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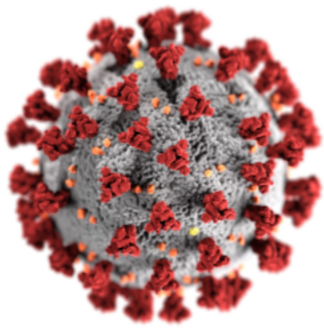
# COVID-19 Updates



## Can the U.S. Relief Program be relevant to Israeli related tech companies?

**03/04/2020**

As businesses of all shapes and sizes grapple with the countless issues posed by the global COVID-19 pandemic and resulting economic crisis, governments have scrambled to provide expedient relief to impacted businesses.

The U.S. Coronavirus Aid, Relief, and Economic Security ("CARES") Act signed into law by President Trump provides support not only to those industries most immediately impacted by the crisis, such as travel and hospitality, but also to small U.S. businesses across industries facing financial hardship.  Among other measures, the CARES Act provides assistance by supplementing and expanding existing loan and assistance programs of the U.S. Small Business Administration (the "SBA") – an agency of the federal government dedicated to assisting small businesses.

Expanding the SBA's existing "Section 7(a)" loan program (through which the SBA partially guarantees loans to qualifying businesses by authorized lenders) the CARES Act's Paycheck Protection Program ("PPP") authorizes the SBA to guarantee up to $349 billion of additional loans.

The PPP is intended to provide up to $10 million to a qualifying business to help cover payroll and some other basic operating expenses incurred between February 15, 2020 and June 30, 2020.  Further, the PPP provides for the forgiveness of certain loan amounts, in an effort to provide a strong incentive for such businesses to retain employees during this turbulent time.

The implementation of the PPP is continuing to develop in real-time, however certain key elements included in the CARES Act, and summarized below, can allow management teams to assess their eligibility and consider whether PPP loans may be advantageous.

In guidance issued this week, the U.S. Treasury and SBA have indicated that they expect corporate borrowers to be able to apply as soon as Friday, April 3. Given the anticipated high subscription for PPP loans, it is advisable for borrowers to approach their SBA approved lenders as soon as possible to begin gathering relevant application materials (including payroll documentation).

1. **Borrower Eligibility.**

- **US Located.** In order to be eligible for SBA loans generally, a potential borrower must be located in and operating primarily in the U.S., or alternatively have an operation in the U.S. that makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials, or labor. In general, a U.S. subsidiary of an Israeli company may potentially be eligible for an SBA loan.

- **Size of Business.** In general, in order to be eligible for a PPP loan, a borrower (and its affiliates) may not have more than the greater of (i) 500 employees, or (ii) such higher limit set for the borrower's industry under SBA rules. Notably, the SBA's rather broad definition of "affiliate" may be deemed to include minority shareholders who have been granted veto or consent rights and such shareholders' other holdings. Accordingly, companies with venture capital or private equity investors should carefully consider this issue with counsel when determining their eligibility status.

- **Loan Eligibility.** In addition to the size requirement, a borrower is required to have been operating as of February 15, 2020 and must also certify that: (i) the uncertainty of current economic conditions makes the loan request necessary to support its ongoing operations; and (ii) the loan proceeds will be used to retain workers and maintain payroll or make mortgage, lease or utility payments.

2. **Loan Terms.** PPP loans will be subject to an interest rate of 0.50% and not subject to fees. The payment of interest and principal will be delayed for 6 months. The loans will mature after 2 years, and repayment will be permitted at any time with no penalty. No security or personal guarantee will be required from borrowers.

3. **Borrowing Limit.** The total amount available to an eligible borrower will be 2.5x its average monthly payroll costs, capped at $10 million. Compensation to any individual in excess of $100,000 annually will be excluded from such payroll costs.

4. **Use of Proceeds.** PPP loan proceeds may be used to cover the borrower's (i) payroll costs, (ii) mortgage or rent obligations, (iii) utility bills, and (iv) interest on existing debt (incurred pre-February 15, 2020).

5. **Loan Forgiveness.** A PPP loan will generally be eligible for loan forgiveness for amounts used to cover payroll expenses, and a portion of the non-payroll expenses described in (ii)-(iii) of Item 4 during the period of 8 weeks following receipt of the loan. In its guidance published April 1, 2020, the U.S. Treasury explicitly stated that in light of the expected high subscription, it anticipates that not more than 25% of the forgiven amount may be for non-payroll costs. The portion of such amounts eligible for forgiveness will be reduced in the event that during the period between February 15, 2020 and June 30, 2020 the borrower either (i) reduces headcount, or (ii) reduces wages by more than 25%, in each case, unless such changes are reversed prior to June 30, 2020.

While advice on the CARES Act involves U.S. law expertise, members of our team can assist in discussing the extent to which PPP loans may be available to Israeli related companies.

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