

## Coronavirus Business Interruption Loan Scheme (CBILS) FAQs for Lenders

### Additionality and insufficient collateral

#### 1. What's changed?

Answer: The CBIL Scheme has been expanded, meaning that more smaller businesses can access and benefit from the Scheme, including those who meet your normal lending requirements for a commercial facility.

In order to be eligible for the CBIL Scheme, the applicant must have confirmed that it has been impacted by the Coronavirus (COVID-19) and you must also consider the applicant to be viable, in line with the test of viability set out in the CBILS Launch Letter.

An applicant may self-certify that it has been impacted by the Coronavirus (COVID-19).

#### 2. What do the changes mean for those SMEs who have taken out commercial facilities since the initial launch of the Scheme who would now be eligible for a CBILS Facility?

Answer: For any commercial (non-CBILS) Facility offered since the Scheme's launch on the 23 March, providing the SME meets the CBILS eligibility criteria, you are required to offer these SMEs a CBILS Facility wherever possible (e.g. where you are accredited to offer the same facility through CBILS). This will not be considered as a refinance and will not be included within your refinance limit.

#### 3. What do the changes mean for those SMEs who have taken out CBILS Facilities since date of the CBILS Launch Letter (the initial launch of the Scheme)?

Answer: For any CBILS Facilities offered prior to the change in terms, Lenders are expected to apply the new requirements retrospectively including changes to the taking of personal guarantees.

If you have taken a personal guarantee from a borrower for a facility below £250,000, you cannot make any demand on it or apply any proceeds from it in connection with the CBIL Scheme Facility. If you have taken a personal guarantee from a borrower for a facility above £250,000, the proceeds of the enforcement of that guarantee that can be applied to a CBIL Facility cannot exceed more than 20 per cent. of the post recovery losses. See below the question on "**Personal Guarantees**" for further information.

#### 4. Do I still need to assess whether an applicant has security if a facility is £250,000 or above?

Answer: Yes, we would still expect you to take collateral where collateral is available, in line with your own lending policy.

## Viability

### 5. Have there been any changes to the way we should determine whether an applicant is “viable”?

Answer: The test for determining the applicant’s viability remains the same as set out in the 23 March 2020 letter to lenders (the “**CBILS Launch Letter**”).

To add flexibility, we have allowed for an alternative method for determining eligibility under CBILS for smaller value facilities (e.g. those under £30,000). Rather than assessing viability in accordance with the test set out in the CBILS Launch Letter you may decide that an appropriate approach (either for individual facilities or generally) in considering the eligibility of the applicant is to consider the credit worthiness of the applicant based on the normal unsecured credit score methodology and/or approval cut off (including any appeals process) that you would have applied prior to any changes to reflect Coronavirus (COVID-19) impact.

If you choose this method for determining eligibility, it should be based on your internal ratings based on your credit models, as determined prior to the Coronavirus (COVID-19) impact, and in line with your regulatory requirements.

## Removal of certain restrictions on eligibility of the applicant and purpose of the CBILS Facility

### 6. Has there been any relaxation in relation to the category of applicants can apply?

Answer: Business, employer, professional, religious, and political membership organisation and trade unions are now in principle eligible for the CBIL Scheme. They must meet the other eligibility criteria of CBILS, including that more than 50% of the income of an applicant must be derived from its trading activity.

### 7. Has there been any relaxation in relation to the purpose that the facility can be used for?

Answer: There were previously a small number of restrictions on the purpose that a facility could be used for businesses operating in the agriculture, aquaculture and/or fisheries sectors.

As these restrictions are applicable for the BIP, rather than the proceeds of the facility itself we have de-linked these. We have included language in the BIP letter to confirm that this payment will not be used for certain purposes. This means we have removed the restrictions on the facility purpose from the CBILS Agreement and also from the Web Portal. As, in practice, the BIP will only be applied to cover interest and fees due on the facility to you (as lender), this should make no difference to your processes. If you receive any questions from a borrower in relation to the additional language, you can advise them, that as the payments are being made to you as lender, they should not be concerned about these restrictions even if they operate in these sectors.

## Notification of ‘in-life’ events

### 8. Have there been any change to what we need to notify a “in life events”?

Answer: In order to reduce operational complexity in operating the enhanced scale of the CBIL Scheme, the requirement for you to notify the Guarantor of ‘in-life’ events affecting a CBIL Facility through the scheme portal is being scaled back. You must still notify the Guarantor if you extend the term of a CBIL Facility or make a repayment demand in respect of a CBIL Facility.

## Refinancing

### 9. Is there any change to the refinancing limit?

No, we would remind you that the CBIL Scheme contains restrictions on when the scheme can be used to refinance existing facilities. These include a requirement that the aggregate Outstanding Guaranteed Balance of all Refinancing Facilities (meaning any CBIL Facility entered into to refinance all or part of an existing facility of the applicant with you) made available by you to all borrowers under the CBIL Scheme must not exceed 20% (or such other percentage as we may from time to time notify for such purpose to you) of your Annual Lending Total.

If at any point during the operation of the CBIL Scheme you anticipate any issues in complying with the refinancing restrictions of the CBIL Scheme, you should get in touch with your British Business Bank contacts.

### 10. If I have offered a non CBILS facility between 23 March 2020 and the date of its letter and I now offer the applicant a CBILS facility, will it count towards my refinancing limit?

Answer: No, you may refinance these facilities without this counting towards your refinancing limit.

## Personal Guarantees

### 11. Can we take personal guarantees?

Answer: Personal guarantees cannot be used for CBIL Facilities of £250,000 or less. This means that you cannot request a personal guarantee in connection with a CBIL Facility of £250,000 or less. If a CBIL Facility of £250,000 or less benefits from an existing personal guarantee or at any time in the future benefits from any personal guarantee, then you cannot make a demand or otherwise enforce such a guarantee for any amounts due under the CBIL Facility or apply any proceeds from such a guarantee to the CBIL Facility.

### 12. What are the rules for CBIL Facilities of over £250,000?

Answer: Personal guarantees can be used for CBIL Facilities of over £250,000, at your discretion. If a personal guarantee is used in relation to such a CBIL Facility, including where such a facility benefits from an existing or future personal guarantee, the following rules apply:

1. You must only make a demand on such a personal guarantee once you have realised all other collateral that is available to support such CBIL Facility. This includes collateral that is available to both the CBIL Facility and to other facilities (but not the CBILS Guarantee);
2. If you make a demand on or otherwise apply the proceeds of such a personal guarantee in connection with the CBIL Facility, you may only do so for a maximum amount equal to 20% of the amount of such CBIL Facility that remains outstanding after the proceeds of all other available collateral have been applied.

A worked example to show what this change will mean in practice:

- £1,000,000 facility
- Business pays off £400k, then defaults, owing £600k
- You recover £100k from other business assets secured, such as a debenture (e.g. stock), leaving £500k outstanding
- Call on Personal Guarantee is £100k (20% - not the full £500k as previously), leaving £400k as a loss
- Claim under the guarantee £320k, Lender loses £80k

If you have made any offers for CBILS Facilities prior to the date of this letter, we expect you to apply the same requirements around the taking of personal guarantees to those offered CBILS Facilities as are set out above. All CBILS Facilities (no matter when they were offered) are subject to these requirements.

### **13. Can you give an example of how this may apply in a recovery scenario?**

Answer: See Appendix A to this Q&A for worked examples of how this may apply in a recovery scenario both pre and post claim under the CBILS Guarantee.

### **Scheme Eligibility – Undertakings in Difficulty**

CBILS cannot be used where an applicant was an “undertaking in difficulty” as at 31 December 2019.

### **14. What type of businesses will be captured by the undertaking in difficulty definitions?**

#### ***High growth and thinly capitalised companies***

Answer: Undertaking in difficulty is defined to include businesses that have accumulated losses greater than half of their subscribed share capital as at 31 December 2019. In practice this means certain fast growth businesses may not be eligible for the CBIL Scheme (unless the business is less than three years old).

### **15. What does it mean for an undertaking to have accumulated losses greater than half of their capital?**

Answer: Limited liability companies (i.e. any public companies limited by shares or by guarantee, and any private companies limited by shares or by guarantee) will be regarded as having accumulated losses greater than half their capital if deducting accumulated losses from a company’s reserves (and all other elements generally considered as part of the company’s own funds) leads to a negative amount that exceeds half of the company’s subscribed share capital (including any share premium). For companies where at least some of the members have unlimited liability for the debt of the company (i.e. partnerships, limited partnerships and unlimited companies), the test is whether more than half of the company’s capital as shown in the company’s accounts has disappeared as a result of the accumulated losses. The criteria should be applied to the position of the company as of 31 December 2019. These criteria do not apply to SMEs that, on that date, had existed for less than three years.

### **16. What are “collective insolvency proceedings”?**

Answer: For the purpose of interpreting “collective insolvency proceedings” we would consider it appropriate to use the definition in Commission Regulation (EU) 2015/848 of 20 May 2015 being “*proceedings which include all or a significant part of a debtor’s creditors, provided that, in the latter case, the proceedings do not affect the claims of creditors which are not involved in them*”. This definition should be used instead of using the definition of ‘insolvency proceedings’ in the Insolvency Act 1986.

### **17. What does the definition of “collective insolvency proceedings” mean from a practical perspective?**

Answer: From a practical perspective, the following UK proceedings would be categorised as ‘collective insolvency proceedings’ under Commission Regulation (EU) 2015/848 of 20 May 2015 (the “Insolvency Regulation”):

- Winding-up by or subject to the supervision of the court

- Creditors' voluntary winding-up (with confirmation by the court)
- Administration, including appointments made by filing prescribed documents with the court,
- Voluntary arrangements under insolvency legislation
- Bankruptcy or sequestration.

The 'voluntary arrangements' listed above include company voluntary arrangements and individual voluntary arrangements.

Receiverships, members' voluntary liquidations and schemes of arrangement under Part 26 of the Companies Act 2006 are not included in the scope of the Insolvency Regulation and therefore fall outside of the definition of "collective insolvency proceedings".

### **18. What is the interpretation of "fulfils the criteria under its domestic law for being placed in collective insolvency proceedings"?**

Answer: Commission Regulation (EU) No 651/2014 of 17 June 2014 ("**GBER**") does not provide any guidance on what '*fulfils the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors*' means.

In practice we suggest the following approach should be taken:

- If a borrower is the subject of any of the proceedings listed above, or otherwise meets any of the other criteria in the GBER definition of 'undertaking in difficulty' then the borrower should be categorised as an undertaking in difficulty.
- If a borrower doesn't meet any of the other criteria of an undertaking in difficulty under the GBER and is not subject to any insolvency proceedings, but meets the criteria for any of the above listed insolvency proceedings i.e. a court would make an order if a petition was made, then the borrower should be categorised as an 'undertaking in difficulty'. Companies subject only to vexatious claims (where a court would not grant an order) would not 'fulfil the criteria', and therefore would not be categorised as an undertaking in difficulty.

### **19. How do I know if a company has received rescue aid or restructuring aid?**

Answer: Companies will know if they have received rescue or restructuring aid as they will have been informed of this at the time of grant and this type of aid is normally the subject of a specific State aid approval from the European Commission. For the avoidance of doubt, aid provided under the Enterprise Finance Guarantee Scheme is not rescue or restructuring aid. Note also that the test here is whether the company is currently in receipt of rescue aid or currently operating under a restructuring plan. Where aid measures are entirely historic this is not a barrier to participation in the CBILS arrangements. There will be only a very small number of companies within this category. In case of any doubt seek specific advice.

### **20. What solvency ratios must a company, that is not an SME (because it has 250 or more employees), meet to not be "in difficulty"?**

Answer: A company that is not an SME will be 'in difficulty' if, for the two years prior to 31 December 2019:

1. the company's book debt to equity ratio was greater than 7,5 and
2. the company's EBITDA interest coverage ratio was below 1,0.

It is necessary for a company to meet both of these ratios to be classified as 'in difficulty'. If the company meets only one of the ratios then it will not be classified as 'in difficulty' under this limb of the definition. SMEs are not required to meet these solvency ratios.

### **21. Which companies are classified as SMEs for the purpose of the definition of an "undertaking in difficulty"?**

Answer: The definition of an SME provided in Annex I of the GBER will apply. Specifically:

An 'enterprise' is any entity engaged in an economic activity, irrespective of its legal form. This includes, in particular, self-employed persons and family businesses engaged in craft or other activities, and partnerships or associations regularly engaged in an economic activity.

An enterprise will be micro, small or medium-sized if it employs fewer than 250 persons and

1. has an annual turnover not exceeding EUR 50 million, and/or
2. an annual balance sheet total not exceeding EUR 43 million.

**22. Are there any exceptions where we don't have to consider whether an undertaking is an undertaking in difficulty?**

Answer: For facilities under £30,000, the "undertaking in difficulty" test does not apply as a facility of this level is considered to involve a de minimis amount of State aid.

An applicant may self-certify whether or not it was an undertaking in difficulty.

**23. Is there further guidance on how to measure turnover?**

Answer: Further guidance on this point will be published shortly.

**24. What takes precedence, the CBILS Launch Letter or the CBILS Amendment Letter dated 3 April 2020?**

Answer: To the extent the terms set out in the CBILS Amendment Letter amend the provisions set out in the CBILS Launch Letter, the provisions of the CBILS Amendment Letter take precedence.

We are preparing a consolidated version of the CBILS Agreement, which will be made available to Lenders as Scheme Guidance in due course.

**25. Are facilities that would have qualified under EFG automatically eligible under CBILS? What about EFG eligible businesses that are not impacted by coronavirus?**

Answer: CBILS is designed to support businesses facing interruption as a direct result of the Coronavirus (COVID-19) outbreak. A facility that was eligible under EFG would not necessarily be eligible under CBILS unless they have been impacted by COVID 19 and meet all the other eligibility criteria.

**26. Are companies that derive income from property in principle eligible for the scheme?**

Answer: Yes, if more than 50% of the income of the applicant (together with its Group) is derived from commercial activities that generates turnover (whether or not such activity is carried on with the intention of making a profit) then they will be (in principle) eligible for the scheme. This includes real estate SMEs who derive income from property (including investment companies).

## Appendix A - Recoveries Examples

Example 1		
Original CIBLS Loan	£500,000	
CIBLS debt at default:	£400,000	
<p>The following are held as security:</p> <p>Charge over commercial property in relation to the CIBLS Facility – which is sold for £200,000</p> <p>£100,000 personal guarantee in support of the CIBLS Facility (this is the maximum amount the guarantor could be liable for under the CIBLS Facility - £500,000 x 20%)</p> <p>You must only make a demand on a personal guarantee once you have realised all other collateral that is available to support such CBIL Facility. This includes collateral that is available to both the CBIL Facility and to other facilities.</p>		
CBILS Loss pre personal guarantee	£200,000	(£400,000 - £200,000)
<p>If you make a demand on a personal guarantee in connection with the CBIL Facility, you may only do so for a maximum amount equal to 20% of the amount of such CBIL Facility that remains outstanding after the proceeds of all other available collateral have been applied.</p>		
Max recovery under personal guarantee	£ 40,000	(£200,000 x 20%)
Outstanding CBILS Facility	£160,000	(£200,000 - £40,000)
Claim on the guarantee (CBILS x 80%)	£128,000	(£160,000 x 80%)
Loss to Lender	£ 32,000	(£160,000 - £128,000)

<b>Example 2</b>		
Original CIBLS Loan	£500,000	
CIBLS debt at default:	£400,000	
<p>The following are held as security:</p> <p>Charge over commercial property in relation to the CIBLS Facility – which is sold for £50,000</p> <p>£100,000 personal guarantee in support of the CIBLS Facility (this is the maximum amount the guarantor could be liable for under the CIBLS Facility - £500,000 x 20%)</p> <p>You must only make a demand on a personal guarantee once you have realised all other collateral that is available to support such CBIL Facility. This includes collateral that is available to both the CBIL Facility and to other facilities.</p>		
CBILS Loss pre personal guarantee	£350,000	(£400,000 - £50,000)
<p>If you make a demand on a personal guarantee in connection with the CBIL Facility, you may only do so for a maximum amount equal to 20% of the amount of such CBIL Facility that remains outstanding after the proceeds of all other available collateral have been applied.</p>		
Max recovery under personal guarantee	£ 70,000	(£350,000 x 20%)
Outstanding CBILS Facility	£280,000	(£350,000 - £70,000)
Claim on the guarantee (CBILS x 80%)	£224,000	(£280,000 x 80%)
Loss to Lender	£ 56,000	(£280,000 - £224,000)

<b>Example 3 – Post claim recovery</b>		
Original CIBLS Loan	£500,000	
CIBLS debt at default:	£400,000	
The following are held as security:		
Charge over commercial property in relation to the CIBLS Facility		
£100,000 personal guarantee in support of the CIBLS Facility (this is the maximum amount the guarantor could be liable for under the CIBLS Facility - £500,000 x 20%)		
As 18 months have elapsed since Formal Demand and the normal recoveries process has not been completed, a Claim under the Guarantee is submitted		
Claim on the guarantee (CBILS x 80%)	£320,000	(£400,000 x 80%)
Outstanding CBIS Facility	£ 80,000	(£400,000 - £320,000)
After a protracted sale the commercial property is eventually sold for £200,000		
80% of £200,000 = £160,000 is returned to BBB; the balance of £40,000 is retained by the Lender to reduce their loss on the CBIL Facility		
CBILS Loss pre personal guarantee	£40,000	
If you make a demand on a personal guarantee in connection with the CBIL Facility, you may only do so for a maximum amount equal to 20% of the amount of such CBIL Facility (pre-claim) that remains outstanding after the proceeds of all other available collateral have been applied.		
Max recovery under personal guarantee	£ 40,000	(£200,000 x 20%)
80% of £40,000 = £32,000 is returned to BBB; the balance of £8,000 is retained by the Lender to reduce their loss on the CBIL Facility		
Loss to Lender	£ 32,000	(£40,000 - £8,000)