International Law Office

BANKING - SWITZERLAND

Liquidity aid for businesses in times of coronavirus: emergency aid through guaranteed COVID-19 bridging loans

03 April 2020 | Contributed by Meyerlustenberger Lachenal

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Introduction

The COVID-19 pandemic and the measures against it taken by states all over the world will have serious consequences for the Swiss economy.

To cushion the economic consequences of the spread of the coronavirus, the Federal Council approved a comprehensive package of measures worth Sfr32 billion on 20 March 2020. A key component of this package are government-backed loans to provide liquidity for businesses. This is because, as a result of the shutdown of operations and slumps in demand, many businesses face liquidity issues and struggle to cover their running costs, despite cost saving measures such as short-time working compensation. A bundle of complementary measures is designed to prevent solvent businesses from getting into difficulties due to the COVID-19 pandemic.

On 25 March 2020 the Federal Council issued an emergency ordinance (COVID-19 Joint and Several Guarantee Ordinance) which provides for a programme to grant bridging loans (COVID-19 bridging loans) with joint and several federal guarantees for small and medium-sized enterprises (SMEs) in an amount equal to up to 10% of an SME's turnover or a maximum of Sfr20 million. The emergency ordinance entered into force on 26 March 2020. From this date and provisionally until 31 July 2020, applications for COVID-19 bridging loans can be submitted to participating Swiss banks and, to a limited extent, PostFinance AG.

Types of COVID-19 bridging loan

There are two types of COVID-19 bridging loan: the COVID-19 loan and the COVID-19 loan plus.

COVID-19 loan (up to Sfr500,000)
Bridging loans of up to Sfr500,000 (10% of the annual turnover, up to Sfr500,000) are paid out without much red tape within a short period of time and are 100% secured by the state. The interest rate on these bridging loans is currently 0%.

COVID-19 loan plus (exceeding Sfr500,000)
Bridging loans exceeding Sfr500,000 (10% of the annual turnover, from Sfr500,000 up to Sfr20 million) are 85% secured by the state. The lending bank must bear the risk for the remaining 15% of the loan. Such loans therefore require a more comprehensive credit approval procedure. For these bridging loans, the interest rate is currently 0.5% per annum on the loan amount secured by the state (ie, 85% of the COVID-19 loan plus), whereas the interest rate applicable to the unsecured part of the loan is individually determined and agreed on by the applicant SME and the lending bank. PostFinance AG is not allowed to grant such COVID-19 loan plus.

Amount of loan funds

The total amount guaranteed in accordance with Articles 3 and 4 of the COVID-19 Joint and Several Guarantee Ordinance relevant to this is a maximum of 10% of the turnover (net proceeds) of the relevant Swiss entity's business in 2019; if the annual financial accounts for 2019 are not yet final, the provisional financial statements are decisive or, if these are also missing, the turnover of the business year 2018 is decisive.

Neither the COVID-19 Joint and Several Guarantee Ordinance nor the explanatory notes issued by the Federal Department of Finance dated 25 March 2020 explicitly address how to deal with Swiss or international groups. Yet, it seems relatively clear that each operating Swiss entity of a group should be eligible to participate (based on its stand-alone financial statements).

If the incorporation and commencement of business operations took place in 2019 and the financial year is not completed by the end of 2020 (ie, a prolonged first financial year), the turnover shall be deemed to be three times the total net salaries for a financial year, with a minimum of Sfr100,000 and a maximum of Sfr500,000.

According to the Federal Department of Finance's explanatory notes, this rule aims to grant enough liquidity to cover the fixed costs of a start-up for slightly more than three months, assuming that the cost base consists of approximately one-third each of wage costs (which can be covered by short-time working compensation or COVID-19 emergency ordinance regarding income compensation), variable costs and fixed costs.

Duration of joint and several federal guarantee and amortisation

The maximum duration of a joint and several federal guarantee is five years (with a possibility to extend for two additional years in certain cases).

In general, the loans granted must be amortised in the same time period.

Requirements for COVID-19 bridging loan

In order for an SME to apply to a bank for a bridging loan or to PostFinance AG for a COVID-19 loan, it must:

- be a simple partnership, partnership or legal entity, each with its registered office in Switzerland or – for COVID-19 loan plus only – have a company identification number (UID number);
- have been founded before 1 March 2020;
- have a turnover of no more than Sfr500 million;
- not be, at the time of filing the application, in bankruptcy or composition proceedings or in liquidation;
- be economically significantly impaired due to the COVID-19 pandemic, in particular with regard to its sales;
- not have, at the time of filing the application, already received liquidity protection based on emergency legal regulations in the areas of sport or culture; and
- pass a credit assessment in line with industry standards – for COVID-19 loan plus only.

Procedure for obtaining COVID-19 bridging loan

Both COVID-19 loans and COVID-19 loan plus require an application by the respective SME.

For COVID-19 loans, a standardised agreement must be signed and submitted to a participating bank. Once the bank has assessed the completeness of the application and forwarded it to the guarantee organisation, the lending bank will disburse the funds to the applicant SME (there is no need to wait for a formal approval by the guarantee organisation). Hence, if the application for a COVID-19 loan is submitted to the SME's house bank, funding should be possible within the same day.

For a COVID-19 loan plus, a standardised application must be submitted to a participating bank. The completeness of the application will then be checked by the corresponding bank and forwarded to the guarantee organisation. After the application is approved by the guarantee organisation, the lending bank will pay out the loan funds to the applicant SME. As the bank and the SME applicant must agree on the interest applicable for the unsecured 15% tranche of the COVID-19 loan plus, the parties will have to reach an agreement in this respect before the bank submits the application to the guarantee organisation.

No entitlement to COVID-19 bridging loan

There is no entitlement to a COVID-19 bridging loan: neither the banks nor PostFinance AG are obliged to grant such loans to their customers.

Use of loan funds

COVID-19 bridging loans serve exclusively to secure bank loans for the applicant SME's on-going liquidity needs. For instance, a COVID-19 bridging loan cannot be used to make new investments in fixed assets unless these would be considered as replacement investments.

According to Article 6(3) of the COVID-19 Joint and Several Guarantee Ordinance, for the duration of the joint and several guarantee, a participant SME must not:

- distribute dividends, profit shares or (re)distribute previous capital contributions;
- grant any loans or refinance private and shareholder loans, with the exception that overdrafts accumulated with the bank granting a COVID-19 bridging loan as of 23 March 2020 may be refinanced by applying the proceeds of a COVID-19 bridging loan;
- the repayment of group loans; and
- the transfer/forwarding of COVID-19 bridging loan funds to a group company directly or indirectly affiliated with the applicant SME which is not domiciled in Switzerland.

While some of the restrictions seem to be quite clear, others bear a significant risk as they are open to interpretation. First, Swiss entities that participate in a physical or notional cash pooling should carefully assess the effects of obtaining a COVID-19 bridging loan, in particular as the fines imposed for non-compliance might be applicable per breach.

Parties which deliberately obtain a COVID-19 bridging loan with false information or apply the proceeds in breach of Article 6(3) of the COVID-19 Joint and Several Guarantee Ordinance will be fined up to Sfr100,000, unless the action in question qualifies as a more serious crime (eg, fraud).

Exception from capital protection rules

COVID-19 loans (up to Sfr500,000) bear a significant additional benefit by providing an exception with regard to the capital protection rules provided by Swiss corporate law. Pursuant to Article 725(2) of the Code of Obligations, certain duties are imposed on a company's directors if the annual balance sheet shows that half of the share capital and legal reserves are no longer covered by net assets, or an interim balance sheet shows that a company's liabilities are no longer covered.

Assuming that the COVID-19 pandemic might not entail only liquidity issues for many businesses, but presumably will also impair their profitability, Article 24 of the COVID-19 Joint and Several Guarantee Ordinance states that COVID-19 loans will not be taken into account when determining a company's net equity for the purposes of Article 725 of the Code of Obligations. Yet, it should be noted that such exception does not apply in respect of COVID-19 loans plus (exceeding Sfr500,000).

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