GIBSON DUNN

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COVID-19: UPDATE ON UK FINANCIAL SUPPORT MEASURES

To Our Clients and Friends:

In our client alert of *27 March 2020*, we provided an overview of the financial support made available by the UK Government to: (i) investment grade businesses through the Covid Corporate Finance Facility (the "**CCFF**"); and (ii) small and medium sized enterprises ("**SMEs**") through the Coronavirus Business Interruption Loan Scheme (the "**CBILS**"). In our client alert of *6 April 2020*, we gave a brief overview of the measures that have been taken in the UK to support businesses and highlighted in that alert that the CBILS was being extended to larger business with an annual revenue of between £45 million and £500 million.

In this client alert we summarise: (i) the announcement of details on the Coronavirus Large Business Interruption Loan Scheme (the "**CLBILS**"); and (ii) the announcement of a new funding scheme for innovative companies that are facing financing difficulties due to the COVID-19 pandemic (the "**Innovation and Development Scheme**").

See also the *Gibson Dunn Coronavirus (COVID-19) Resource Centre* for more resources on the response to COVID-19.

Background to the CLBILS

Design Flaws with the CBILS and Pressure from Industry

Whilst the UK Government announced a package of measures worth approximately £330 billion in mid-March 2020, in recent days, the UK Government has come under pressure to ensure that all UK businesses are able to access the financial and liquidity support measures that have been made available. As at close of business on 13 April 2020, UK Finance (the industry body for the banking and finance sector in the UK) reported that of 28,461 applications made to lenders to access the CBILS, only 6,016 loans had been approved with total lending reaching £1.1 billion. Further, it has become clear that the CCFF would only be available to a select number of investment grade companies in the UK that already had a commercial paper issuance programme or those that would otherwise meet the criteria for such a programme.

Criticism of the CBILS have been growing since its launch. Industry bodies, including the British Private Equity and Venture Capital Association (the "**BVCA**") have been reporting a number of structural issues with the scheme that meant large business and portfolio companies of private equity firms were not able to access much needed financial support. This is supported by the views of our private equity clients, whose portfolio companies have encountered difficulties in accessing the scheme. Some of the issues identified have been:

- *Process and Timing:* Difficulties with access to the scheme and the process for approving applications has had a significant impact on the liquidity position of a number of companies.

- *Eligibility Criteria:*

  - Companies and industry bodies have been reporting that banks are only lending to those companies that are credit-worthy with a strong balance sheet (i.e. those companies with retained profits/equity capital and low leverage). This is because lenders retain a 20% exposure to loans advanced under the CBILS. This has prevented many venture capital backed companies and innovative tech and healthcare companies that are not typically profitable from accessing much-needed financial support.

  - Importantly for our clients, guidance from the British Business Bank to lenders also provided that companies that are majority-owned by a private equity firm would not be eligible to participate in the CBILS in circumstances where additional equity funding is available to be provided by the private equity firm.

  - Lenders have also been aggregating the annual revenues of private equity firm's majority-owned portfolio companies to determine whether a single portfolio company is eligible for a CBILS loan, which had the effect of excluding the large majority of portfolio companies backed by mid to large-cap private equity firms (estimated by the BVCA to be 750+ companies).

- *Level of Funding:* When the CLBILS was initially announced on 3 April 2020, it was suggested that the scheme would provide £25 million of funding to businesses with an annual revenue of between £45 million and £500 million. For larger companies with an annual revenue of £500 million, a loan of £25 million would represent just over half of a business' revenue for a month. The concern expressed is that if the current low levels of economic activity prevail for a significant period into the summer months, the loans available would not provide a sufficient liquidity buffer, even with the other support measures available, to prevent many companies from going out of business.

In the context of the growing criticism of the design flaws with the CBILS and the lack of access to the CCFF, the UK Government was forced to act by launching: (i) the CLBILS to provide genuine support to the majority of medium to large-sized UK businesses, and (ii) the Innovation and Development Scheme to support innovative development and research companies, including those backed by venture capital firms.

Regulatory Pressure

On 15 April 2020, the Financial Conduct Authority (FCA) published a "Dear CEO" letter setting out its expectations of banks, in relation to lending to SMEs.

In the *letter to banks*, the FCA reminded them that the priority is ensuring that the benefit of the package of measures introduced by the Government, including the CBILS, is passed through to businesses as soon as possible. The FCA also highlighted that responsibility for these specific lending activities should be allocated to one or more Senior Managers.

In the letter, the FCA also stated that a new small business unit has been established. This will, amongst other things, gather intelligence about the treatment of SMEs during the crisis. There is, therefore, a clear prospect of future enforcement action being taken by the FCA against banks where it does not consider that its expectations have been met. The pressure on commercial lending institutions to deliver the UK Government's schemes and provide access to liquidity has, therefore, been increasing.

The Coronavirus Large Business Interruption Loan Scheme

On 3 April 2020, the UK Chancellor of the Exchequer, Rishi Sunak MP, announced that support would be provided to larger businesses in the UK (i.e. those with an annual revenue of in excess of £45 million) through the CLBILS. There followed an announcement on 16 April 2020, which set out the scope of the CLBILS, a scope broader than that initially announced on 3 April 2020. The UK Government has sought to design the CLBILS to support those businesses that hitherto had been unable to access funding through the CBILS or that had been ineligible to obtain funding through the CCFF. The CLBILS launched on Monday, 20 April 2020, and the key details of the scheme are as follows:

- Businesses with UK-based business activity and annual revenue of more than £45 million are eligible.
- Businesses with an annual revenue of between £45 million and £250 million will be able to access to up to £25 million of loans and businesses with an annual revenue of more than £250 million will have access to up to £50 million of loans.
- The UK Government will guarantee 80% of each loan but unlike the CBILS, the UK Government will not cover the first twelve months of interest.
- The business needs to have a borrowing proposal which the lender would consider viable, that will enable the business to trade out of any short-term to medium-term difficulty caused by the COVID-19 pandemic.
- The business should be able to self-certify that it has been adversely impacted by the COVID-19 pandemic.
- The business should not have received a facility under the CCFF.
- Majority-owned portfolio companies of private equity firms will now be able to access the scheme following updated guidance to lenders, as such companies' annual revenues will be assessed on a standalone basis (i.e. there will be no grouping of all of a private equity firm's portfolio companies' annual revenues).
- Personal guarantees will not be permitted for loans of up to £250,000.

- The scheme will be available through a series of accredited lenders, that will be listed on the British Business Bank website.
- Credit institutions, insurers, reinsurers, building societies, public sector bodies, grant-funded further education establishments and state-funded schools are not eligible to participate in the scheme.

As a result of pressure from UK-businesses, the CLBILS appears to address some of the key issues relating to eligibility and levels of funding that had been identified with the CBILS. Large businesses now have access to up to £50 million of funding (depending on annual revenues) and companies that are not eligible to access the CCFF may still able to access the loans under the CLBILS. Importantly for the private equity industry, it also appears as though revenue-grouping for portfolio companies has been abolished together with the exclusion from the schemes of companies that are majority-owned by private equity firms.

However, one key point to note is that it appears as though businesses will need to still be credit-worthy with a viable business plan to access finance under the CLBILS. The decision on credit-worthiness remains in the hands of a business' lenders and so businesses which maintain a high leverage levels may continue to be excluded.

The Innovation and Development Scheme

On 20 April 2020, the Chancellor of the Exchequer announced the establishment of a new Future Fund to support the UK's innovative businesses currently affected by the Covid-19 pandemic, together with other measures to support businesses driving innovation in the UK. In total, the package announced represents £1.25 billion of additional funding through: (i) a £500 million investment fund for high-growth companies impacted by the Covid-19 pandemic, delivered in partnership between UK Government and the private-sector (the "**Future Fund**"); and (ii) £750 million of grants and loans to SMEs focussing on research and development.

The Future Fund

In an unprecedented step, the Future Fund will make convertible loans of between £125,000 and £5 million available to high-growth innovative businesses in the UK. The Fund will be delivered by the British Business Bank and will provide UK-based companies with funding from the UK Government. Private investors will be obliged to match the UK Government funding amount for companies to participate. These loans will automatically convert into equity on the company's next qualifying funding round, or at the end of the loan if they are not repaid, meaning the UK Government will become a shareholder in these companies.

To be eligible, a business must be an unlisted UK registered company that has previously raised at least £250,000 in equity investment from third party investors in the last five years.

The UK Government has also published a term sheet which sets out the terms of the convertible loans provided under the Future Fund *here*.

The UK Government's initial commitment to the Future Fund will be £250 million, with the Future Fund due to open for applications in May 2020 and run until September 2020. The UK Government has announced that it will keep the scale of its investment in the Future Fund under review.

Grants and Loans for Research and Development

£750 million of targeted support will be made available for research and development intensive SMEs. The grants and loans will be provided through existing schemes of the UK's national innovation agency, Innovate UK.

Innovate UK, will accelerate up to £200 million of grant and loan payments for its 2,500 existing Innovate UK customers on an opt-in basis. An extra £550 million will also be made available to increase support for existing customers and £175,000 of support will be offered to around 1,200 firms not currently in receipt of Innovate UK funding. It has been announced that the first payments will be made by mid-May.

Conclusions

We are in unprecedented times in the United Kingdom, as is the case for many leading economies globally. The UK State (and accordingly, the UK taxpayer) is being asked to underwrite British business for it to survive during the COVID-19 pandemic. The UK Government is having to make policy announcements an almost daily basis in a very fluid situation and then rush to provide guidance and infrastructure for policy to be delivered. This has led to much criticism but the new measures appear to be designed to plug the design flaws in the initial schemes that were adopted in the early days of the developing COVID-19 crisis.

However, it remains to be seen whether the new schemes and updated guidance will enable lenders to speed up processes for approving loans and funding businesses at a time when the liquidity squeeze is being keenly felt. Central to the loan approval processes is the issue that the UK Government is guaranteeing only 80% of the exposure for lenders under the schemes with 20% of the residual risk carried by commercial lenders. In the current economic environment and prevailing macro-economic uncertainty, some lenders are discouraged from approving the loans under the schemes where they carry such residual risk. It is considered likely that further measures may need to be enacted, including having the UK Government or the Bank of England step in to guarantee 100% of the loans issued under the schemes to enable lenders to have the confidence in lending to British business. In these unprecedented times, it will remain to be seen whether further unprecedented measures are needed or whether the UK Government's latest schemes will provide sufficient funding and liquidity for UK Business to survive what is fast-turning into a global economic crisis.

This client update was prepared by Tom Budd, Greg Campbell, Michelle Kirschner, Mark Sperotto, Attila Borsos, Amar Madhani and Martin Coombes.

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 your usual contacts or any member of the Firm's Coronavirus (COVID-19) Response Team. In the UK, the contact details of the authors and other key practice group lawyers are as follows:

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