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Corporate Recovery and Insolvency

BBLS - THE CONSEQUENCES

BBL - The Numbers?

- The final numbers- £46.53bn lent on over 1,531,095 applications (0.5 million applications rejected)
- Loan of up to £50,000 or 25% of annual turnover if lower
- Businesses self-certified the application documents and lenders were not required to perform credit or affordability checks
- 100% guaranteed by British Business Bank
- Interest free for first 12 months then 2.5%
- Repayable over 6 years commencing 12 months after loan taken out
- The application period for loans was originally to 31st October 2020 but it was extended three times eventually ending on 31st March 2021

Conditions

- Applicants should be engaged in trading or commercial activity and have been established by 1 March 2020.
- BBLS applicants should not be in in “bankruptcy or liquidation or undergoing debt restructuring” when they apply.

September 2020 (“pay as you grow” introduced)

- Can request an extension to repay up to 10 years at the same 2.5% rate of interest
- May reduce monthly payments for six months paying interest only (up to three times during the term of the loan)
- Can request a six-month payment holiday during the term of the loan (available once)

House of Commons library briefing paper 05/03/2021 Coronavirus: Business Loan Schemes

Timescale	Objective
Short term COVID-19 restrictions place significant restrictions on business operations	<ol style="list-style-type: none">1. Guarantee schemes complement other government support and initiatives.2. Unlock finance at scale and pace such that businesses disrupted by COVID-19 still have access to finance.
Medium term COVID-19 restrictions lifted	<ol style="list-style-type: none">3. Businesses receive the maximum opportunity to maintain liquidity until lockdown measures are lifted (given what was known about the pandemic at the scheme launch date).4. Scheme design should incentivise appropriate risk-taking by lenders.
Long term Over the life of the loan	<ol style="list-style-type: none">5. Debt structure should take account of long-term business survival.6. Debt structure should allow firms with long-term growth potential to continue to grow.7. Long-term economic benefits realised from 5) and 6) exhibit value for money against any government-incurred losses.

Risks

- The risks for BBLs were recognised from the earliest stages:
 - The British Business Bank issued a reservation notice and;
 - the Government accepted responsibility for the risks through Ministerial Direction
- PWC risk review for British Business Bank identified fraud risk through:
 - self-certification;
 - multiple applications;
 - lack of legitimate business;
 - impersonation; and
 - organised crime.

Risks (continued)

- October 2020- The NAO report warned that the risk of fraud had been “very high” and remained “significant”.
 - initial and “prioritised” objective (Chancellors “whatever it takes”) achieved
 - fraud and debt remained significant risks into the future.

Issues

- Challenger and fin tech lenders were authorised to provide BBLS
- Banks and other financial institutions were encouraging SME businesses to take the loans
- Peer to peer lenders such as Funding Circle were encouraging their borrowers to replace their lending

Problems

- The NAO report October 2020
 - 35% to 60% of borrowers may default
 - Government's default estimates at Scheme launch ranged between 30% and 75%
- The latest estimates have widened to between:
 - 15% and 80% depending on the UK's economic performance
 - Estimated losses range from £6.9billion to £27.9 billion
- Fraudulent applications:
 - Private Eye reported as many as 33% of applications may have been made on false information
 - Equifax have said that based on their research the level of application fraud may be as low as 0.5%

Dear IP114, issued December 2020, puts IPs under an obligation to report any abuse of Covid-19 Government support schemes as misconduct when submitting their report pursuant to CDDA 1986 report.

Where abuse is identified, there are potentially other reporting obligations to HMR&C and under AML SAR.

But....whilst some fraud may be clear cut, what constitutes misrepresentation?

Application forms were simple and often included only 4 questions.

If a business didn't have accounts they were asked to estimate their turnover

DearIP 114 (December 2020)

- COVID-19 Financial Support Schemes – Reporting Misconduct The Insolvency Service has received reports of a number of corporate insolvencies in which there appears to have been abuse of the various COVID-19 Government financial support schemes, such as:
 - Bounce Back Loans
 - Coronavirus Job Retention Scheme (support for employees on furlough)
 - Small Business Grant Fund
 - Retail, Hospitality and Leisure Grant Fund
 - Local Authority Discretionary Grants Fund
- It is appreciated that other support schemes are available and misconduct involving the abuse of any will be considered as part of the investigation targeting process. The Director Conduct Reporting Service does not have any specific questions relating to COVID-19 and IT constraints prevent these from being added.

Dear IP114 (continued)

If office-holders identify any possible abuse of the COVID-19 support schemes (please see examples below) they should report this by answering yes to the question in section 12 of the conduct report: “Have you identified any potential criminal matters; statutory or regulatory breaches that are not currently being investigated by other regulators or the police?”. This will ensure that the report is sifted in and office-holders will be contacted for further information. Office-holders should answer yes to the question, even if they are aware that the police or another regulator is investigating.

If office-holders are dealing with any cases where the conduct report has already been submitted and they are aware of a COVID-19 support scheme being abused which has not been identified on the Directors Conduct Report, they should report this as new information via the “Contact Us” link which can be found on every page of the application.

Dear IP114 (continued)

Examples of COVID-19 support scheme abuse already reported include the following:

- Bounce Back Loans obtained, and the proceeds removed by the directors for their personal benefit in close proximity to the company entering into formal insolvency proceedings
- Using the Coronavirus Job Retention Scheme for purposes other than paying employees on furlough, or claiming support for employees who continue to work contrary to the terms and conditions of the scheme
- Providing false information in connection with any application for a COVID-19 support scheme

What happens if a business can't repay the BBL, even on the generous terms available?

Insolvency Act 1986 s123- a company is insolvent if either/or:

- It is unable to pay its debts as they fall due (cash flow test) and/or
- It is insolvent on a Balance Sheet basis (net asset test)

It is incumbent on directors to obtain professional advice and take appropriate action otherwise they may leave themselves open to accusations of wrongful trading.

If an Insolvency Practitioner ascertains that BBLs have been obtained fraudulently he has reporting obligations to the Insolvency Service, to HMRC and under AML SAR procedures.

If an Insolvency Practitioner ascertains the BBL monies have been misappropriated it is his or her responsibility to recover those monies for the benefit of creditors as they would any antecedent transaction.

Can the directors justify they have spent the monies trying to preserve their business?

Three scenarios: A director approaches you to liquidate his insolvent company.

The director says:

1. I obtained a BBL of £20k but I carefully set it aside. Should you advise the director to repay the BBL before starting the liquidation process?

Yes or No

2. I obtained the BBL a year ago and I have used about 50% it to pay my wages while I was trying to save my business. Historically my accountant advised me to take benefits by way of dividend, so I didn't qualify for CJRS. Is this legitimate use of a BBL?

Yes or No

3. The director says I started my business in early 2020. I had great plans and took a £50k BBL but due to the extended restrictions the business has never really got off the ground and I have spent the money. Is this fraudulent use of a BBL?

Yes or No

Conclusions (my own views)

- The Government did a fantastic job in getting money out of the door quickly, which has saved many SME's
- Repayment terms are generous
- Those who have clearly and intentionally abused the scheme should be brought to book
- Directors have a moral obligation to repay monies borrowed

But:

- I am not convinced there is much incentive for a SME with a BBL, other debts and uncertain future income streams to do anything other than liquidate their company
- There needs to be greater clarity for IPs in what constitutes misrepresentation