CLIENT BRIEFING

CBILS Q&A NOTE

1 April 2020

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BACKGROUND

HM Government has announced a package of £330bn in loan guarantees and a £20bn fiscal intervention including further business rate relief for companies to support businesses affected by the novel coronavirus, COVID-19. These measures, which are unprecedented in scale, includes the Coronavirus Business Interruption Loan Scheme ("CBILS").

This Client Briefing is drafted on the basis of anecdotal feedback we have received from clients and partners. For more information on CBILS in general, please see our Client Briefing on CBILS which can be found on our website.

THE CORONAVIRUS BUSINESS INTERRUPTION LOAN SCHEME

CBILS provides financial support to smaller businesses (SMEs) across the UK that are losing revenue, and seeing their cashflow disrupted, as a result of the COVID-19 outbreak.

CBILS is a government-backed, partial guarantee (80%) against the outstanding facility balance, subject to an overall cap per lender. HM Government has announced that CBILS will initially support up to £1.2bn of lending by associated lenders (the original announcement suggested a maximum value of £1bn), including the Big Four banks (Barclays, HSBC, Lloyds Bank and The Royal Bank of Scotland).

CBILS is operated by the British Business Bank via (and at the discretion of) its accredited lenders. There are over 40 of these lenders currently working to provide finance. They include high-street banks, challenger banks, asset-based lenders and smaller specialist local lenders.

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Q&A OUTLINE

Q1. What is the maximum amount I can borrow?

The maximum amount a borrower can borrow is 25% of 2019 turnover or 2x the borrower's wage bill in 2019, whichever is greater. This is capped at a maximum of £5m (the original announcement suggested a maximum value of £1.2m).

The borrower remains fully liable for the debt. Therefore, before taking on a loan under the CBILS, it would perhaps be prudent to investigate whether other support measures are available to your business in the form of, for example, Statutory Sick Pay relief, grants, and creditor deferrals or haircuts.

Furthermore, we expect lenders to query whether such other support measures have been sought as part of their CBILS loan application procedure. Therefore, it would likely be useful to set out whether such other measures are available before applying for a CBILS loan. Please see Q7.

Q2. What type of loan facilities would be available?

A lender can provide the loan in the form of:

a) term loans;
b) overdrafts;
c) invoice finance;
d) asset finance; or
e) possibly a mixture of the above.

Some lenders may provide all the above types of finance options, while other lenders may only be offering some of these.

Q3. What finance terms will apply?

The finance terms available depend on the specific type of loan obtained:

a) for overdrafts and invoice finance facilities, finance terms are up to 3 years; and
b) for term loans and asset finance facilities, finance terms are up to 6 years.

Q4. Will any fees or interest rates apply in relation to CBILS?

There is generally no guarantee fee for SMEs to access CBILS. Interest and fees will be paid to lenders by HM Government for 12 months (the original announcement suggested a maximum interest free term of 6 months) and any lender-levied fees through a Business Interruption Payment. This means that smaller businesses will benefit from no upfront costs and lower initial repayments. Furthermore, capital repayment holidays may be available - at the discretion of the lender.

Instead, lenders will pay a fee to access CBILS. However, please see Q5 in relation to any security requirement.

However, please note that fees and interest may be payable after the initial 12-month period. We are unaware of any interest rate ceiling provided by HM Government in relation to the period following the initial 12 months. The specific interest rate will, therefore, be discretionary to the individual lender, bearing in mind that CBILS are backed by a government guarantee, but they should not be double digit rates. Interest rates may be fixed or variable. If fixed rates are provided alongside derivative products, such as interest rate hedging products, you should note that there may be implications of making early prepayments of loans, in terms of closing out payments. There should otherwise be no restriction on early prepayments and no prepayment fees charged.

Q5. Will I need to provide any form of security?

For loans of up to £250,000, the Big Four banks have agreed that they will not take personal guarantees as security. However, other banks may require personal guarantees as security.

For loan facilities above £250,000, the lender must establish a lack or absence of security prior to businesses using CBILS. If the lender can offer finance on normal commercial terms without the need to make use of the scheme, they are required to do so. Furthermore, in relation to loans over £250,000 you will generally be required to provide the usual securities a lender would expect, including, for example, debenture security, charges and floating charges (if not already provided) from the borrower and personal guarantees from shareholders and directors, supported by charges over any available tangible assets. However, lenders are excluded from taking security over a guarantor’s primary, personal dwelling.

Q6. What are the eligibility criteria for CBILS?

You are eligible for the scheme if your business:

a) is UK based;
b) has a turnover of no more than £45m p.a.;
c) more than 50% of turnover has come through trading (for example, this requirement means that manycharities will not be eligible for a CBILS loan);
d) has a UK business bank account (and not trading through a personal bank account);
e) was a viable business capable of meeting all its financial obligations prior to the impact of COVID-19 (i.e. an “Affordability Test” based on the business’ 2019 figures). For example, the lender will review whether you have stayed within any overdraft limits, whether your credit score is acceptable, etc;
f) evidence (typically through a solid forecast) that you are able to repay the loan in accordance with its finance terms (e.g. over the 6-year period for asset finance facilities); and
g) is a business envisioned to recover post COVID-19.

Please note that if a lender can lend to a person under normal lending criteria and not use the CBILS, the lender must do so.

For example, if a business has an existing loan secured against a commercial property and is seeking to obtain additional liquidity by seeking further equity release against the value of that property, and existing loan to value covenants allow that wiggle room, then it must seek further funding from its lender against the headroom available under normal lending criteria and not throughCBILS.

This may or may not be more advantageous to the borrower as CBILS term loans are restricted to a term of up to 6 years, whereas commercial real estate loans usually carry significantly longer terms.

Q7. What type of documentation will I need to provide?

In general, the documentation required depends on the individual lender. However, in relation to the requirement to show that the business is able to recover post COVID-19, you will be required to provide the lender witha cash flow forecast for the balance of 2020.

The forecast will help identify your finance needs and how you envision trading to recover in order to service the debt. However, it is not a requirement for a full business plan.

You will also generally be expected to show the net effect on cashflows of, for example, the Coronavirus Job Retention Scheme, other available support measures such as grants, and any debt restructuring arrangements agreed with creditors which you have managed to obtain or negotiate.

Furthermore, we believe that you should generally be prepared to enter into a discussion with the lender on, for example, how the CBILS loan may be repaid over the term of the loan, how you expect your business to recover; and how your business may develop and change post COVID-19.

For a loan above £250,000, directors and shareholders should expect to be required to give a personal guarantee, often supported by appropriate security and will be required to provide statements of assets, liabilities, income and expenditure.

Q8. How will the "Affordability Test" be calculated?

It is our understanding at this time that the Affordability Test will vary from lender to lender and borrower to borrower. However, the fundamental requirements will likely be whether or not a borrower can meet the standard lending requirements of the individual lender, having in mind the government-backed guarantee.

Q9. How does CBILS work?

CBILS replicates the Enterprise Finance Guarantee Scheme (”EFG”) to facilitate the provision of business finance to smaller businesses affected by COVID-19.

HM Government will only pay out the 80% guarantee to the extent that the lender has enforced any available security. An example is given below.

Example 1

In the following scenario, a lender lends £1,1m. After having repaid only £100,000 the business fails and the lender is only able to recover £500,000 from the available assets. The lender recovers £200,000 from a personal guarantee provided by the borrower. This will result in HM Government covering 80% of the outstanding loan.

CBILS loan	= £(1,100,000)
Repayment	= £100,000
Secured assets	= £500,000
Personal guarantee	= £200,000
Outstanding CBILS loan	= £(300,000)
CBILS guarantee (80% of outstanding CBILS loan)	= £240,000
Unrecoverable by lender	**= £(60,000)**

Q10. What if a lender will not support a CBILS application?

Due to the volume of CBILS applications at this time, it is our understanding that lenders will generally focus on servicing their existing clients at this time. If your existing lender is unwilling to provide the loan, you may obviously apply with other lenders, but, as previously noted, they may not be immediately receptive to your application.

If your business is less than 2 years old, you may want to seek funding through the Start Up Loan scheme. Under the Start Up Loan scheme, UK businesses can:

a) access funding up to £25,000;
b) at a fixed interest rate of 6% p.a.;
c) with repayment terms between 1-5 years; and
d) 12 months of free mentoring.

More information the Start Up Loan scheme is available here.

Q11. What representations, warranties, covenants and events of default will the loan likely be subject to?

CBILS is a novel scheme, and we understand that formal documentation has not yet been circulated to/produced by lenders.

At this time, it is our understanding that if there are any covenants, etc required in the formal loan documentation, then this will be light touch in relation to loans of under £250,000. One financial covenant we would expect to see is a cross-default clause which would be linked to any of the borrower's existing loan facilities, so it will be important for borrowers to review their existing facility documentation in order to assess whether or not there are breaches of terms which are "Events of Default" or "Potential Events of Default" and to negotiate waivers or amended terms to mitigate this issue.

For loans above £250,000, this will largely be at the discretion of the individual lender, and different lenders may take different approaches.

GET IN TOUCH

Should you have any questions to the topics covered in this Client Briefing, please get in touch with your usual Rooney Nimmo contact or any of the persons below.

CONTACT

John Nimmo

Partner, Private Equity / M&A
Tel: +44 (0)7811 458 506
john.nimmo@rooneynimmo.co.uk

Grant Docherty

Partner, Banking & Finance
Tel: +44 (0)7877 283 645
grant.docherty@rooneynimmo.co.uk

Dawn Robertson

Partner, Employment
Tel: +44 (0)7779 939 665
dawn.robertson@rooneynimmo.co.uk

Jin Enyi

Advisor, Private Equity / M&A
Tel: +44 (0)7492 354219
jin.enyi@rooneynimmo.co.uk

rooneynimmo.com

Edinburgh • London • New York • San Francisco ◆ Beijing ◆ Shenzhen ◆ Hong Kong