Department for Business, Energy & Industrial Strategy

Sarah Munby
Permanent Under-Secretary of State
1 Victoria Street
London
SW1H 0ET

T: +44 (0)20 7215 5916

E: permanentsecretary@beis.gov.uk

Meg Hillier MP
Chair, Public Accounts Committee
House of Commons
Westminster
SW1A 0AA

23 November 2020

Dear Chair,

FOLLOW-UP TO 5 NOVEMBER PUBLIC ACCOUNTS COMMITTEE HEARING

Thank you for inviting me to give evidence to the Committee earlier this month on the Bounce Back Loan Scheme. As agreed, I am writing to follow up on a couple of specific questions raised by the Committee. I understand that Sir Tom Scholar and Catherine Lewis La Torre are writing to you separately to address other outstanding queries.

Accounting treatment of Business Interruption Payment

With reference to IFRS 9 accounting standards, Craig Mackinlay asked whether there has been any instruction "as to how businesses should account for free interest over the year" and whether this is something HM Treasury might want to tax.

For both the Bounce Back Loan Scheme and the Coronavirus Business Interruption Loan Scheme, the Government makes a Business Interruption Payment to cover the first twelve months of interest payable on each facility drawn.

Whilst companies may wish to prepare their financial statements in accordance with EU-adopted IFRS 9, it is possible that businesses that have taken out Bounce Back Loans will instead apply FRS 102 (the Financial Reporting Standard applicable in the UK and Republic of Ireland) or FRS 105 (the Financial Reporting Standard applicable to the Micro-Entities Regime).

Neither the IFRS Foundation nor the Financial Reporting Council has issued guidance on the application of accounting standards to specific government support schemes. The Financial Reporting Council has previously issued guidance on the treatment of interest-free and below market rate loans, however this is not specific to the Government's Covid-19 support schemes.

The UK GAAP Technical Advisory Group provides advice on accounting (and related company law) issues for all entities applying UK accounting standards. When the Group meets early next month, they will discuss whether to issue new guidance or signpost to existing information on the application of accounting standards to government support schemes. The Group will advise my Department of the outcome shortly afterwards.

HM Treasury keeps the tax system under review.

Holding company directors to account for their actions

Peter Grant asked about whether the Government has adequate powers to hold company directors to account, given the fraud risk associated with the Bounce Back Loan Scheme.

A number of powers already exist, but we have plans to strengthen them further.

Under the Companies Act 2006, directors have a duty to promote the success of the company for the benefit of its shareholders. In acting as a director, they are to have regard to a number of issues, including the consequences of any decision in the long term for the company. It is important to stress that the vast majority of directors do take heed of their duties and act in good faith. However, evidence has shown that some are fraudulently claiming Bounce Back Loans, and, as I explained during the Committee session, the Government is implementing a range of counter-fraud measures including investigation and enforcement.

The act of a company transferring assets with the intention of dissolving the original entity without paying the liabilities owed is often referred to as "phoenixing" and is an issue that a range of existing legislation targets. An administrator can bring claims against directors for fraudulent trading, which stops companies moving straight to dissolution without having to work with a regulated insolvency practitioner. Existing regulations also forbid the director of an insolvent company from forming, managing, or promoting any business of a company with the same or a similar name. The person in question can face criminal and civil penalties, including disqualification from acting as a director.

However, there are limitations to the powers held by the Insolvency Service to investigate the actions of directors, where the company in question has already been dissolved. Following a consultation in 2018, the Government announced reforms that would allow the Insolvency Service, on behalf of the BEIS Secretary of State, to investigate directors, even where a company is already dissolved. These reforms would also allow for disqualification of such directors and/or for the directors to be made to compensate creditors, as appropriate. These proposals complement the existing powers of the Insolvency Service to investigate director conduct and would strengthen the Service's ability to take rogue directors out of the marketplace. The Government intends to introduce the measure into Parliament in due course.

Following an Insolvency Service review of voluntary industry reforms to pre-pack sales, the Government has also recently announced its intention to legislate to require independent scrutiny of pre-pack sales to connected people. The new measures are intended to reassure creditors that pre-pack sales are for proper value and are not being used by directors or those connected with an insolvent company as a means to rid a company of its liabilities and immediately start up a new company. Draft regulations have been published and the Government will review the proposed legislation in light of responses to ensure that any concerns, including those regarding phoenix companies are addressed by the regulations. The Government will introduce regulations into Parliament in due course.

With these reforms, the Government will have even stronger powers to investigate, target and punish fraud perpetrated by company directors. This includes through criminal and civil penalties, including disqualification from being a director for a period of time.

Further reforms will increase the transparency and robustness of the register of companies and the insolvency framework, which will also help to tackle fraudulent use of companies. The Government has recently announced a range of measures to this end, including:

- Reforming the powers of the Registrar of Companies to allow them to query information that is submitted to Companies House, rather than having to accept information that is validly submitted;

- Requiring company directors to have verified IDs, and allowing only agents properly supervised under anti-money laundering regulations to file information;

- Introducing an obligation on bodies that fall under the Anti-Money Laundering (AML) regulations to report discrepancies between the public register of companies and the information they hold on their customers; and

- Permitting cross-referencing of Companies House data against other data sets as part of stronger sharing of intelligence across Companies House, HMRC and law enforcement agencies.

These reforms will ensure that law enforcement has the powers and information they need, including those required to properly tackle fraud. The reforms will ensure that the regulatory framework for setting up and reporting company information will continue to support the UK's global reputation as a trusted and welcoming place to do business and a leading exponent of greater corporate transparency.

Sarah Munby

Permanent Secretary for Business, Energy & Industrial Strategy