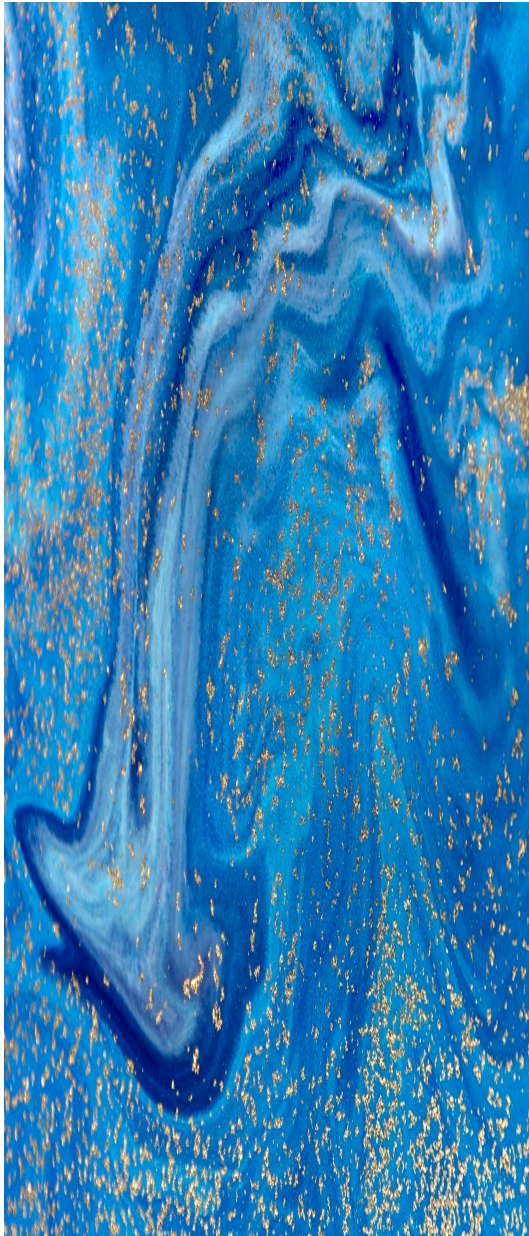


C L I F F O R D
C H A N C E

**COVID-19 UK GOVERNMENT AID: IMPACT ON
DIVIDEND PAYMENTS AND EXECUTIVE PAY**
November 2020

UK GOVERNMENT SUPPORT SCHEMES: DIVIDENDS AND PAY



The UK government has a number of COVID-19 related support schemes in place for companies.

Where a company has sought or is seeking aid from the UK government, this should typically be reflected both in its policy on dividend distributions and in decisions on executive remuneration.

Even in cases where the UK's HM Treasury (HMT) has not formalised its expectations as a condition of the particular government scheme, what has become clear is that there is an expectation that boards and remuneration and management committees should be alive to these issues and sensitive to the interests of its wider stakeholders, including its workforce, shareholders and taxpayers.

This guide sets out the executive pay and dividend issues for some of the UK government's key support schemes and what you need to think about now as we approach year end.

Contact:

Sonia Gilbert
Partner: Incentives
sonia.gilbert@cliffordchance.com
020 7006 2041

Andrew Patterson
Partner: Incentives
andrew.patterson@cliffordchance.com
020 7006 6160

Catrin Wright
Head of Practice Development: Incentives
catrin.wright@cliffordchance.com
020 7006 2920

Covid Corporate Financing Facility (CCFF)

	Significance (RAG)	Detail
What is it?		Facility designed to support liquidity among larger companies and firms, helping bridge coronavirus disruption to cash flows through the purchase of short-term debt in the form of commercial paper (CP).
Are there capital restrictions?		<ul style="list-style-type: none"> Requirement to show 'restraint' on capital distributions. 'Letter of commitment' to HMT is required (for CPs maturing on or after 19 May 2021, and/ or where an increase in an issuer's CCFF limit is over and above the suggested investment rating). Letter must confirm that all capital distributions will be suspended whilst the CP is outstanding (including dividends and buybacks of shares). For partnerships, this confirmation covers the suspension of any distributions to members for the length of the CP (except where there is agreed equity partner remuneration up to a maximum level).
Are there executive pay restrictions?		<ul style="list-style-type: none"> Requirement to show 'restraint' on approach to senior executive pay. Letter of commitment, where needed, should set out that no pay rises or cash bonuses be made to senior management (as a minimum requirement) whilst the CP is outstanding. For partnerships, any equity partner remuneration is only allowed up to a maximum level.

CC Comment

HMT expects detail on how pay 'restraints' are to be implemented in the commitment letter. The restrictions above are viewed as the minimum. HMT acknowledges that different companies face different circumstances, management structures and contractual obligations in exercising any restrictions. Employers should consider other potential steps that demonstrate restraint, like delivering more variable pay in shares.

Coronavirus Large Business Interruption Loan Scheme (CLBILS)

	Significance (RAG)	Detail
What is it?		Financial support loan designed for mid-sized and larger UK businesses, with turnover above £45 million, scheme has a borrowing limit of £200 million.
Are there capital restrictions?		<p>Restrictions on capital depend on the amount of the loan. These include:</p> <ul style="list-style-type: none"> • up to £50m, dividend payments may continue but not increased for the term of the loan. • more than £50m, a number of restrictions apply, including that companies must not declare or pay a dividend or other distribution (including partnership payments to partners) or commit to share buybacks. Certain exemptions apply to restrictions, e.g. dividends declared before the company enters into the loan may be paid out.
Are there executive pay restrictions?		<ul style="list-style-type: none"> • For loans of greater than £50m, companies cannot pay any cash bonuses or award pay rises to senior management, unless the pay rise (i) is agreed in writing before the loan was taken out, (ii) is in keeping with similar payments made in the preceding 12 months, and (iii) does not have a material negative impact on the ability to repay the loan. • Restriction does not apply to awards or cash bonuses to be paid to new members of senior management joining the group after the date of the loan (but must apply to any later cash bonuses or pay rises).

CC Comment

Although one of the more restrictive schemes in terms of actions around pay, the exceptions on pay rises will be helpful for businesses. However, companies will want to finely balance this flexibility with the optics and potential censure of making pay increases to executives whilst participating in the CLBILS. Companies will also want to carefully consider the terms of any existing bonus and variable pay arrangements with senior staff. 'Senior management' is also broadly defined and captures layers of management below board, including those covered by the senior managers regime and employees whose levels of remuneration and risk taking are considered material to the relevant group member's overall performance.

Coronavirus Future Fund (CFF)

	Significance (RAG)	Detail
What is it?		The CFF provides government convertible loans to UK-based high growth companies ranging from £125,000 to £5m, subject to at least equal match funding from private investors.
Are there capital restrictions?		Companies must not use the CFF funding to repay any borrowings or pay dividends or advisory fees.
Are there executive pay restrictions?		Companies should not use the CFF funding to make any bonus or other discretionary payments for a period of 12 months to any employee, consultant or director of the company, other than in relation to commitments that were entered into before the CFF was introduced.

CC Comment

As with some other UK government aid schemes, where an existing contractual entitlement or commitment has been made in relation to the award or payment, then these may be honoured, notwithstanding the provision of the loan or aid. Companies will want to carefully review any commitments and existing pay arrangements with its staff, well in advance of pay-round.

Coronavirus Job Retention Scheme (CJRS)

	Significance (RAG)	Detail
What is it?		Scheme under which employers are able to access government support to help with wage costs (up to a cap of 80% per individual) for furloughed employees.
Are there capital restrictions?		No formal restriction under the terms of the CJRS which restricts a company's ability to declare dividends.
Are there executive pay restrictions?		As with dividend policy, there is no formal restriction in respect of paying executive bonuses for companies.

CC Comment

Although there is no formal requirement or express restriction in the CJRS terms, many investor bodies such as the Investment Association have been clear about their expectations in this area. Generally speaking, the expectation is that listed companies taking aid from the UK government should take steps to reflect this position in any dividend policies and executive pay outcomes. The IA has also issued recent guidance that listed companies should be even more mindful of the wider employee context through this period and that generally, where companies are participating in such schemes, they would not expect the payment of any executive annual bonuses for FY2020 or 2020/21 unless there are truly exceptional circumstances.

Coronavirus Business Interruption Loan Scheme (CBILS)

	Significance (RAG)	Detail
What is it?		Financial support loan designed for smaller UK businesses, with turnover below £45 million, scheme has a borrowing limit of £5 million.
Are there capital restrictions?		No formal or express restriction under the terms of the CBILS which restricts a company's ability to declare dividends.
Are there executive pay restrictions?		As with dividend policy, there is no formal or express restriction in respect of paying bonuses for companies.

Coronavirus Job Support Scheme (CJSS)

	Significance (RAG)	Detail
What is it?		New proposed scheme to protect 'viable' jobs in businesses that are facing a reduced demand in what they do. UK government tops up the wages of employees (working reduced hours) as a way to protect against redundancies. The CJSS was intended to replace the CJRS (furlough scheme). However, as the CJRS has been extended, the CJSS is currently on hold.
Are there capital restrictions?		Before being postponed, government guidance set out that larger employers taking advantage of the CJSS (i.e. with 250 or more employees) would not be able to make capital distributions while using the scheme. This includes dividends, charges, fees or other distributions (and any equivalent payment that a partnership may make to its partners).
Are there executive pay restrictions?		Although no express reference to executive pay restrictions has been included in guidance so far, listed companies should still note that investor bodies have issued guidance in this area (see also 'Commentary' box for CJRS).

CC Comment

Before the CJSS was placed on hold, the government guidance made it clear that it did not plan to make this expectation on capital a contractual or legal condition of the CJSS but instead it encouraged companies to 'reflect' on their responsibilities and consider that taxpayers should be able to rely on public money only being claimed where it is clearly needed. As with similar comments made by the Investment Association and other investor bodies (see also CJRS) listed companies should be mindful of this guidance and of the public censure that would likely arise should they choose to raise capital or make significant payments to senior employees.

CLIFFORD CHANCE

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

Clifford Chance, 10 Upper Bank Street, London, E14 5JJ

© Clifford Chance 2020

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street, London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to nomorecontact@cliffordchance.com or by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ

Abu Dhabi • Amsterdam • Barcelona • Beijing • Brussels • Bucharest • Casablanca • Dubai • Düsseldorf • Frankfurt • Hong Kong • Istanbul • London • Luxembourg • Madrid • Milan • Moscow • Munich • Newcastle • New York • Paris • Perth • Prague • Rome • São Paulo • Seoul • Shanghai • Singapore • Sydney • Tokyo • Warsaw • Washington, D.C.

Clifford Chance has a co-operation agreement with Abuhimed Alsheikh Alhagbani Law Firm in Riyadh.

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.

WWW.CLIFFORDCHANCE.COM