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Insolvency & Restructuring

Factsheet:
Bounce Back Loans
and Liquidation

The Bounce Back Loan Scheme (BBLS) was introduced on 4 May 2020 in response to the coronavirus pandemic. Over one million loans were approved under the scheme, but the focus now turns on the consequences of the scheme. Please continue to read below to find out more about what the BBLS is and other frequently asked questions.

What is a Bounce Back Loan?
The BBLS was one of many schemes in a package of support measures launched by Chancellor Rishi Sunak in response to the pandemic. It made up part of a larger scheme supporting small businesses to help them stay afloat and continue to trade as we progressed out of the various lockdowns and open the economy more widely.

How much was available to borrow?
The BBLS aimed to assist businesses by allowing them to borrow between £2,000 and up to 25% of the business' turnover (capped at £50,000) at an interest rate of 2.5%.
Moreover, the government provided lenders with a 100% guarantee and covered the cost of any fees and interest due from the borrower for the first twelve months.

Eligibility
To be eligible for the BBLS, a company must be:
- Based in the UK;
- Established and carrying on business on or before 1 March 2020; and
- Adversely impacted by the coronavirus.

Moreover, Borrowers were required to submit information on, amongst other things:
- Whether they are in the process of applying for a BBLS facility;
- Whether they have already obtained a Bounce Back Loan;
- Whether as of 31 December 2019 the business was in difficulty;
- At the time of submission, the business is not in liquidation, or a similar process; and
- Confirm the loan will be used solely to provide economic benefit to the business and is not to be used for personal benefit.

Banks, building societies, insurance companies, public sector organisations or state-funded primary or secondary schools were not able to apply for a loan under the BBLS.

What can the company use the Bounce Back Loan for?
The guidance stated that the loan must be used to provide economic benefit to the business and cannot be used for personal benefit.
A benefit to the business covers some of the following overheads:
- payment of staff wages (including directors, subject to the payments not being excessive);
- rent owed by the business;
- utility charges owed by the business; and
- refinancing other business debts due to the lower 2.5% rates attached to the loan.

The preceding list is not exhaustive but provides a helpful example of the types of costs the loan may be used for. In any event, if you are uncertain, always seek advice from a professional.

What is the repayment period for the loan?
No payments were due for the first twelve months and the initial length of the loan was six years (extendable in some circumstances to ten years). Therefore, after the first twelve months, the borrower became liable to repay the loan.

Paying back the loan
Concerns about liability and paying back the loan are clearly at the forefront of the minds of many companies. When paying back the loan, in circumstances where the company is struggling to repay the loan, it is important to consider whether the transactions involving the loan amount to a preference transaction under section 239 of the Insolvency Act 1986 should your company fall into an insolvency process.

A company may be seen to cause a preference transaction to a person/company if the following is satisfied:

a. That the person/company is one of the company's creditors or a surety or guarantor for any of the company's debts or liabilities;
b. The person preferred was put into a better position than they would otherwise have been in on an insolvent liquidation;
c. The company desired to bring about the improvement of their position described above;
d. The company causing the transaction must have been insolvent at the time of the transactions; and
e. The transactions must have taken place within six months preceding the liquidation of the company or two years if the preference is to a person connected to the company.

For example, if the company cannot afford to repay the Bounce Back Loan yet and are considering insolvency options, it is important to review what the loan has been used for and would any liquidator look to claw back these amounts. If the loan was used to repay other debts (such as ones the director of the company may have personally guaranteed) and all of the above criteria were satisfied then it could be deemed a preference. Depending on the circumstances, the repayment could also result in a breach of director's fiduciary duties, thus opening the director to personal liability.

However, it was, of course, impossible to foresee that the lockdown measures would last more than a year and many businesses who took out the loans have found that trade is still below pre-pandemic levels. In recognising this issue, the government introduced the Pay as You Grow (PAYG) scheme on 24 September 2020 granting borrowers some options. Firstly, the borrower can repay the loan early without additional fees. Secondly, the borrower can move to interest-only payments for six months (this option is available to use a maximum of three times). Thirdly, the borrower can pause their repayments for a period of six months (this option is available to use only once). Lenders should proactively inform borrowers of the PAYG scheme and borrowers should expect to receive correspondence three months before the first repayment is due.

What happens if the business enters liquidation?

As the BBLS did not require a personal guarantee for the loan, it is treated as an unsecured debt. Therefore, if the company does enter liquidation, the liquidator will attempt to realise assets to repay the loan (even in part) along with the other creditors of the company. Nevertheless, as the loan amounts to an unsecured debt, it is likely that it will not be repaid in full through liquidation. Despite this, the loan is secured by the government.

Therefore, as a last course of action, the lender can pursue the government for repayment in full. That said, and considering the above, it is important to bear in mind that the liquidator will investigate the company's financial history leading up to and throughout the insolvency. If they find evidence the directors have improperly used the loan (i.e., for personal purposes) they could become personally liable for the debt.

Could I simply dissolve the company?

It is not recommended that you simply dissolve the company. First off, it is worth considering the differences between dissolution and liquidation.

The former is also known as 'striking off' and is the process of closing a business by removing its name from the public register held by Companies House. A company may be dissolved where it has not traded or changed its name for the past three months and has no significant outstanding debts. If the company has a BBLS, then it does have debts and should not be dissolved.

Liquidation, on the other hand, involves realising the value of the company's assets for distribution to the creditors when the company is unable to settle its debts. In addition, the process must be overseen by a licensed Insolvency Practitioner.

We recommend against simply dissolving the company because the directors' disqualification regime has been extended to allow the Insolvency Service to investigate the directors of dissolved companies with retrospective effect.

Can I be liable for the Bounce Back Loan?

The government guidance states "the borrower always remains 100% liable for the debt". That means that the company, as the borrower, will be liable for the debt. This does not automatically default to you personally or any other individual in the business.

Despite that, it is important to be aware of how the loan was used and whether it was used contrary to your duties as a director or the terms of the agreement. We, therefore, always recommend seeking the advice of a professional if you are concerned that the loan monies may have been used in a way that would breach the terms of the agreement or your duties as a director.

The Insolvency Service also have a policy of seeking disqualification against directors for 10 years or more where (a) the BBL was improperly obtained; and/or (b) the proceeds were improperly used.

We have acted for both insolvency practitioners claiming against directors in relation to BBL misuse, and for directors in the defence of such claims. We have also acted for directors in the defence of disqualification proceedings.

Closing remarks

This fact sheet is by no means comprehensive and there will be a wide array of scenarios that cannot be covered here. As a result, we would urge you to seek professional advice on all things relating to the BBLS.

Whatever your situation, Isadore Goldman can help. Please contact one of our lawyers for your expert friendly consultation.

To find out how we can help, get in touch

Kevin Mitchell Director
London
T 0207 353 1000
M 07949 472506
E kmitchell@isadoregoldman.com

Kevin has the benefit of over 35 years' experience in the insolvency and business recovery fields which includes advising a large number of Insolvency Practitioners and other clients in relation to Individual Voluntary Arrangements, Bankruptcies, Liquidations, Administrations, Company Voluntary Arrangements and Fixed Charged Receiverships.

"He provides excellent, clear advice and is very knowledgeable and up to date on case law."
Chambers & Partners

Nick Oliver Director
Portsmouth/London
T 023 9229 2533
M 07718 159136
E noliver@isadoregoldman.com

Nick has become particularly known for dealing with complex insolvency disputes and litigation, insolvency investigations (particularly in a fraud context) and technical insolvency and restructuring advice.

"A well-deserved reputation for contentious insolvency work."
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"One of the most technically adept insolvency solicitors with an impressive network across industries and the ability to offer innovative solutions to complex issues."
Legal 500

Sian Leonard Director
Norwich/London
T 01603 611370
M 07828 335544
E sleonard@isadoregoldman.com

Specialist areas: Lenders, Contentious and non-contentious insolvency, administrations.

Sian is a committee member for both the R3 London Women's Group and the R3 Eastern Region Committee

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