- Employees cannot work while furloughed, including reduced hours;
- Only available in respect of employees employed on or before 19 March 2020; and
- Eligible employers are UK employers (with a UK PAYE scheme as of 19 March 2020 and a UK bank account).

HM Revenue & Customs (“**HMRC**”) will reimburse eligible employers for 80% of the wage costs for each employee in the United Kingdom that would otherwise have been laid off or made redundant, up to a cap of £2,500 per month per employee. Payments to employers will be backdated to reimburse wage costs from 1 March 2020. Furloughed employees should not complete any work to generate commercial revenue or provide services to or on behalf of their employer. However, a furloughed director may continue to carry out duties required to fulfil his or her statutory obligations, *provided* that such director does not undertake more work than would reasonably be judged necessary for that purpose. Furloughed employees may undertake volunteer work or training, *provided* that such activities do not provide services or generate revenue for the employers’ business. Where employees are required to complete online training courses, they must be paid at least the Apprenticeship Minimum Wage, National Minimum Wage or National Living Wage (as applicable) for the time spent in training, even if this is more than the subsidised 80% of their salary.

On 12 May 2020, Rishi Sunak announced an extension to the scheme, which was originally set to expire at the end of June and is now set to expire at the end of October 2020. While noting that there will be no changes to the key elements of the scheme (i.e. reimbursement of 80% of furloughed workers’ wages up to £2,500 per month) before the end of July, he further announced that, after July, the scheme will be revised so that employers will be asked to share the cost of furloughed employee wages that are currently reimbursed under the scheme and to provide for payments to furloughed staff working part-time. The UK Government will announce further details on the revised scheme by the end of May.

The UK Government has confirmed that furloughed employees have the same statutory rights as they did previously, including maternity and paternity leave rights, rights to redundancy payments, rights

² See the “Eligibility” section below for a complete list of individuals that may be furloughed. For the purposes of this memorandum, all eligible individuals will be collectively referred to as “employees”.

against unfair dismissal and Statutory Sick Pay (“**SSP**”) entitlement. The UK Government has also clarified that furloughed workers planning to take paid parental or adoption leave are entitled to pay based on their usual earnings, not their furloughed pay rate. To the extent employers seek to make any changes impacting such rights, employers will need to discuss the issue with their staff, and would need to amend employment contracts by agreement, which may require entering into a collective consultation process in order to achieve any such changes. The UK Government has confirmed that employees entitled to SSP (as detailed in A.2 below) may be furloughed and will no longer receive sick pay. However, there is some continued uncertainty in this regard, as the UK Treasury Direction published on 15 April 2020 (the “**Treasury Direction**”) suggests that furlough designation in respect of an employee cannot occur until any period of SSP has expired. An employer may make a claim from both the Job Retention Scheme and the SSP rebate scheme for the same employee, but not for the same period of time.

The minimum period of time an employee may be furloughed is 21 calendar days. Subject to the minimum furlough period, an employee is able to move between furloughed status and normal status as and when work becomes available (for example, to replace an employee who becomes sick).

Eligibility

The scheme is open to UK employers with a UK PAYE scheme registered on HMRC's real time information system for PAYE as of 19 March 2020 and a UK bank account. A new PAYE scheme registered after this date will also be permitted where the new scheme (i) replaces at least two of the employer's qualifying PAYE schemes as a consequence of the employer's payroll consolidation, and (ii) only has effect in relation to employees who are former members of one of the transferred schemes. All employers accessing the scheme must be enrolled for PAYE online; enrolment can take up to 10 days.

The scheme applies to the following individuals that may be furloughed:

- employee (and apprentice) wage costs, including employees on fixed-term contracts; contracts with such employees may be renewed or extended during the furlough period. However, where a fixed-term contract terminates because it has not been renewed or extended, an employer may no longer claim the wage costs for such employee;
- the wage costs of agency workers, zero-contract or casual workers (i.e. workers who provide services to a business other than pursuant to a contract of employment);
- the wage costs of employees that are foreign nationals. The UK Government has confirmed that the scheme will not be considered to be ‘access to public funds’, for the purposes of an employee on any category of visa;
- office holders (including company directors) and salaried members of limited liability partnerships where the company or LLP (as applicable) has formally adopted a decision to furlough such individual and vary the terms of the LLP agreement (if applicable); and
- agency workers and limb (b) workers (also known as ‘dependent contractors’, e.g. Uber drivers), in each case, *provided* that such individuals were employed on or before 19 March 2020 and are paid through the employer's PAYE system. Employees that have been made redundant since 28 February 2020 may be rehired by their employer and designated as furloughed employees.

Employees on unpaid leave cannot be furloughed unless such unpaid leave commenced after 28 February 2020 or until the period of unpaid leave expires on the date contemplated on its commencement or, where the duration was tied to an event or circumstance, such event or circumstance has occurred. Employees that are shielding in line with the UK Government's advice or have caring responsibilities resulting from COVID-19 may be furloughed.

Eligible employers include:

- public sector, local authority and charity status employers. However, the UK Government has stated that the expectation is that most public sector employers will not access the scheme, as the majority of public sector employees will continue to work providing essential services. Subject to limited exceptions where employers are not primarily funded by the UK Government and cannot redeploy staff to essential services, any employers receiving public funding for staff costs (or the provision of necessary services to respond to COVID-19) are also not expected to furlough employees;
- an employer that becomes an employer of otherwise eligible employees after 19 March 2020 by way of a TUPE transfer or a transfer where PAYE business succession rules apply (even where such new employer did not have a qualifying PAYE scheme on or before 19 March 2020);
- individual employers; individuals may furlough employees such as nannies, *provided* that such employees are paid through PAYE; and
- administrators, where an eligible employer is under the management of an administrator. However, such access is limited to where the administrator considers there is a reasonable likelihood of the furloughed employees not being made redundant at the expiry of the scheme.

The scheme is intended to assist employers who would otherwise have difficulty in paying their employees due to COVID-19. However, the UK Government has confirmed that all employers are eligible to claim under the scheme. Although it has not been expressly stated, it would appear that HMRC will not dispute the granting of a rebate where a company has sufficient cash flow to pay its employees.

Where an employee works for two employers and is furloughed by one employer, such employee may continue their employment with the other employer. In the case of employees with multiple employers, the £2,500 cap would apply to each employer individually.

The UK Government has retained the right to retrospectively audit employers and claw back fraudulent or erroneous claims pursuant to the scheme. The UK Government has also put in place an online portal for employees and the public to report suspected fraud and is actively encouraging employees to do so. HMRC has confirmed that fraud will be subject to criminal prosecution.

Determining Payments under the Scheme

For the purposes of determining 80% of an employee's wage costs (including past overtime, non-discretionary fees and compulsory commission payments, but in all cases excluding discretionary fees, discretionary bonuses, tips, other commission payments, non-cash payments, benefits in kind and benefits provided through salary sacrifice schemes):

- full-time or part-time salaried employees (including employees returning from statutory leave after 19 March 2020): the wage costs should be determined by reference to the employee's actual salary before tax as of 19 March 2020, *provided* that, where an employee is on unpaid leave, the wage costs should be calculated on the basis of what would have been paid to the employee during the unpaid period if the leave had been granted on the same terms as the employee's paid leave entitlement. The UK Government has confirmed that where an employer has calculated wage costs using an employee's salary as at 28 February 2020 in line with previous guidance, such calculation may be used for the employer's first claim under the scheme;
- variable pay employees: if the employee (i) has been employed for 12 months prior to the claim or returns from statutory leave after 19 March 2020, employers should use the higher of (A) the same month's earning from the previous year, and (B) the employee's average monthly earnings from the 2019-20 tax year, or (ii) has been employed for less than 12 months, employers should use such employee's average monthly salary since they started work; or
- new employees: where an employee only commenced work in March 2020, an employer should calculate a pro rata for their earnings to date, and claim for 80%.

A detailed guide setting out how to calculate wage costs (including worked examples) can be accessed [here](#). HMRC has also provided detailed guidance on how to calculate an employee's average weekly wage costs where an employee has been furloughed and starts maternity, adoption, paternity, shared parental or parental bereavement leave on or after 25 April 2020.

Employers may elect, but are not required, to continue to pay furloughed employees all or some of their remaining salary. However, although the UK Government has specifically reserved the right to change its guidance on this particular point, the current guidance states that where an employee takes holiday while furloughed, an employer must pay the employee their usual rate of pay for the days on which the employee is on holiday. In addition, HMRC has confirmed that COVID-19 is classified as a life event that could warrant changes to salary sacrifice arrangements, if the relevant employment contract is updated accordingly. If employers do not elect to make additional payments to furloughed employees, such employees would be paid the lower of 80% of their salary and £2,500 (on a monthly basis), even where this amount would be below the National Minimum Wage/National Living Wage (as applicable).

In addition to amounts subject to the £2,500 cap, employers may claim for the associated Employer National Insurance contributions and minimum automatic enrolment employer pension contributions of 3% on qualifying earnings. The following will not be reimbursed:

- additional National Insurance or pension contributions where an employer elects to top up a furloughed employee's salary;
- voluntary automatic enrolment contributions above the minimum mandatory employer contribution will not be reimbursed; and
- the Apprenticeship Levy and Student Loans, each of which should continue to be paid as usual.

If an employer offers enhanced (earnings related) contractual pay to employees on maternity leave, these are wage costs that can be claimed-through the scheme. The same principles apply in respect of employees qualifying for contractual adoption, paternity or shared parental pay.

In accordance with normal principles when calculating taxable profits for Income Tax and Corporation Tax purposes, businesses (i) must record any payments received from HMRC pursuant to this scheme as income, and (ii) may deduct employment costs as normal.

How to Access

Eligible employers must:

- designate the affected employees/workers as 'furloughed workers' and notify them in writing of the change. An employer must retain a record of this communication for five years. An employee must agree to be furloughed, subject to existing contractual relationships between the employer and employee. The Treasury Direction states that an employee must agree in writing to be furloughed, but the latest guidance from the UK Government provides that while there must be a written record of the agreement, the employee is not required to provide a written response. Alternatively, an employer may reach collective agreement with a trade union. Collective consultation will also be required where 20 or more employees/workers will be made redundant or terminated and re-engaged (if they do not agree to be designated as furloughed workers);
- comply with all applicable equality and anti-discrimination laws when deciding which employees to furlough; and
- continue to pay each furloughed employee, reduced to 80% of their salary (up to the £2,500 cap) where appropriate. Employers must pay employees the gross amount received by the employer in respect of such employee, and no fees can be charged. In addition, no part of the grant should be netted off to pay for the provision of benefits or a salary sacrifice scheme. Employees will pay Income Tax and National Insurance and make pension contributions as usual.

Employers should apply through the online portal, submitting the following information to HMRC: (i) the amount claimed, (ii) their ePAYE reference number, (iii) the number of employees being furloughed, (iv) the National Insurance Number for each furloughed employee (employers should contact HMRC where an eligible employee does not have a National Insurance Number), (v) the name of each furloughed employee, (vi) the payroll/works number for each furloughed employee, (vii) their Self-Assessment Unique Taxpayer reference or Corporation Tax reference, (viii) the claim period (start and end date), (ix) the amount claimed (per the minimum length of furloughing of 21 calendar days), (x) their bank account number and sort code, (xi) their registered name and address, (xii) a contact name, and (xiii) a contact phone number.

Where an employer furloughs fewer than 100 employees, the details of each employee must be entered directly into HMRC's system; employers with 100 or more furloughed staff must upload a file containing each employee's full name, National Insurance number, payroll number (optional), furlough start date, furlough end date (if known) and the full amount claimed.

Employers may make one claim every 21 calendar days for the duration of the scheme. Employers have been instructed to make claims for relief in accordance with actual payroll amounts at the point at which businesses run payroll or in advance of an imminent payroll. HMRC will pay eligible businesses the amount claimed via a BACS payment to a UK bank account.

A step-by-step guide setting out how to make a claim (including links to HMRC's pre-recorded webinars on YouTube) can be found [here](#).

HRMC will pay the grants within four to six working days of receiving a claim.

Considerations

Employers should consider how this scheme will affect any existing redundancy programs or other reduced hours policies put in place as a consequence of COVID-19. Subject to following the applicable redundancy processes, a furloughed employee can still be made redundant. If no redundancy process is initiated, when the scheme ends, employees will return to work. Where an employer expects their business will be impacted in the long term as a result of COVID-19 and redundancies may be required, such employer should use the same objective redundancy criteria when selecting the employees to be designated as furloughed. Grants received under the scheme cannot be used to substitute redundancy payments.

On 6 May 2020, the UK Court of Appeal held that the joint administrators of Debenhams will be deemed to have adopted any employment contracts of employees furloughed under the Job Retention Scheme prior to the company entering administration if, at any time following 14 days from the beginning of the administration, the administrator submits an application under the scheme or causes the company in administration to make a payment to such employees. This would be the case even in circumstances where the only payments made to employees were to be recovered under the Job Retention Scheme. The consequence of this decision is that employees' salaries/wages, along with certain other liabilities such as sick pay and holiday pay, following adoption will have super-priority status in the administration, meaning they would be payable ahead of the administrators' expenses and remuneration and the claims of other creditors. This decision could therefore result in administrators deciding to take actions adverse to furloughed employees (such as making greater numbers of employees redundant at the outset of an administration) so as to maintain discretion in their ability to act in furtherance of the purpose of the administration.

2. Statutory Sick Pay Refund

Key highlights:

- Refund for up to two weeks' SSP for eligible employees/workers who are absent for specified COVID-19-related reasons; and
- Further details are yet to be provided as to the recovery mechanism.

Eligible employers are entitled to a refund for up to two weeks' SSP for each employee and worker who is otherwise entitled to SSP and is absent from work from 13 March 2020 because they: (i) are self-isolating or shielding (in accordance with the relevant UK Government guidance), or (ii) contract COVID-19. The two weeks will commence on the first day the employee is absent (as employees are entitled to SSP from the first day of any COVID-19-related absence, not the usual fourth day). SSP is currently £94.25 per week.

Eligibility

Open to all UK businesses, connected companies and charities with (i) fewer than 250 employees as of 28 February 2020, and (ii) employees or workers who are otherwise entitled to SSP. The refund is only available in respect of employees, casual workers and employees on agency contracts or flexible or zero-hour contracts who are otherwise entitled to SSP.

A pregnant employee who contracts COVID-19 (or self-isolates in accordance with government guidance) is entitled to SSP. Such employee is not required to bring forward maternity pay for a pregnancy-related illness.

Pursuant to State aid restrictions, a business classified as an “undertaking in difficulty”³ as of 31 December 2019 will not be eligible to receive the SSP refund under the Temporary Framework (see B.3 below). However, such a business may be able to access the SSP refund pursuant to the *de minimis* State aid regime, *provided* that the business does not breach the *de minimis* State aid limit of €200,000 in aid over the last three years.

How to Access

The UK Government is to provide further information on the recovery mechanism.

For a period of three years following any claim under the scheme, employers must maintain records of COVID-19-related absences, including: (i) the reason why an employee was absent from work, (ii) the start and end dates for the period of time the relevant employee could not work, (iii) details of the SSP qualifying days; and (iv) the National Insurance number for each employee to whom the employer has paid SSP.

Employees are not required to provide the usual medical evidence to support their absence in order for employers to claim the SSP refund. However, if employers require evidence, employees with symptoms can obtain an isolation note from [NHS 111 online](#) and employees who are self-isolating because someone in their household has symptoms can obtain an isolation note from the [NHS website](#).

Considerations

The relief has been structured as a reimbursement (not an advance). If a business is experiencing cash flow difficulties, such business should consider utilizing other support measures that may be available (for example, the lending programs discussed in B below or the grants discussed in C below, as applicable).

The UK Government has confirmed that the scheme is Approved Direct State Aid (defined in B.3 below). Accordingly, any amount claimed under the scheme, together with any other Approved Direct State Aid, must not exceed €800,000 (or €120,000 for businesses in the fishing and aquaculture sectors and €100,000 for businesses that produce agriculture products).

B. Lending Programs

1. COVID-19 Corporate Financing Facility (“CCFF”)

Key highlights:

- Introduced to support larger, generally investment grade/non-financial businesses to manage their cash flows during the COVID-19 crisis;
- Eligible businesses can access short-term debt of at least £1 million for up to 12 months;

³ The definition of an “undertaking in difficulty” in respect of the SSP refund scheme has not been provided. However, see the definition used by the British Business Bank in connection with the CBILS (see B.3 below).

- In place for an initial 12-month period, subject to potential extension; and
- Participation in the CCFF is intended to remain confidential.

The CCFF is designed to support liquidity among larger businesses, helping them to bridge COVID-19-related disruption to their cash flows through the issuance of short-term debt in the form of commercial paper to be purchased by the Bank of England. The facility will be available for an initial 12-month period and for as long as steps are needed to relieve cash flow pressures on eligible firms (with a six-month notice period ahead of the withdrawal of this facility).

The facility will operate via the purchase of sterling-denominated commercial paper with the following characteristics:

- maturities of one week to 12 months;
- where available, a credit rating of A-3/P-3 /F-3 /R3 from at least one of Standard & Poor's, Moody's, Fitch and DBRS Morningstar as at 1 March 2020 or otherwise established to be investment-grade (as described below)⁴; and
- issued directly into Euroclear and/or Clearstream.

Commercial paper with any non-standard features, such as extendibility or subordination, will not be accepted under the scheme.

The minimum size of an individual security that the Bank of England will purchase from any single participant is £1 million and offers must be rounded to the closest £0.1 million.

For primary market purchases, the Bank of England will purchase securities at a spread above a reference rate, based on the current sterling overnight index swap ("**OIS**") rate. For secondary market purchases, the Bank of England will purchase commercial paper at the lower of amortised cost from the issue price and the price as given by the method used for primary market purchases.

Eligibility

All non-financial companies (and their finance subsidiaries) that make a "material contribution to the UK economy" and that issue commercial paper are generally able to participate in the facility. They will be asked to demonstrate they were in sound financial health prior to the onset of the COVID-19 pandemic. Ordinarily, this means companies that had a short or long-term rating of investment-grade as of 1 March 2020, or equivalent.

Where large firms do not have a formal investment-grade credit rating, the Bank of England will accept:

- the existing banks' internal credit ratings of the firm. To be eligible for the scheme using banks' internal ratings, a firm will (i) have at least three investment-grade bank ratings (and no speculative-grade bank ratings) as at 1 March 2020, or (ii) two bank ratings where the firm is viewed as strongly investment-grade (i.e. BBB+/Baa1/BBB+/BBB(High)). Firms with speculative-grade ratings are still

⁴ If firms do not have an existing credit rating from the major credit ratings agencies, the Bank of England encourages them to speak to their bank in the first instance. Potential participants may contact the facility on CCFFeligibleissuers@bankofengland.co.uk to discuss their potential eligibility.

eligible to participate in the CCFF, *provided* that the average of bank ratings available is at least BBB/Baa2/BBB/BBB; or

- an assessment of credit quality as of 1 March 2020 from one of Moody's Investor Services, Standard & Poor's Ratings Services or DBRS Morningstar. The Bank of England has indicated some standard agency forms of credit assessment that the Bank of England expects to view as suitable evidence of credit status for the CCFF.

To determine lenders' aggregate internal credit ratings of an applicant, Credit Benchmark will provide credit assessments for applicants to the Bank of England, aggregating the credit estimates from the largest UK banks who have such ratings in respect of an applicant. However, the Bank of England may also require applicants to submit confirmations of banks' internal ratings to the Bank of England directly. Applicants will also be asked to confirm that all principal direct on-balance sheet borrowings have been disclosed.

While "material contribution to the UK economy" remains undefined, the Bank of England has indicated that, in practice, it may include: UK incorporated companies, including those with foreign-incorporated parents and with a genuine business in the UK; companies with significant employment in the UK; and firms with their headquarters in the UK. The Bank of England says it will consider whether the 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. An issuer need not have issued commercial paper before to participate in the facility.

Currently, the Bank of England will purchase only commercial paper with a maturity of less than one year pursuant to the CCFF. Depending on an issuer's cash flows and the maturity profile of its existing liabilities, an issuer may wish to consider whether longer term working capital facilities may be available from other credit providers, such as the issuer's banks or other investors.

Commercial paper issued by banks, building societies, insurance companies and other financial sector entities regulated by the Bank of England will not be eligible. Commercial paper issued by public bodies or authorities, entities governed by public law or public undertakings will also not be eligible.

How to Access

Issuers should apply to participate in the facility through their lender. The application form and guidance is available on the Bank of England's website.

Considerations

Issuers should consider if consents or waivers are required under existing debt documentation. Existing facilities may place limits on raising additional indebtedness or require the maintenance of leverage or other financing ratios, effectively limiting the scope for an issuer to participate in the CCFF.

The names of issuers and securities purchased or eligible will not be made public, and the Bank of England requires companies that participate in the facility to sign a confidentiality agreement. However, CCFF participants will need to consider their own existing disclosure obligations, including under the Market Abuse Regulation and in their financial statements.

Although the CCFF permits issuances of commercial paper to be rolled over, participants should consider how they will refinance the commercial paper and/or exit the program in due course (including once it is no longer made available).

2. Coronavirus Large Business Interruption Loan Scheme (“CLBILS”)

Key highlights:

- Targeted at mid-cap and larger businesses (i.e. with annual turnover of more than £45 million), CLBILS provides lending support of up to £25 million for borrowers with a turnover of up to £250 million or £50 million for borrowers with a turnover in excess of £250 million;
- The UK Government will guarantee 80% of the financing (including principal, interest and fees); and
- Financing offered under CLBILS is to be offered at commercial rates of interest for a period of three months to three years.

CLBILS is a loan (and other debt facility) guarantee scheme designed to enable more financing to UK businesses by providing a guarantee to accredited lenders. Businesses will still have to repay the loan or facility, which can take the form of term loans, revolving credit facilities, invoice financing or asset financing. The CLBILS is available through a range of British Business Bank accredited commercial lenders.

The British Business Bank's website confirms that lenders may not require personal guarantees for facilities under £250,000 and that personal guarantees for claims of £250,000 and over cannot exceed 20% of losses after all other recoveries have been applied.

Eligibility

CLBILS is available to businesses with “UK-based” business activity, with turnover of more than £45 million or more (turnover calculations done on a group-wide basis) and, as is the case for CBILS, that are not in sectors excluded from the scheme, as set forth below. Businesses must be able to self-certify that the business has been adversely impacted by COVID-19.

Lenders are only to extend financing under CLBILS if (i) the business has a borrowing proposal which, were it not for the COVID-19 pandemic, would be considered viable by the lender, (ii) the lender believes the provision of financing will enable the business to trade out of any short-to-medium-term difficulty, and (iii) the business has not received a facility under the CCFF (see B.1 above).

Businesses in the following sectors are excluded from the scheme: (i) banks, credit institutions, building societies, insurers and reinsurers (but not insurance brokers), and (ii) the public sector, including state funded primary and secondary schools.

Pursuant to the State aid restrictions, a business is also precluded from accessing the scheme where such business is an "undertaking in difficulty" as at 31 December 2019.⁵

⁵ The definition of an "undertaking in difficulty" in respect of the CLBILS scheme has not been provided. However, see the definition used by the British Business Bank in connection with the CBILS (see B.3 below).

How to Access

The scheme was launched on 20 April 2020. Businesses should approach a participating lender directly through that lender's website.

Considerations

Businesses with existing debt should consider the implications of participation in CLBILS on their existing obligations. If in financial difficulty, businesses could consider discussing options (including repayment holidays) with their existing lenders as an alternative to incurring additional debt. Potential borrowers should also consider if consents or waivers are required under their existing debt documentation, as existing facilities may place limits on raising additional indebtedness, limit leverage or require other ratios to be maintained.

Lenders will still likely require a level of diligence as part of their lending process in order to be sure they are lending to a viable business, and to confirm eligibility criteria, including turnover. So businesses can still expect to have to provide historical financial statements and projections, but can also expect to have to discuss how the business has been, and will be, impacted by COVID-19, as well as their stress test projections, taking into account COVID-19-related assumptions.

The British Business Bank has confirmed that CLBILS operates as a notified State aid scheme not under the *de minimis* scheme. Accordingly, there is no interaction between any *de minimis* State aid previously received by a business and the quantum of funds accessed under the CLBILS.

The UK Government has not notified the European Commission to specifically seek State aid approval for the CLBILS. Although not stated by the UK Government to date, it may be that the UK Government has taken the view that the CLBILS falls within the State aid permitted pursuant to the UK umbrella framework approved by the European Commission on 6 April 2020 ("**Umbrella Framework**"). The Umbrella Framework permits the UK to adopt support measures contemplated by the Temporary Framework (see B.3. below) without submitting further additional State aid applications to the European Commission.

3. Coronavirus Business Interruption Loan Scheme (the "CBILS")

Key highlights:

- Eligible UK businesses (must not have turnover of over £45 million per annum or be in certain sectors) have access to £1,000 - £5 million in finance for a three-to-six-year term;
- The UK Government will guarantee 80% of the finance and pay the first 12 months' interest and lender levied fees;
- Only open to eligible businesses which lack security but otherwise meet their lender's criteria; and
- In place for an initial six-month period, which is subject to potential extension.

Through CBILS, eligible businesses have access to £1,000 - £5 million in finance from the British Business Bank's accredited lenders. The British Business Bank's website confirms that finance terms permitted under CBILS are: (i) up to six years for term loans and asset finance; and (ii) up to three years for overdrafts and invoice finance.

The UK Government will (i) guarantee 80% of each loan (subject to a per-lender cap on claims); and (ii) cover the first 12 months of interest payments and any lender-levied fees.

Lenders will only extend finance if (i) the business has a borrowing proposal which, were it not for the COVID-19 pandemic, would be considered viable by the lender; and (ii) the lender believes the provision of finance will enable the business to trade out of any short-to-medium-term difficulty.

Lenders are prohibited from requiring personal guarantees for facilities below £250,000. For facilities in excess of £250,000, a business must not have any security over its assets prior to accessing the CBILS.

The CBILS was originally only open to eligible businesses that could not access financing on “normal commercial terms” without accessing the CBILS. However, the scope of the CBILS has been extended, allowing an otherwise eligible business to access finance under CBILS even where the lender decides it could have offered the business financing on “normal commercial terms”.

Eligibility

Open to UK-based businesses with turnover of no more than £45 million per annum and not in certain sectors excluded from the scheme as set forth below. “UK-based” has not been defined, but may include: (i) businesses with the majority of their employees based in the UK, (ii) companies incorporated in England & Wales, Scotland or Northern Ireland and (iii) groups headquartered in the UK. The annual period(s) that will be used to determine a business’ turnover has yet to be confirmed.

In addition, to be eligible, businesses must:

- otherwise meet the relevant British Business Bank’s eligibility⁶ and lender’s credit criteria (but may lack security as provided below);
- not have received State aid in excess of the *de minimis* €200,000 limit in the last three years; and
- be able to self-certify that the business has been adversely impacted by COVID-19.

A business which was a “business in difficulty” on 31 December 2019 may only access a loan of less than £30,000 pursuant to the CBILS.⁷

Businesses in the following sectors are excluded from the scheme: (i) banks, building societies, insurers and reinsurers (but not insurance brokers) and (ii) the public sector, including state funded primary and secondary schools. Employer, professional, religious or political membership organisations and trade

⁶ The criteria are as follows: (1) the application must be for business purposes; (2) the CBILS-backed facility will be used primarily to support trading in the UK; (3) the business intends to borrow up to a maximum of £5m; and (4) the business must generate more than 50% of its turnover from trading activity – the sale of goods or services (registered charities and further education establishments are exempt from this requirement).

⁷ A “business in difficulty” has been defined by the British Business Bank in connection with the CBILS as a business that has (i) accumulated losses of more than half of its subscribed share capital for limited companies or its share capital for unlimited liability companies, (ii) started, or had fulfilled the criteria to be put into, collective insolvency proceedings, (iii) previously received rescue aid that has yet to be reimbursed (or in the case of a guarantee, terminated), (iv) received restructuring aid and is still under a restructuring plan, or (v) (where it has not met the SME criteria) has fallen below solvency ratios for the previous two years.

unions were originally excluded from the scheme, but the scope of the CBILS has been extended to permit such organisations to access finance.

How to Access

Eligible businesses can now apply online through their existing (or other) lenders' websites.

CBILS is available for an initial six-month period through the British Business Bank's 40+ accredited lenders, listed [here](#). The list of accredited lenders is continuing to be updated. In the first instance, businesses should approach their existing lenders (and consider approaching other lenders) through the relevant lender's website.

Considerations

As is the case with CCFF discussed in B.1 above, businesses with existing debt should consider the implications of participation in CBILS on their existing obligations.

As in the case with CLBILS (see B.2), if in financial difficulty, businesses could consider discussing options (including repayment holidays) with their existing lenders as an alternative to incurring additional debt. Potential borrowers should also consider if consents or waivers are required under their existing debt documentation, as existing facilities may place limits on raising additional indebtedness or require the maintenance of leverage or other financing ratios, effectively limiting the scope for a potential borrower to participate in the CBILS.

In order to demonstrate a viable business to the relevant lenders, businesses will likely be asked to provide copies of their latest audited consolidated accounts and management accounts. Lenders may also ask businesses to provide balance sheet forecasts which include COVID-19-related assumptions.

On 25 March 2020, the European Commission approved CBILS in accordance with the State Aid Temporary Framework adopted by the European Commission on 19 March 2020 and amended on 3 April 2020 ("**Temporary Framework**"). The Temporary Framework provides that each business (subject to the exceptions set out below) is permitted to receive up to an aggregate amount of €800,000 in State aid comprising of direct grants, selective tax advantages, advance payments, zero-interest loans and 100% guarantees on loans ("**Approved Direct State Aid**"). Businesses (i) in the fishing and aquaculture sectors may receive up to an aggregate amount of €120,000 in Approved Direct State Aid; and (ii) that produce agricultural products may receive up to an aggregate amount of €100,000 in Approved Direct State Aid.

Other forms of State aid permitted by the Temporary Framework that fall outside of the Approved Direct State Aid criteria (e.g. aid in the form of <100% guarantees on loans) are not subject to the above thresholds. However, where the UK Government also pays certain amounts in connection with such forms of State aid (e.g. direct payments to cover interest and lender fees), such payments will be subject to the above thresholds.

4. Coronavirus Future Fund ("Future Fund")

Key highlights:

- The scheme will provide access to convertible loans to UK-registered companies with 'a substantive economic presence' in the UK if such companies can attract the equivalent match

funding from third-party private investors and have previously raised at least £250,000 in equity investment from third-party private investors in the last five years. As initially proposed, this match funding is required to be in the form of convertible debt with the same terms as the UK Government receives, which rules out match funding with ordinary shares qualifying under the Enterprise Investment Scheme (EIS) and certain other venture capital provisions - this feature has been highly controversial;

- Loan sizes from the UK Government are to range from £125,000 to £5 million (in addition to the match funding offered by third-party private investors), with a maximum term of 36 months (on the basis that the convertible debt will convert into equity on the next qualifying equity raise during this period at a minimum 20% discount to the valuation in that raise). The minimum interest rate on the loans is 8%;
- Any funding received by a business under the scheme must be solely used for working capital purposes; and
- The scheme will launch in May 2020 and will initially be open until the end of September 2020;

The indicative headline terms of the convertible loans are available [here](#). The exact terms of convertible loans in connection with the Future Fund are not yet finalised, and the UK government has stated that it will publish further, updated details shortly. The UK Government has also noted that it intends to keep under review the amount it makes available under the scheme (initially £250 million).

Eligibility

The UK Government guidance currently states that the scheme is open to unlisted UK-registered companies that (i) can attract equivalent matching funding from third-party private investors, and (ii) have previously raised at least £250,000 in equity investment from third-party investors in the last five years. To be eligible, a business must also have a "substantive economic presence in the UK", though this term has not yet been defined. Only the ultimate parent company of a corporate group (if it is a UK-registered company) is eligible for access to the scheme.

The UK Government has confirmed it will publish further eligibility criteria 'shortly'. It is possible that the scheme will be limited to businesses in certain sectors. The UK Chancellor of the Exchequer has stated that the scheme will be available to innovative high growth companies, including in the tech and life sciences sectors.

An eligible company will be subject to customer fraud, money laundering and KYC checks.

How to Access

The UK Government will issue further details about how to access the Future Fund 'shortly', but has announced that the scheme will be launched in May 2020 and remain open until the end of September 2020.

Considerations

The UK Government has not yet confirmed the time period over which match funding may be provided by third-party private investors, given that raising funds from such investors typically takes a number of weeks or months.

The indicative headline terms of the scheme indicate that third-party private investors extending the match funding will not be able to SEIS/EIS tax reliefs in respect of their investment. Businesses are advised to consider any additional difficulty in raising the required match funding if such reliefs are unavailable.

Businesses should consider the terms of their existing shareholder arrangements and articles of association to identify any restrictions on issuing convertible loans as contemplated for this scheme. Businesses should also consider if accepting the UK Government terms may make it more difficult for the company to raise equity in the future.

Businesses should consider the implications of (i) a government shareholder (for example, potential delays in receiving shareholder consent), and (ii) a potential transfer to an unknown third-party institutional investor.

If in financial difficulty, businesses could consider discussing options (including repayment holidays) with their existing lenders as an alternative to incurring additional debt. Potential participants should also consider if they are eligible to access funds under the CLBILS or the Coronavirus Business Interruption Loan Scheme.

The UK Government has not yet provided any guidance on the State aid implications for the Future Fund. If the funding is offered on market terms and conditions, the Future Fund will not fall within the State aid criteria requiring pre-notification to the European Commission.

5. Bounce Back Loan Scheme (“BBL”) ”

Key highlights:

- Targeted for small UK-based businesses, eligible businesses have access to UK Government guaranteed, standardized term loans in values ranging from £2,000 up to 25% of the business’ turnover, with a maximum loan value cap of £50,000 for a term of six years (early repayment is allowed without early repayment fees);
- No payments required of borrowers for the first 12 months. The UK Government will pay the first 12 months of interest payments and the borrower need not make any principal repayments in this period;
- Interest rate for BBL loans is set at a 2.5% interest rate per annum and lenders are not permitted to charge any fees; and
- Eligible businesses are able to apply online using a short application form, and the loans will be advanced 'within days' of application.

Lenders are not permitted to take personal guarantees or take recovery action over a borrower’ s main home and primary personal vehicle (for sole traders or partnerships, who do not have the benefit of limited liability, other personal assets may be at risk of recovery action). BBL will initially be open until 4 November 2020, with the UK Government retaining the right to extend this.

Eligibility

The scheme is open to most businesses, regardless of turnover, that are: (i) UK limited companies or partnerships, or tax residents in the UK; (ii) engaged in trading or commercial activity in the UK at the

date of the application (more than 50% of income must be derived from trading activity, excluding charities or further education colleges) of the business and that was carrying on business on 1 March 2020; (iii) have been adversely affected by coronavirus (COVID-19); and (iv) are neither in bankruptcy, debt restructuring proceedings, liquidation or similar activities at the time of application submission.

Pursuant to the State aid restrictions, businesses are required to self-declare that, since 19 March 2019, they have not received more than €800,000 in State aid under the Temporary Framework (or €120,000 in the case of fisheries and aquaculture businesses, or €100,000 for agriculture businesses).

In addition, businesses are required to determine and declare upon application as to whether they were, on 31 December 2019, a "business in difficulty".⁸ Where a business self-declares as a "business in difficulty" on 31 December 2019, such business is not eligible to receive State aid under the Temporary Framework and must give a further confirmation that the loan being applied for (i) does not breach the *de minimis* State aid limit of €200,000 in aid over the last three years and (ii) will not be used to support export-related activities.

Businesses meeting the "business in difficulty" test in the agriculture, aquaculture or fisheries sectors may not qualify for the full amount otherwise available pursuant to BBLs.

Businesses in the following sectors are excluded from the scheme: (i) banks, building societies, insurance companies and (ii) the public sector, including state funded primary and secondary schools. Individuals (other than a sole trader or a partner acting on behalf of a partnership) are also excluded from the scheme.

A business (and any wider group of which it is a part) may only access either BBLs or one of the other COVID-19-related UK government loan schemes discussed in this memorandum, such as CBILs (see B.3 above). Businesses that have already received a loan of up to £50,000 under CBILs or another scheme and would like to transfer it into the BBLs may arrange this with their lender (upon application, businesses will be asked to confirm that the BBLs is being used to refinance the existing scheme loan in full).

Businesses in the following sectors are excluded from the scheme: (i) banks, insurers and reinsurers (but not insurance brokers), and (ii) the public sector, including state funded primary and secondary schools.

How to Access

BBLs launched on 4 May 2020. The British Business Bank website provides a list of BBLs accredited lenders that can provide lending, with the expectation that most businesses will use their existing lender. An online application form should be provided by such lenders.

⁸ For the purposes of the BBLs, a "business in difficulty" has been defined as a business that meets any one of the following criteria: (i) individuals or companies that have entered into collective insolvency proceedings; (ii) limited companies which have accumulated losses greater than half of their share capital in their last annual accounts (this does not apply to SMEs less than three years old); (iii) partnerships, limited partnerships or unlimited liability companies which have accumulated losses greater than half of their capital in their latest annual accounts (this does not apply to SMEs less than three years old); (iv) the business has received rescue aid and has not yet reimbursed the loan or terminated the guarantee, or has received restructuring aid and is still subject to a restructuring plan; or (v) a company which is not an SME where, for each of the last two accounting years: i) its book debt to equity ratio has been greater than 7.5; and ii) its EBITDA interest coverage ratio has been below 1.0.

Considerations

As State aid cannot be granted to a "business in difficulty" under the Temporary Framework, the UK Government has taken the approach that a "business in difficulty" may access the BBLs scheme, *provided* that any loan advanced falls below the *de minimis* State aid limit of €200,000 in aid over the last three years. Where a business was not a "business in difficulty" on 31 December 2019, any previous *de minimis* State aid does not impact such business' eligibility to access a BBLs loan, but a business may only receive the maximum Approved Direct State aid approved by the Temporary Framework (see B.3 above).

C. Grants

1. Small Business Grant Funding ("SBGF Grant") and Retail, Hospitality and Leisure Grant Funding ("RHLG Grant")

Key highlights:

- Eligible businesses may receive a grant of between £10,000 and £25,000, pursuant to the Small Business Grant Funding and the Retail, Hospitality and Leisure Grant Fund initiatives announced by the UK Government (together, the "**Grants**");
- Only one Grant is available per eligible property;
- Grant income will be subject to tax where the eligible business makes an overall profit once Grant income is included;
- Businesses which were in liquidation as of 11 March 2020 are not eligible to receive a Grant; and
- Local authorities are contacting eligible businesses with further details on how to claim a Grant.

SBGF Grant

The scheme is designed to assist eligible businesses in meeting their ongoing costs, such businesses may receive a one-off SBGF Grant of £10,000 per each eligible property. Grants are expected to be paid from 1 April 2020.

The scheme is open to small businesses (defined as those with a rateable value of less than £51,000) that are based in England and are eligible for small business rate relief or rural rate relief (including tapered relief). SBGF Grants will not be available in respect of a property occupied for personal use (including car parks, parking spaces).

RHLG Grant

Eligible businesses that operate from a property with a rateable charge of (i) up to £15,000 are to receive a £10,000 grant per relevant property; and (ii) over £15,000 but less than £51,000 are to receive a RHLG Grant of £25,000 per relevant property, in each case valued as of 11 March 2020.

The scheme is open to businesses based in England in the retail, hospitality and/or leisure sectors, which operate from properties with rateable values of less than £51,000 as of 11 March 2020, which are used:

- as shops, restaurants, cafes, drinking establishments, cinemas and live music venues;

- for assembly and leisure; and/or
- as hotels, guest and boarding premises and self-catering accommodations.

Car parks, parking spaces and properties occupied for personal use, such as private stables and beach huts, are excluded.

How to Access the Grants

The Grants are to be provided by local authorities who will contact eligible businesses with further details on how to claim the relevant Grant. We understand that local authorities are in the process of contacting eligible businesses. The UK Government has said that no action should be required by eligible businesses until contacted.

Considerations

Eligible businesses will only receive one Grant in respect of each eligible property. It is unclear which Grant a business will receive in circumstances where the business would otherwise be eligible to receive each of the Grants.

The UK Government has confirmed that the SBGF will be primarily managed under the existing State aid rules permitting *de minimis* aid of €200,000 within a three-year period. Where a business will reach this threshold by accepting the SBGF, the business will receive the SBGF as Approved Direct State Aid under the Temporary Framework. The RHLG will also be given as Approved Direct State Aid under the Temporary Framework. A business classified by the General Block Exemption Regulations (2014) as an “undertaking in difficulty” as of 31 December 2019 will not be eligible to receive the SBGF or RHLG under the Temporary Framework.

Some business support measures are devolved. Measures for businesses based in Scotland, Wales and Northern Ireland are beyond the scope of this memorandum.

D. Tax Measures

1. Business Rates Holiday for Businesses in the Retail, Hospitality and Leisure Sectors

Key highlights:

- Eligible businesses are not required to pay business rates between 1 April 2020 and 31 March 2021 (with no limit to rateable values); and
- The relief will be provided by local authorities who will reflect the relief in each eligible business’ April Business Rates invoice.

Eligibility

Open to businesses based in England in the retail, hospitality and/or leisure sectors, which operate from properties which are occupied and used:

- as shops, restaurants, cafes, drinking establishments, cinemas and live music venues;
- for assembly and leisure;
- as hotels, guest and boarding premises and self-catering accommodations.

Property types that are not listed but fall within the description above may also be eligible. However, certain properties, including the following, will not be eligible for the relief: (i) financial services (e.g. banks, building societies), (ii) medical services (e.g. vets, dentists, doctors), (iii) professional services (e.g. solicitors, accountants, financial advisers) and (iv) post office sorting offices.

The relief is only available in respect of premises which are occupied, but properties closed temporarily due to the UK Government's COVID-19 advice are treated as occupied.

How to Access

The relief will be provided by local authorities, who will reflect the relief in each eligible business' April Business Rates invoice. Where required, local authorities will reissue invoices to exclude the business rates charge as soon as possible. No action should be required by eligible businesses until contacted.

Considerations

Businesses may want to satisfy themselves that they fall within the criteria for relief provided for in the UK Government's guidance for local authorities (entitled *Business Rates: Expanded Retail Discount 2020/21: Coronavirus response - Local Authority Guidance*) published online by the UK Ministry for Housing Communities and Local Government.

On 2 April 2020, following discussions with the European Commission, the UK Government confirmed that, given the impact of COVID-19 on the retail, hospitality and leisure sectors, the business rates holiday is not classed as State aid.

Next Steps

Local authority action is required to apply the relief on a case-by-case basis.

2. Deferral of VAT Payments

Key highlights:

- Certain VAT amounts (excluding VAT MOSS or import VAT) payable by all eligible businesses may be deferred for three months, commencing on 20 March 2020 and ending on 30 June 2020;
- Businesses may only defer (i) quarterly and monthly VAT returns' payments for the periods ending in February, March and April, (ii) payments on account due between 20 March 2020 and 30 June 2020; and (iii) annual accounting advance payments due between 20 March 2020 and 30 June 2020;
- No interest or penalties on any deferred VAT will be payable;
- Deferral is optional; and
- Deferred payments are due by no later than 31 March 2021.

Eligibility

The scheme is open to all UK VAT-registered businesses. Deferral of VAT payments is optional, but there is no requirement to notify HMRC of an intention to defer. Businesses must continue to pay VAT MOSS and import VAT as usual and file their VAT returns by the existing deadlines.

How to Access

No action is required to be taken by eligible businesses, as the deferral applies automatically, unless businesses choose to opt out of the deferral. If relevant, businesses should cancel their direct debit VAT payments with their bank, in advance of submitting their latest VAT return, to prevent the application of HMRC's automatic payment collection process.

Where businesses have a VAT repayment plan, businesses can also apply online to move to monthly returns to improve their cashflow position.

HMRC has also confirmed that where businesses defer a payment on account between 20 March and 30 June 2020, but the balancing payment is outside of these dates, the business must pay the balancing payment, less any deferred payments. Deferring payments will not create a repayment.

Considerations

The UK Government will continue to pay VAT refunds and reclaims in the ordinary course (most repayments are paid within five working days), and businesses will want to ensure that relevant claims are included in timely VAT return filings.

HMRC has confirmed that repayments will not be offset against any deferred VAT, but they will be offset against existing debts.

Next Steps

Businesses should contact HMRC if they wish to elect to opt out of the scheme. Where a business elects to participate, the business should cancel its direct debit VAT payments with their bank.

3. Time to Pay ("TTP")

Key highlights:

- Eligible businesses in financial distress with tax liabilities have access to HMRC's existing TTP service; and
- Delayed payment plans for outstanding tax liabilities pursuant to the TTP service are agreed to by HMRC on a case-by-case basis.

HMRC's existing TTP service allows businesses in financial distress to defer current (not prospective) tax debts (e.g. corporation/income tax, payroll taxes or VAT) by paying in instalments over a period of time (generally up to 12 months, although the detail of time to pay arrangements are agreed to on a case-by-case basis).

Eligibility

The scheme is open to all businesses that pay tax to the UK Government and have outstanding tax liabilities. Businesses are likely to have to provide evidence of their cash flow concerns and demonstrate that no other sources of financing are available to them. Any TTP arrangements are agreed to by HMRC on a case-by-case basis.

How to Access

Businesses should discuss using the TTP service either with their Customer Compliance Manager or by contacting HMRC's COVID-19 helpline at 0800 0159 559.

HMRC have not yet confirmed if businesses will need to submit any additional information (or less information) in support of COVID-19-related applications. However, businesses should be prepared to provide extensive information as part of the process, including (but not limited to): (a) the business' aggregate tax liability; (b) the sum the business is requesting to defer; (c) when the business proposes to pay the deferred sum; (d) a summary of why the deferral has been requested; (e) a summary of any other mitigating actions taken by the business to support its financial position; (f) a cash flow forecast (with COVID-19-related assumptions); and (g) confirmation that the directors have undertaken to ensure that the business will adhere to the agreed upon TTP arrangement.

Considerations

Businesses should note that typically interest will be payable on amounts deferred under a TTP arrangement, and HMRC does not have discretion to waive interest.

Businesses should be careful to ensure that applications to HMRC are both fair and measured in order to mitigate the risk that HMRC will take action in connection with such businesses' potential insolvency.

It is currently unclear if the TTP service will be extended to prospective (as opposed to only current) tax liabilities.

Businesses should contact the [HMRC COVID-19 helpline](#) where they cannot pay their tax bills (other than VAT) as a consequence of COVID-19. Businesses should ensure that transcripts or notes of all calls and copies of all correspondence with HMRC are retained.

E. Other Bank of England Measures to Support the Flow of Credit

Key highlights:

- The Bank of England has announced a number of additional measures to support the flow of credit; and
- These measures include (i) making available short and medium-term financing, (ii) reducing the UK countercyclical capital buffer rate, (iii) expanding quantitative easing; and (iv) enhancing liquidity via standing US dollar liquidity swap line arrangements.

1. Contingent Term Repo Facility ("CTRF")

The CTRF is a temporary, flexible liquidity insurance tool that allows participants to borrow central bank reserves (cash) in exchange for other, less liquid assets (collateral). The CTRF will lend reserves for a period of three months, and is able to lend in all major currencies through its participation in the central bank swap line network. The size of the CTRF operations will be unlimited, and the price will be a fixed rate of Bank Rate plus 15bps. Only banks and building societies that are signed up to the Bank's Discount Window Facility are eligible to participate in the CTRF.

2. Term Funding Scheme (“TFSME”)

Under the TFSME, participating banks and building societies are able to borrow funds from the Bank of England against eligible collateral at a rate close to Bank Rate for up to four years. On 11 March 2020, the Bank of England announced that it would provide four-year funding of at least 10% of participants’ stock of real economy lending (this had previously been capped at 5%) and offer additional funding for small and medium enterprises (“SMEs”). Institutions eligible to participate in the TFSME will be banks and building societies that are participants in the Sterling Monetary Framework (“SMF”) and that are signed up to access the Discount Window Facility. This represents a broad range of participants that are already operationally ready to participate in the TFSME.⁹

3. Reduction in the UK Countercyclical Capital Buffer Rate

The UK countercyclical capital buffer is a regulatory cushion designed to enable banks to absorb potential losses and that can be released in response to stress scenarios to allow banks to continue lending. On 11 March 2020, the Bank of England’s Financial Policy Committee (“FPC”) announced that it would reduce the UK countercyclical capital buffer rate to 0% of banks’ exposures to UK borrowers with immediate effect. The FPC has indicated that it expects to maintain the 0% rate for at least 12 months, so that any subsequent increase would not take effect until March 2022 at the earliest. The release of the countercyclical capital buffer will support up to £190 billion of bank lending to businesses. That is equivalent to 13 times banks’ net lending to businesses in 2019.

4. Asset Purchase Facility (“APF”)

On 19 March 2020, the Bank of England’s monetary policy committee announced that the Bank of England would significantly expand its quantitative easing program and increase its holdings of UK government bonds and sterling non-financial investment-grade corporate bonds by £200 billion, to a total of £645 billion, financed by the issuance of central bank reserves. As part of the increase in APF asset purchases, the MPC has approved an increase in purchases of sterling corporate bonds financed by central bank reserves.

5. Enhancements to US Dollar Repo Operations

In coordination with the Bank of Canada, the Bank of Japan, the European Central Bank, the US Federal Reserve, and the Swiss National Bank, the Bank of England also announced measures to enhance the provision of liquidity via standing US dollar liquidity swap line arrangements. The Bank of England has increased the frequency of seven-day maturity operations from weekly to daily, commencing on March 23, 2020 and continuing at least through the end of April.

F. Proposed Changes to UK Insolvency Laws

Key highlights:

- The UK Government has announced changes to UK insolvency laws in response to COVID-19, giving companies extra breathing space to weather the crisis;

⁹ SMF participants that are not already signed up to the DWF can apply for access alongside applying to use the TFSME. Institutions that are not currently SMF participants can apply to join, subject to applicable SMF criteria, by contacting applications@bankofengland.co.uk.

- A temporary suspension of wrongful trading provisions for company directors to remove the threat of personal liability during the pandemic, applied retrospectively from 1 March 2020;
- A temporary ban on the use of statutory demands (made between 1 March 2020 and 30 June 2020) and winding up petitions (presented between 27 April and 30 June) where a debtor company is unable to pay its debts as a result of the COVID-19 pandemic; and
- The UK Government previously announced plans to introduce new restructuring procedures in August 2018. New legislation will implement these plans, including the ability to bind dissenting stakeholders to a new restructuring plan (including a “cross-class cramdown”) and a short moratorium or “breathing space” that will give companies in difficulty time to explore options for rescue. This will include the protection of supplies to enable companies to continue to trade during the moratorium.

The UK Government plans to promulgate legislation to this effect “at the earliest opportunity”, noting that Parliament was in recess until 21 April 2020. The exact timetable therefore remains uncertain. Provisions will be included to enable the changes to be extended if necessary.

Wrongful Trading

There will be a temporary suspension of wrongful trading provisions for company directors to remove the threat of personal liability during the pandemic. The suspension, once legislation is enacted, will take effect retrospectively from 1 March 2020 and will last for a period of three months, up to and including 31 May 2020 (subject to any extension if considered necessary by the UK Government). The current wrongful trading rules have been of particular concern to directors in the past few weeks, given the risk of personal liability for directors if they fail to take **every step** to minimise potential losses to creditors once they know or ought to know that there is no reasonable prospect of avoiding an insolvent liquidation/administration, which may push directors to file the company for insolvency proceedings prematurely. It is important to note that existing laws for fraudulent trading and the threat of director disqualification will remain in force as a deterrent against director misconduct.

New Restructuring Plan and Moratorium

There is little detail on this measure in the UK Government’s announcement, but it builds on the potential reforms previously announced in August 2018. It is understood that the UK Government is fast-tracking these proposals in light of the COVID-19 crisis. The Secretary of State for Business, Energy and Industrial Strategy, Alok Sharma, announced that these reforms will enable UK companies undergoing a rescue or restructuring process to continue trading, giving them respite that could help them avoid insolvency. This will include enabling companies to continue buying certain essential supplies, such as energy, raw materials or broadband, while attempting a rescue.

Considerations

The full text of the announcement can be found on the UK Government [website](#). No further details were available at the time of this memorandum. Whilst this is clearly a very welcome move, further details are urgently needed at this critical time for business and company directors. Notably, the announcement does not include other changes to insolvency law that may be necessary or helpful in the current crisis, such as amending the circumstances in which a company is deemed to be unable to pay its debts under the Insolvency Act 1986 or limiting the ability to file hostile winding up petitions.

It remains to be confirmed whether companies that are already insolvent will be eligible for the new moratorium. The UK Government's proposals in August 2018 excluded companies that were already insolvent from the scope of the moratorium, opening it only to companies with sufficient liquidity to pay their debts for the proposed moratorium period as they fall due. In this context, there will clearly be significant focus on the scope of the moratorium and which companies in the current COVID-19 crisis will qualify.

* * *

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its contents. If you have any questions about the contents of this memorandum, please call your regular Fried Frank contact or an attorney listed below:

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