

Measures implemented in France to help companies dealing with liquidity problems and other financial difficulties

April 2020

The main measures implemented by the French Government to help companies overcome their liquidity issues is the State Guarantee scheme. Additional liquidity will be obtained by French companies facing the economic impact of the COVID-19 outbreak. French State will guarantee the reimbursement of certain eligible loans up to an aggregate amount of 300 billion euros as provided by the amended 2020 budget bill (the “ABB”) and its implementing Decree dated on 23 March 2020. Other urgent measures have been implemented by the French Government and key market players in order to handle companies financial difficulties.

Please note French large companies are not eligible to benefit from the State Guarantee if they authorize the distribution of dividends or a share buy-back in 2020.

Alexis Hojabr

Partner, Paris
T +33 1 55 04 16 07
alexis.hojabr@whitecase.com

Alexandre Balat

Associate, Paris
T +33 1 55 04 15 43
alexandre.balat@whitecase.com

State Guarantee managed by Bpifrance Financement

The ABB (immediately applicable) and its implementing decree dated 23 March 2020 (applicable the day after its publication, *i.e.* 25 March 2020), provide that French State will grant guarantees, to be managed by Bpifrance Financement on behalf of and under the control of the State in order to cover the reimbursement of the principal, interest and incidental amounts of eligible loans. The funds available for providing such guarantees amount to 300 billion euros (each a “State Guarantee”).

Borrowers can request a State Guarantee with respect to financings in the form of loans. The ABB and its implementing decree refer to the notion of a “loan”, which seems to refer to consumer loans subject to article 1892 of the French Code civil, and in particular to cash loans, to the exclusion of any other type of credit operations provided for in article L. 313-1 of the French *Code monétaire et financier*. Bond issuances cannot benefit from the State Guarantee. Key details of the scheme are as follows:

- **Eligible lenders:** lenders qualifying for the State Guarantee are credit institutions and financing companies. Therefore, hedge funds or debt funds that are not registered as financing companies, as well as parent or holding companies cannot benefit from the State Guarantee.
- **Beneficiaries:** the State Guarantee will be granted for the benefit of French companies, excluding:
 - real estate companies (*sociétés civiles immobilières*);
 - credit institutions and financing companies;
 - companies subject to ongoing safeguard, judicial reorganization or liquidation proceedings. Companies subject to ongoing *mandat ad hoc* or *conciliation* proceedings can however benefit from such a guarantee similarly as companies which are implementing a safeguard or reorganization plan; and
 - companies deemed to be “undertakings in difficulty” under section (18) of article 2 of EU Regulation no. 651/2014.
- **Purpose:** a State Guarantee can cover financings granted between 16 March 2020 and 31 December 2020, for the purpose of “helping companies facing cash-flow shortages related to the health crisis”. However, neither the ABB nor its implementing decree explicitly restricts the use of proceeds. As a result, it seems the proceeds might be used to (i) finance borrower’s business activities abroad, or (ii) reimburse part of borrower’s previous outstanding loans. However, the French State may control the use of proceeds of loans made available to larger companies eligible upon an individual decree of the Ministry of Economy.
- **Maximum guaranteed amount:** the State Guarantee will only cover a fraction of the relevant loan in principal, interest and incidental amounts, which shall be equal to:
 - 90% for borrowers with less than 5,000 employees in France and with an annual turnover lower than 1.5 billion euros;
 - 80% for other borrowers, with an annual turnover of more than 1.5 billion euros but lower than 5 billion euros; and
 - 70% for other companies.
- **Conditions:** the granting of a State Guarantee is subject to the following conditions:

1.	Date on which the loan is granted	<ul style="list-style-type: none">▪ Between 16 March 2020 and 31 December 2020
2.	Initial maturity	<ul style="list-style-type: none">▪ 1 year

3.	Borrowers' option	<ul style="list-style-type: none"> A contractual provision shall grant the borrowers an option to extend the maturity for an additional period of one, two, three, four or five years at the end of the initial maturity¹.
4.	Maximum duration	<ul style="list-style-type: none"> Six year maturity
5.	Maximum size	<p>The aggregate amount of all financings granted to the same entity backed by a State Guarantee cannot exceed:</p> <ul style="list-style-type: none"> For companies created after 1st January 2019: their payroll (in France) estimated over the first two fiscal years; and For other companies: 25% of the 2019 recorded turnover, or the last available recorded turnover (with some exceptions²).
6.	No dividends No share buy-back	<p>French Minister of Economy has announced a prohibition on dividends payments³ and share buy-backs within FY 2020 for large companies (<i>i.e.</i> more than 5,000 employees and a consolidated turnover of more than 1.5 billion euros for the last fiscal year) or group companies (<i>i.e.</i> all the French group members, even where only some of them enjoy support measures regarding cash-flow shortages) benefiting from the State Guarantee.</p> <p>Note: this provision is problematic as currently drafted because it would limit the ability of a pure holding company to distribute dividends, even if such holding company is not the borrower of the guaranteed financing. It would also prevent subsidiaries of the borrower from up-streaming cash for the purpose of servicing the guaranteed financing, which is evidently counterintuitive.</p>
7.	Additional security interests and guarantees	<ul style="list-style-type: none"> For eligible borrowers having less than 5,000 employees in France and a total registered turnover of less than 1.5 billion euros for the last fiscal year or, in case of new companies, as of March 16, 2020: loans need to be granted without any security interest or guarantee; For other eligible borrowers: it should be possible to provide for other guarantees or security interests.

¹ The borrowers' option do not seem to prohibit the parties from providing for an amortization schedule upfront in the loan documentation, by virtue of the freedom of contract, but the borrowers should be free to choose the exact amortization schedule at the end of the first year.

² For innovative companies, as defined in article D. 313-45-1, II of the French *Code de l'entrée et du séjour des étrangers et du droit d'asile*, an amount equal to two times their recorded payroll for 2019 or, as the case may be, the last recorded payroll, if this criterion proves more favorable.

³ Except for entities that are under a legal obligation to distribute dividends in 2020.

8.	Grace period	Loans need to provide for a grace period of at least 1 year and for the possibility, at borrower's discretion, to extend it for 1 to 5 additional years at the end of the first year.
9.	New money	The overall amount disbursed by the relevant lenders <i>vis à vis</i> the borrower must be increased as a result of the financing transaction.

- **Commercial terms:** the State Guarantee will be remunerated, based on a scale depending on the borrower's size and the loan's maturity, as follows:

	First year	Second and third year	Fourth, fifth and sixth year
SMEs	25 bps	50 bps	100 bps
Companies with (i) more than 250 employees, or (ii) an annual turnover of more than 50 million euros or a total balance-sheet of more than 43 million euros	50 bps	100 bps	200 bps

- **Process:** In order to handle the multiple and urgent requests anticipated by the French government, the State Guarantee will be granted following a simplified procedure. Two distinct procedures exist, however, depending on borrower's size:
 - loans granted to companies with 5,000 employees or more during the last fiscal year and with an annual turnover of more than 1.5 billion euros can only benefit from a guarantee upon a special decree issued by the ministry of economy, which is therefore enabled to decide, on a case by case basis, whether the State Guarantee is appropriate given the particular circumstances; and
 - loans granted to smaller companies, on the other hand, will benefit from the State Guarantee upon simple notice to Bpifrance Financement, if they comply with the conditions set forth in the decree implementing the ABB. In this case, in light of the procedure for obtaining the guarantee, it seems that the responsibility for making sure that all criteria are met lies with the lenders based on the information provided by the borrower⁴.
- **Call of the State Guarantee:**
 - Lenders will only be compensated under the State Guarantee for losses recorded after the reasonable exercise of all the available amicable or judicial means and, if unsuccessful, the filing for the opening of insolvency proceedings following a credit event;
 - The compensated amounts will be calculated as follows:
 - in case of the restructuring, whether amicable or judicial, of the guaranteed loan, giving rise to an actuarial loss, the calculation will take into account, as the case may be, the value of the claims held by the lender following such restructuring;

⁴ Lenders might request that the borrower provide, for the purpose of ensuring that the information is accurate, a certificate issued by its statutory auditors stating, under its responsibility, that the conditions of the implementing amendment are met. The borrower might also involve its own responsibility by way of providing representations and warranties in the loan documentation.

-
- in case of insolvency proceedings, the compensated amounts will be calculated when such proceedings are closed, taking into account the sums recovered by the lender.
 - o The State Guarantee will not be applicable if called by the lender within the first two months after being granted;
 - o Where the State Guarantee is called by the lender, after the abovementioned two-months period, Bpifrance Financement will need to ensure that all the conditions are met before proceeding with the payment of all the due sums, which will subsequently be reimbursed by the State.
 - o These conditions need to be further clarified, especially relating to the consequences of the opening of insolvency proceedings and of the adoption of a safeguard or reorganization plan (in particular in case of a debt rescheduling) on the ability of lenders to call on the State Guarantee.
 - **Loans granted to ineligible borrowers:** it should be noted that in order to encourage borrowers to ensure that all the eligibility criteria are met, lenders may provide, in the relevant loan agreements, that the loan be accelerated where it subsequently comes to light that all the criteria set forth in the implementing decree were not met, and in particular where the borrower intentionally provided false information to the lender or to Bpifrance Financement.

New measures to be granted by Bpifrance

Bpifrance, the French public investment bank, undertook several additional commitments aimed at ensuring that French companies, especially very small (“TPE”), small and medium (“PME”) and intermediary (“ETI”) companies, do not fail to meet their financial commitments due to the COVID-19 outbreak.

- **Measures regarding short-term liquidity issues:** Bpifrance undertook:
 - o to grant a guarantee covering 90% of the amount of short-term loans with a maturity of 12 to 18 months, in accordance with further conditions, yet to be specified;
 - o to accept the assignment of outstanding invoices and open short-term credit lines amounting to 30% of the value of such invoices; and
 - o to provide new loans, so-called *Prêts Atout*, granted without requesting any security interest over company’s or its management’s assets, with a maturity of three to five years and for amounts of 50,000 euros to five million euros for *PMEs* and up to thirty million euros for *ETI*. Such loans may be provided to any *TPE*, *PME* or *ETI* active for more than 12 months in any business sector, with some exceptions. These loans will be granted with the exclusive purpose of financing temporary cash-flow needs or exceptional shortages related to the present context. Moreover, the information provided by the *Comité Interministériel de Restructuration Industrielle* (the “CIRI”) implies that a *Prêt Atout* could only be granted by Bpifrance where a loan for a similar amount is granted to the borrower by another commercial bank. In addition to *Prêts Atout*, which depend on the region where the company has its business activity, guaranty-free loans for amounts of 10,000 euros to 300,000 euros might be available (so-called *Prêts Rebond*).
- **Measures in order to facilitate the refinancing of long-term loans:** Bpifrance committed:
 - o to extend any previously granted guarantees in the context of the rescheduling of debtor’s financial indebtedness, without any additional fees; and
 - o to grant a guarantee covering part of the amount of mid-term loans with a maturity of 2 to 7 years, in accordance with further conditions (yet to be specified).
- **Measures regarding existing loans:** Bpifrance announced that it will automatically extend the payment deadlines of its own previously granted loans for 6 months as from 24 March 2020.
- **Process:** all these measures are subject to debtor’s submitting an online request, or contacting Bpifrance representatives through a dedicated hotline. Bpifrance publicly undertook to handle all cases within five business days following the receipt of such requests.

Direct state payments (SMEs only)

On 25 March 2020, the French Government enacted Ordinance no. 2020-317 relating to the setting up of a solidarity fund. In combination with Decrees no. 2020-371 of 30 March 2020 and no. 2020-394 of 2 April 2020, it sets up a solidarity fund for a period of three months, with the purpose of providing financial assistance to persons engaged in an economic activity "particularly affected by the economic, financial and social consequences" of the COVID-19 outbreak.

This solidarity fund will be financed by the French State and, on a voluntary basis, by the regions, local authorities and public institutions (*établissements publics de coopération intercommunale à fiscalité propre*).

Small companies, micro-businesses, self-employed workers and liberal professionals with an annual turnover of less than 1 million euros and an annual tax revenue of less than 60,000 euros who have to close down their premises or register losses amounting to 70% for their March 2020 turnover (as compared to their March 2019 turnover) might apply for a special aid from this State backed solidarity fund:

- as from 1st April 2020, eligible persons can request the payment of 1,500 euros of financial aid;
- as from 15 April 2020, eligible persons facing severe economic consequences might request an additional payment amounting to 2,000 euros, granted on a case by case basis.

Involvement of private banks

Private commercial banks have committed to undertake exceptional measures in order to help French companies throughout the current crisis, in particular by (i) setting up fast-track procedures for processing of new loan requests, where companies face severe cash-flow shortages, within five days as from such request, (ii) granting extensions for payment deadlines of up to 6 months, and (iii) waiving any late-payment penalties and additional fees related to the extension of payment deadlines.

Handling conflicts with trade partners

Where companies face conflicts with their trade partners (e.g. customers and/or suppliers), for instance over the performance of their respective contractual obligations, they can request the intervention of a public ombudsman by filing an online request. The ombudsman's mission starts within 7 days of the request and is aimed at encouraging the parties to reach a formalized settlement agreement.

While the ombudsman's mission is limited to assisting the parties, both the French government and the *Médiateur des Entreprises* publicly encouraged creditors to prove lenient in the current emergency context, especially regarding French *PMEs*.

Support for the renegotiation of companies' financial indebtedness

If the COVID-19 outbreak results in severe economic distress, French companies might need to renegotiate the rescheduling of their financial indebtedness.

The French government has committed to support such negotiations. It can therefore be expected that the CIRI and the regional CODEFIs (competent for smaller companies in each *département*) will be actively involved.

Furthermore, the French Central Bank (*Banque de France*) encourages companies to request the involvement of a public credit ombudsman (the *Médiateur du Crédit*). Its mission is to assist debtors during the amicable renegotiation of their liabilities with their financial partners (e.g. commercial banks, lessors, credit insurers, factoring companies). In addition, pursuant to an agreement entered into between the *Médiateur du Crédit*, the French State and the associations of French banks and financial institutions (*Accord de place*), financial creditors undertook, in particular, to maintain their credit lines and not request any additional guarantees during the mediation proceedings. A similar agreement entered into with the main credit insurers provides, in

particular, that the opening of mediation proceedings should not result in a reevaluation of the debtor's risk profile and an increase of the insurance fees.

There are currently 105 such credit ombudsmen across France. Their intervention is subject to the filing of a prior online request, usually treated under 48 hours.

Support for companies in case of amicable or insolvency proceeding

The Ordinance no. 2020-341 of 27 March 2020 temporarily adapts the proceedings relating to the treatment of companies' difficulties in order to mitigate economic consequences of the COVID-19 outbreak and the months following its cessation. In particular, it encourages the use of preventive proceedings and extends the deadlines for collective proceedings.

- **Opening of collective or conciliation proceedings:** the debtor is the sole person entitled to request the opening of any proceedings, which excludes any request by a creditor.
- **Suspension of duty to file for insolvency:** in the current context, and until a date falling 3 months after the end of the health emergency state, managers do not have to file for insolvency if the company was not in a state of cessation of payments as of 12 March 2020, except in cases of fraudulent behaviour.
- **Time extension of current proceedings and plans**

The above measures are intended to provide companies with substantive tools to face the immediate effects of the COVID-19 on their share capital and financial statements as well as to grant time and flexibility to their directors in reacting to the challenges deriving from such effects. Directors and officers should begin working with their advisors quickly in order to assess whether any of these measures could suit their needs now or in the near future.

Conclusions

The French Government and market players have implemented a series of urgent measures which are intended to support French companies during the crisis.

The government has taken additional steps to support all businesses by providing access to guarantees to be issued by Bpifrance Financement in favor of lenders who make new financing available, including by refinancing existing liabilities. SMEs may receive funds from State backed solidarity fund. Note that the measures under the above described Decrees and Ordinance are not considered "forbearance measures" as such term is defined by EU regulatory authorities.

We encourage our clients to consider the opportunities presented by the Decrees and Ordinance carefully, consulting with us as appropriate.

Separately, French companies which meet the relevant credit rating requirements may also benefit from liquidity assistance via the European Central Bank ("ECB") Pandemic Emergency Purchase Programme (PEPP), pursuant to which the ECB may purchase bonds and commercial paper issued by European private and public sector entities. See our client alert <https://www.whitecase.com/publications/alert/european-central-bank-launches-emergency-bond-buying-programme-response> for further details.

In addition, White & Case has carried out an analysis of global governmental responses to the COVID-19 crisis. These vary considerably from country to country and are being updated and amended regularly.

We have prepared an in-depth and nuanced analysis for various major jurisdictions and pulled together a [global response team](#).

For useful information on COVID-19, please consult the [Coronavirus section of www.whitecase.com](#).

Annex I

The French Government and market players have implemented urgent measures to deal with the impact of the COVID-19 outbreak. The applicable measures are described and compared below.

Applicable Measures	Large corporates	SMEs
Eligible Beneficiary	<p>All enterprises registered in France regardless of their shareholder structure, excluding:</p> <ul style="list-style-type: none"> - real estate companies (<i>sociétés civiles immobilières</i>) - credit institutions and financing companies - companies subject to ongoing safeguard, judicial reorganization or liquidation proceedings. Companies subject to ongoing <i>mandat ad hoc</i> or <i>conciliation</i> proceedings can however benefit from such a guarantee similarly as companies which are implementing a safeguard or reorganization plan; and - companies deemed to be “undertakings in difficulty” under section (18) of article 2 of EU Regulation no. 651/2014 	Same
Eligible Lenders	Credit institutions and financing companies	Same
State Guarantee Scheme	<p>Type of guarantee: <i>sui generis</i> guarantee, to which neither the regime of personal guarantees (<i>cautionnements</i>) nor first demand guarantees (<i>garanties autonomes</i>) would be applicable</p> <p>Type of financing: loans</p> <p>Purpose of the financing: “helping companies facing cash-flow shortages related to the health crisis”, but there is no explicit restriction to the use of proceeds. However, control of the use of proceeds upon an individual decree of the Ministry of Economy</p> <p>Maximum guaranteed amount: (i) 90% for borrowers with less than 5,000 employees in France and with an annual turnover lower than 1.5 billion euros, (ii) 80% for other borrowers, with an annual turnover of more than 1.5 billion euros</p>	<p>Same</p> <p>Same</p> <p>Same</p> <p>Same</p>

	but lower than 5 billion euros; and (iii) 70% for other companies	
	Conditions	
1.	<i>Date on which the loan is granted:</i> between 16 March 2020 and 31 December 2020	Same
2.	<i>Initial maturity:</i> 1 year	Same
3.	<i>Borrowers' option:</i> a contractual provision shall grant the borrowers an option to extend the maturity for an additional period of one, two, three, four or five years at the end of the initial maturity	Same
4.	<i>Duration:</i> maximum 6 years	Same
5.	<i>Maximum size:</i>	Same
	- For companies created after 1st January 2019: their payroll (in France) estimated over the first two fiscal years	
	- For other companies: 25% of the 2019 recorded turnover, or the last available recorded turnover (with some exceptions)	
6.	<i>No approval of dividends payment or share buy-back:</i> during the year 2020 (applicable also to group companies registered in France)	Not applicable
7.	<i>Additional security interests and guarantees:</i>	Same
	- For eligible borrowers having less than 5,000 employees in France and a total registered turnover of less than 1.5 billion euros for the last fiscal year or, in case of new companies, as of March 16, 2020: loans need to be granted without any security interest or guarantee	
	- For other eligible borrowers: it should be possible to provide for other guarantees or security interests	
8.	<i>Grace period:</i> at least 1 year and possibility, at borrower's discretion, to extend it for 1 to 5 additional years	Same
9.	<i>New money:</i> the overall amount of the liability of the lender <i>vis à</i>	Same

	<p>vis the borrower must be increased as a result of the financing/refinancing</p> <p>Economic conditions: all-in commission equal to:</p> <ul style="list-style-type: none"> ▪ 50 bps during the first year ▪ 100 bps during the second and third year ▪ 200 bps during the fourth, fifth and sixth year <p>Maximum cost of financing: parties are free to negotiate the remuneration of the loan</p> <p>Process: loans granted to companies with 5,000 employees or more during the last fiscal year and with an annual turnover of more than 1.5 billion euros can only benefit from a guarantee upon a special decree issued by the ministry of economy</p>	<p>Economic conditions: all-in commission equal to:</p> <ul style="list-style-type: none"> ▪ 25 bps for the first year ▪ 50 bps during the second and third year ▪ 100 bps during the fourth, fifth and sixth year <p>Same</p> <p>Process: loans granted to smaller companies benefit from the State Guarantee upon simple notice to Bpifrance Financement, if they comply with the conditions</p>
<p>Measures granted by Bpifrance</p>	<p>Not available to large corporates</p>	<ol style="list-style-type: none"> 1. Measures regarding short-term liquidity issues: <ul style="list-style-type: none"> - guarantee covering 90% of the amount of short-term loans with a maturity of 12 to 18 months - assignment of outstanding invoices and open short-term credit lines amounting to 30% of the value of such invoices; and - new loans, so-called <i>Prêts Atout</i>, granted without requesting any security interest over company's or its management's assets 2. Measures in order to facilitate the refinancing of long-term loans: <ul style="list-style-type: none"> - extension of any previously granted guarantees in the context of the rescheduling of debtor's financial indebtedness, without any additional fees - guarantee covering part of the amount of mid-term loans with a maturity of 2 to 7 years 3. <i>Measures regarding existing loans:</i> extension of the payment deadlines

		<p>of its own previously granted loans for 6 months as from 24 March 2020.</p> <p>Process: all these measures are subject to debtor's submitting an online request, or contacting Bpifrance representatives through a dedicated hotline</p>
Direct state payments	Not available to large corporates	<p>Small companies, micro-businesses, self-employed workers and liberal professionals with an annual turnover of less than 1 million euros and an annual tax revenue of less than 60,000 euros who have to close down their premises or register losses amounting to 70% for their March 2020 turnover (as compared to their March 2019 turnover) might apply for a special aid from a State backed solidarity fund:</p> <ul style="list-style-type: none"> - As from 1st April 2020, eligible persons can request the payment of 1,500 euros of financial aid; - As from 15 April 2020, eligible persons facing severe economic consequences might request an additional payment amounting to 2,000 euros, granted on a case by case basis.
Commitments of private banks	<p>Private commercial banks committed to undertaking exceptional measures in order to help French companies throughout the current crisis:</p> <ul style="list-style-type: none"> - fast-track procedures for processing of new loan requests, within five days as from such request; - extensions for payment deadlines of up to 6 months; and - waiver of any late-payment penalties and additional fees related to the extension of payment deadlines. 	
Conflicts with trade partners	<p>Where companies face conflicts with their trade partners, they can request the intervention of a public ombudsman by filing an online request. The ombudsman's mission starts within 7 days of the request and is aimed at encouraging the parties to reach a formalized settlement agreement.</p>	
Bank forbearance	<p>There are no specific bank forbearance provisions.</p> <p>However, creditors might request the involvement of a public credit ombudsman to help them renegotiate and reschedule their financial liabilities in an amicable setting. Pursuant to two agreements entered into with the French State, financial institutions undertook to maintain their credit lines and not request any additional guarantees, and credit insurance providers undertook not to downgrade debtor's risk profile as long as such negotiations are ongoing.</p>	
Insolvency Related Measures	<ol style="list-style-type: none"> 1. <i>Opening of collective or conciliation proceedings</i>: the debtor is the sole person entitled to request the opening of any proceedings, which excludes any request by a creditor. 2. <i>Suspension of duty to file for insolvency</i>: in the current context, and until a date falling 3 months after the end of the health emergency state, managers do not have to file for insolvency if the company was not in a state of cessation of payments as of 12 March 2020, except in cases of fraudulent behaviour. 3. <i>Time extension of current proceedings and plans</i> 	

White & Case LLP
19, Place Vendôme
Paris, France
75001
T +33 1 55 04 15 15

In this publication, White & Case means the international legal practice comprising White & Case LLP, a New York State registered limited liability partnership, White & Case LLP, a limited liability partnership incorporated under English law and all other affiliated partnerships, companies and entities.

This publication is prepared for the general information of our clients and other interested persons. It is not, and does not attempt to be, comprehensive in nature. Due to the general nature of its content, it should not be regarded as legal advice.

© 2020 White & Case LLP