

March 27, 2020

COVID-19: UK FINANCIAL SUPPORT FOR BUSINESSES THROUGH PURCHASES OF COMMERCIAL PAPER AND LENDING TO SMES

To Our Clients and Friends:

The UK Government has launched two funding mechanisms to assist firms with the potential impact of COVID-19 on their businesses:

1. a joint lending facility between the UK HM Treasury and the Bank of England (“**BoE**”) designed to support liquidity among larger firms through the purchase of commercial paper, the Covid Corporate Financing Facility (“**CCFF**”); and
2. financial support for smaller businesses by giving lenders a government-backed guarantee for loan repayments, the Coronavirus Business Interruption Loan Scheme (“**CBILS**”).

This client alert provides an overview of the CCFF and CBILS and provides practical guidance as to how firms can make use of these facilities.

(1) The Covid Corporate Financing Facility

The CCFF is a joint lending facility between HM Treasury and the BoE designed to support liquidity among larger firms, helping them to bridge coronavirus disruption to their cash flows through the purchase of short-term debt in the form of commercial paper.

Is my firm’s commercial paper eligible?

The CCFF will purchase sterling-denominated commercial paper, with the following characteristics:

- Maturity of one week to twelve 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.
- Issued directly into Euroclear and/or Clearstream.

The BoE will accept commercial paper with standard features that is issued using ICMA market standard documentation. Commercial paper with non-standard features such as, for example, extendibility or subordination is not eligible. The BoE may consider accepting simplified versions of documentation, based on standard ICMA materials.

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

Commercial paper will also not be eligible if issued by leveraged investment vehicles or from companies within groups which are predominantly active in businesses subject to financial sector regulation.

Can my firm use the CCFF?

The CCFF is available to companies, and their finance subsidiaries, that “make a material contribution to the UK economy.” The BoE states that, in practice, firms that meet this requirement would typically be:

- UK incorporated companies (including those with foreign-incorporated parents and with a genuine business in the UK);
- companies with significant employment in the UK;
- firms with their headquarters in the UK.

The BoE notes that it will also 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.

The CCFF is open to firms that can demonstrate they were in “sound financial health” prior to the impact of COVID-19. This means companies that had a short or long-term rating of investment grade, as at 1 March 2020, or equivalent. If firms have different ratings from different agencies, and one of those is below investment grade then the commercial paper will not be eligible. The CCFF is open to all firms and sectors, providing that the eligibility criteria as set out above are satisfied. The BoE has indicated that the CCFF will be available for at least 12 months.

How does the CCFF work in practice?

- **Purchase operations** – These will be held every working day between 1000 – 1100 am. Offers to sell commercial paper to the CCFF should be submitted by phone to the BoE’s Sterling dealing desk (or as advised on the BoE’s wire services page).

- Minimum size** - The minimum size of an individual security that the CCFF will purchase from an individual participant is £1 million nominal. The BoE requires offers to be rounded to the closest £0.1 million.
- Primary market pricing** - For primary market purchases the BoE will purchase securities at a spread above a reference rate, based on the current sterling overnight index swap (OIS) rate. The respective reference OIS rate will be determined at 9:45 am on the day of the operation.
- Secondary market pricing** - For secondary market purchases the BOE 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 as set out above. The BOE will apply an additional small fee (currently set at 5 bps and subject to review) for use of the secondary facility, payable separately.
- Spreads** - The respective spreads, which are subject to review, as at 23 March 2020 are:

Rating	Spread to OIS
A1 / P1	20 bps
A2 / P2	40 bps
A3 / P3	60 bps

- Settlement arrangements** – The BoE will send a written electronic confirmation of each transaction on the day of purchase. The CCFF’s purchases will normally settle on a T+2 basis.
- Published information** - The BoE will publish each Thursday at 3 pm information on the use of the CCFF, including: (i) the total amount of commercial paper purchased that week up until the previous day, in terms of the amount paid to the sellers; and (ii) the sum of commercial paper purchased, less redemptions, to date.

What if my firm does not have a credit rating?

The BoE notes that some firms wishing to access the scheme will not have a credit rating. The BoE encourages such companies to discuss the matter with their bank. If that bank's advice is that the firm was viewed as equivalent to investment grade as at 1 March 2020, the BoE suggests such companies contact the BoE. Alternatively, the BoE notes that companies can contact one of the major credit rating agencies to seek an assessment of credit quality in a form that can be shared with the BoE and HM Treasury.

What if my firm has not previously issued commercial paper?

Companies do not need to have issued commercial paper prior to using the CCFF. The BoE recommends that such businesses contact their bank regarding issuing commercial paper. If eligible, banks can assist firms with issuing such commercial paper to the CCFF.

How do I apply to use the CCFF?

Applications to participate as counterparties in the CCFF are now open. Firms wishing to participate in the CCFF must complete and file the following documents:

- Issuer Eligibility Form;
- Issuer Undertaking and Confidentiality Agreement; and
- evidence of the signatory's authority to act.

If the commercial paper is issued by another group entity, that entity may need to provide: (1) guarantee in favour of the BoE; and (2) a legal opinion on the capacity and authority of the guarantor.

Additional documentation is required from banks acting as dealers on behalf of companies. The CCFF application documents are now available on the BoE's website. Once the relevant paperwork has been submitted, the BoE will confirm if a firm's commercial paper is eligible as soon as possible. If eligibility is confirmed before 4 pm on a working day, a firm will be able to sell commercial paper to the BoE the next working day.

(2) Coronavirus Business Interruption Loan Scheme

How does the CBILS work?

The British Business Bank operates CBILS via its "accredited lenders". This includes over 40 lenders ranging from high street banks, challenger banks, asset-based lenders and smaller specialist lenders.

What are the lending criteria?

In order to be eligible, businesses that wish to use the facility must satisfy all of the following criteria:

- the application must be for business purposes;
- the applicant must be a UK-based SME with annual turnover of up to £45 million;
- the applicant's business must generate more than 50% of its turnover from trading activity;
- the CBILS-backed facility will be used to support primarily trading in the UK;
- the applicant wishes to borrow up to a maximum of £5 million; and
- the applicant has a borrowing proposal which the lender:
 - would consider viable, were it not for the COVID-19 pandemic; and
 - believes will enable the business to trade out of any short-term to medium-term difficulty.

The following businesses are **not** eligible:

- banks and building societies;
- insurers and reinsurers (but not insurance brokers);
- public sector organisations (including state-funded primary and secondary schools);
- employer, professional, religious or political membership organisations; and
- trade unions.

What are the key finance terms and the maximum loan covered?

As noted above, lenders can provide up to £5 million in the form of term loans, overdrafts, invoice finance and asset finance. The lender is given a government-backed guarantee for the loan repayments. However, the borrower remains 100% liable for the debt. The CBILS can be used for: (1) term loans and asset finance facilities of up to six years; and (2) for overdrafts and invoice finance facilities of up to three years.

What payments will the UK Government make?

The UK Government will make a “Business Interruption Payment” to cover the first 12 months of interest payments and any lender-levied charges.

What is the position with respect to security?

The position is that if a lender can offer finance on normal commercial terms without making use of the CBILS, it will do so. The lender can choose to use the CBILS for unsecured lending for facilities of £250,000 or less. If the facility is over £250,000, the lender must establish if the borrower is unable to provide security, before it uses CBILS. It is open to banks to ask for security including personal guarantees from directors and security over their assets in support of such guarantees, however, there is a prohibition on taking such security over a director’s primary residential property.

Are there any guarantee fees for businesses?

There are no guarantee fees for SMEs, however, lenders pay a fee to access the scheme.

How do businesses access the CBILS?

Businesses should approach a CBILS accredited lender. A full list of accredited lenders is available on the British Business Bank’s website.[1]

[1] <https://www.british-business-bank.co.uk/ourpartners/coronavirus-business-interruption-loan-scheme-cbils-2/current-accredited-lenders-and-partners/>



*Gibson Dunn's lawyers are available to assist with any questions you may have regarding developments related to the COVID-19 outbreak. For additional information, please contact any member of the firm's **Coronavirus (COVID-19) Response Team**.*

*Gibson Dunn's lawyers regularly counsel clients on the compliance issues raised by this pandemic, and we are working with many of our clients on their response to COVID-19. Please feel free to contact the Gibson Dunn lawyer with whom you usually work, any member of the firm's **Financial Institutions Group**, or the authors:*

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