

March 30, 2019

## SPECIAL REPORT

New Federal Stimulus for Businesses during the COVID-19 Crisis.

It is merely days after enactment of the Coronavirus Aid, Relief and Economic Security (CARES) Act. In brief, subject to important limitations, all small businesses will be eligible for a low cost, long-term loan of as much as two and a half months of their historical payroll costs, some of which will be subject to complete forgiveness of indebtedness.

What law applies? The part of the CARES Act that is of most immediate interest is the Paycheck Protection Program (the “PPP”). This program will be administered by the Small Business Administration (the “SBA”) through banks that have been approved by the SBA.

How is the program administered? We anticipate that all businesses wishing to take advantage of the PPP will do so through approved banks, rather than through the SBA. A business that regularly banks with an institution that has not been preapproved by the SBA will either have to wait for its bank to go through the approval process or else contact a different bank that is already approved.

What businesses are eligible? All “small businesses” are eligible, defined by the CARES Act as businesses having 500 or fewer employees. There are some exceptions in the Act that include additional businesses as well.

What is the amount of the available loan? A qualifying business will be eligible for a loan of up to 2 ½ months of its average payroll costs incurred by the business during the 12 months leading up to the loan, with a maximum loan of \$10 million. Payroll expense paid to any individual in excess of \$100,000 per annum is not included in determining the average payroll cost.

What can the loan be used for? Loan proceeds may be used for payroll costs, mortgage interest, rent, and utilities paid by the business between February 15, 2020, and June 30, 2020.

What will the terms of the loan be? Payments may begin 6 to 12 months after the start of the loan, and the term of the loan may be as long as 10 years. The interest rate will be not more than 4%. Neither collateral nor personal guarantees will be required.

Is the government really going to forgive part of the loan? Yes. The government will forgive the total amount of the loan spent on payroll costs, mortgage interest, rent, and

utilities paid by the business during the 8-week period beginning on the origination date of the loan. There are special rules limiting the amount of forgiveness, such as where an employee makes more than \$100,000 per annum or an employee has been required to take a pay cut of more than 25%.

But if the government cancels a portion of this debt, won't the business be subject to income tax on "cancellation of indebtedness income?" No. The CARES Act prevents the forgiveness of this debt from being taxed under normal Internal Revenue Code provisions. The cancellation of debt, combined with the protection from taxation of that forgiveness, turns that portion of the PPP loan into what some might categorize as a tax-free subsidy to the business.

Pavia & Harcourt cautions that the foregoing is merely a summary, based on early readings of the CARES Act. Regulations (yet to be proposed by the SBA) are likely to give more precise guidance than is presently available. In the meantime, it would be appropriate for all businesses that may be interested in obtaining a PPP loan to make a preliminary determination whether to move in that direction. If yes, we are available to guide you toward a satisfactory result. Although the federal government has made a huge amount of money available in this program, it could be that businesses are already lining up at the front door of their favorite bank, and it would be unfortunate to wind up at the end of the line. Under present legislation, the availability of the loan program will end on June 30, 2020.

### **Contacting Pavia & Harcourt LLP**

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