

"Help is coming!" – Important Questions and Answers on the COVID-19 Bridging Assistance from the Swiss Federal Government

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From 26 March 2020, numerous banks are providing bridging loans for Swiss companies that meet certain minimum criteria and have run into liquidity bottlenecks due to the COVID-19 pandemic. The loans will be secured by the federal government by means of joint and several sureties. The programme was developed jointly by the federal government and the banks and totals CHF 20 billion. The Federal Council put the corresponding COVID-19 Joint and Several Surety Ordinance into force on 26 March 2020, after the Finance Delegation of the Federal Assembly (FinDel) approved the necessary urgent commitment credit of CHF 20 billion on 23 March 2020. Due to the urgency of the matter, the commitment credit will only be submitted to parliament for approval at a later date.

This article is intended to answer initial questions on the most important cornerstones of the federal programme. This must be distinguished from the programmes of the individual cantons, which are not regulated by the emergency ordinance. They are in certain respects formulated differently from one another and from the federal programme and are not the subject of this article.

1. What opportunities does the programme offer for companies?

The programme offers Swiss companies basically two types of loans:

- COVID-19-Credit: Loans of up to CHF 500,000, 100% guaranteed by the federal government (via existing surety organisations) by means of a joint and several surety. These loans should be paid out by the banks quickly and unbureaucratically.
- COVID-19-Credit Plus: Loans from CHF 500,000 up to CHF 20 million, 85% of which are guaranteed by the federal government (via existing surety organisations) by means of a joint and several surety. These loans are subject to a credit check by the bank, as is customary in the industry.

In principle, for each company a maximum amount of CHF 20 million is available from a COVID-19-Credit and a COVID-19-Credit Plus.

In cases of hardship, a joint and several surety can exceptionally be provided for a loan in excess of CHF 20 million. However, the correspondingly increased joint and several surety must be approved by the Federal Department of Economic Affairs, Education and Research (EAER) in agreement with the Federal Department of Finance (FDF).

The programme is based on the existing structures of the surety organisations. The four surety organisations recognised by the federal government commit themselves as joint and several guarantors to the banks participating in the programme.

2. What is the maximum amount of bridging loans in individual cases?

Within the limits mentioned above, a company can apply for a bridging loan of up to 10% of its turnover in 2019. If the final annual financial statements for 2019 are not available, the provisional version is authoritative or, if this is also missing, the turnover in 2018. According to the forms for the loan agreement and the loan application, the turnover is determined by the individual financial statements (not a consolidated view).

For younger companies / start-ups, a special rule applies: if the company commenced business operations on 1 January 2020 or later, or if the business year is longer than one year due to the incorporation of the company in 2019, turnover is deemed to be three times the net wage total for a business year, but at least CHF 100,000 and at most CHF 500,000.

Thus, effectively excluded from the programme are those start-ups which do not yet generate revenue but which are also not covered by the special rule (e.g. because they were incorporated in 2018 or earlier).

3. Which companies can claim a bridging loan as borrowers?

The bridging loans are to be granted to solvent self-employed persons and SMEs suffering from the economic consequences of the coronavirus. A company must meet the following conditions:

- Sole proprietorship, partnership¹ or legal entity² with registered seat in Switzerland;
- Maximum turnover of CHF 500 million in 2019;
- Founded before 1 March 2020;
- No bankruptcy or composition proceedings and no liquidation at the time the credit application is submitted;
- Significant economic impact, notably in terms of revenue, due to the COVID-19 pandemic; and
- No receipt of liquidity protection based on emergency regulations in the areas of sport or culture at the time the loan application is submitted.

To claim a COVID-19-Credit Plus (i.e. for amounts of CHF 500,000 or more), the company must also have a company identification number (UID number). In addition, a positive credit decision based on an industry-standard credit check by the lending bank is required.

¹ General partnership or limited partnership.

² Stock corporation, partnership limited by shares, limited liability company, cooperative, association or foundation.

4. For which companies is a bridging loan intended or suitable?

The bridging loans are basically intended to help those companies that were in good shape before the outbreak of the corona crisis. These measures should help them to get through the crisis. The long repayment period should enable the companies to repay the loans over time.

The bridging loans are less suitable for companies that were financially already severely affected before the crisis and that have little prospect of repaying the loans even after the end of the crisis. This is because the loans must be repaid in full after five years at the latest or, in cases of hardship, after seven years (subject to another political decision).

It should also be noted that the bridging loans – if they exceed CHF 500,000 – are to be booked normally as debt capital. As the liquidity outflow increases, companies are therefore at risk of falling into overindebtedness unless they can book corresponding turnover or other inflows. For loans of up to CHF 500,000 the federal government has found a remarkable solution to the problem of overindebtedness and smaller companies in particular can benefit considerably from this (see question 17 below).

It should also be noted that the loans are subject to certain restrictions on the borrower's entrepreneurial freedom (see question 16 below).

5. Can a bridging loan also be granted to companies that were already in financial difficulties before the corona crisis occurred?

Companies that are already in bankruptcy or composition proceedings or in liquidation at the time the credit application is submitted are excluded from the programme.

In contrast, companies that are not formally in bankruptcy or liquidation proceedings, but were in fact already in significant financial difficulties before the corona crisis, are not explicitly excluded from the programme under the emergency ordinance. The FDF's explanatory comments on the emergency ordinance give the impression that it was not the intention to grant loans to such companies. How the banks deal with this question in practice will be revealed over time. We assume that this question will play a role in particular in the necessary credit check for bridging loans of over CHF 500,000.

6. Which banks are involved in the programme as lenders?

The list of participating banks can be found at <https://covid19.easygov.swiss/banken/> and is updated regularly.

Exceptionally, PostFinance AG is also permitted to grant loans under this programme to businesses that were existing customers as at 26 March 2020. However, it may only grant loans up to a maximum amount of CHF 500,000 (i.e. COVID-19-Credit).

7. Is a company free to choose the lending bank?

In principle yes, provided that the selected bank participates in the programme.

However, the federal government rightly recommends that the company seeking credit should contact its principal bank. This is because with a new bank the company must first go through the normal account opening process (including the so-called AMLA/KYC check). This can lead to delays in the granting of the loan.

8. Can a company obtain bridging loans from several banks or participate in other federal or cantonal aid programmes?

Only one credit application per company can be made up to CHF 500,000. For further bridging assistance up to a maximum of CHF 20 million, a separate application must be made. In the loan agreement or loan application, the company submitting the application must provide a corresponding confirmation. A false statement in this regard may have consequences under criminal law (see question 18 below).

In addition, by signing the loan agreement or the loan application the company releases the bank, the surety organisations and the authorities from bank-customer, tax and official confidentiality obligations. A central data collection system will be used to detect multiple applications by individual companies.

Participation in supplementary cantonal bridging assistance is possible at any time from the federal perspective. However, anyone who has already received assistance within the framework of the emergency programmes for sports and cultural events is excluded from the programme.

9. What procedure must a company follow to apply for a bridging loan?

An overview of the application procedure can be found at <https://covid19.easygov.swiss/> (in German, French and Italian; not English).

COVID-19-Credit (up to CHF 500,000)

The company completes the document "COVID-19-CREDIT (loan agreement)" at <https://covid19.easygov.swiss/>, prints and signs the document and sends it either electronically (by e-mail) or by letter post to a bank participating in the programme. It is not necessary to submit the original.

The loan agreement is specified by the emergency ordinance and is not negotiable.

COVID-19-Credit Plus (from CHF 500,000 up to CHF 20 million)

In addition to the document "COVID-19-CREDIT (loan agreement)", the company completes the document "COVID-19-CREDIT-PLUS (loan application)" at <https://covid19.easygov.swiss/>, prints and signs the document, and sends it electronically (by e-mail) or by letter post to a bank participating in the programme.

The bank may use its own template for the loan agreement. It can be expected that only a very limited number of companies will be able to negotiate the terms.

10. Is there a credit check?

COVID-19-Credit (up to CHF 500,000)

There is no credit check. The bank relies on the self-declaration of the company and proceeds as follows:

- It checks whether the company is already a customer and performs the usual signature verification;
- In case of a new customer, it carries out the complete KYC/account opening procedure in advance; and
- It checks if the submitted loan agreement is complete.

COVID-19-Credit Plus (from CHF 500,000 up to CHF 20 million)

A credit check is carried out in accordance with standard industry practice. The bank proceeds as follows:

- It checks whether the company is already a customer and performs the usual signature verification;
- In case of a new customer, it carries out the complete KYC/account opening procedure in advance;
- It checks if the submitted loan application is complete; and
- It carries out an industry-standard credit check and takes into account the joint and several surety in accordance with the emergency ordinance.

It can be assumed that the credit check will take at least a few days. The consideration of the joint and several surety should facilitate the credit check in practice.

11. When will the bridging loan be paid out?

COVID-19-Credit (up to CHF 500,000)

If the loan agreement submitted by the company is complete, the bank can determine the credit limit and pay the company the corresponding loan amount. The loan agreement is not signed by the bank; it is deemed to be concluded when the loan is granted.

COVID-19-Credit Plus (from CHF 500,000 up to CHF 20 million)

If the loan application submitted by the company is complete and the credit check is positive, the bank concludes a loan agreement with the company. As a next step, the bank forwards the loan application, the loan agreement and the surety agreement completed and signed by the bank to the central office of the surety organisations. As soon as the bank receives back the surety agreement signed by the relevant surety organisation, it can determine the credit limit and pay the company the corresponding loan amount.

12. Can the bank refuse to grant a bridging loan?

Yes, a bank can refuse to grant a bridging loan without having to give reasons.

According to the form for the loan agreement, this also applies to loans of up to CHF 500,000, but we assume that a bank participating in the programme will only refuse such a loan in exceptional cases due to poor creditworthiness. It is conceivable, however, that a bank will reject the application if, for example, the loan agreement has not been completed in full, a new customer does not meet the KYC/account opening requirements or the conditions described in question 3 above are clearly not met.

In the case of bridging loans in excess of CHF 500,000, the banks may reject a company's loan application on the grounds of lack of creditworthiness or for other reasons and need not give the company making the application any reasons. It remains to be seen how the credit check is handled by the banks in practice.

13. Under what conditions will the bridging loans be granted?

Interest rate

The following interest rates currently apply:

- COVID-19-Credit (up to CHF 500,000): 0% per year;
- COVID-19-Credit Plus (for the amount secured by the joint and several surety from CHF 500,000 up to CHF 20 million): 0.5% per year.

The FDF adjusts the interest rates once a year on 31 March (for the first time on 31 March 2021) in line with market developments and in consultation with the participating banks. In any case, the above-mentioned interest rates apply as a minimum.

For the amount of a COVID-19 -Credit Plus not secured by a joint and several surety, it is up to the bank and the company to agree on the interest rate.

Term or amortisation

The loans must be fully amortised within five years. In cases of hardship, the bank may, with the consent of the surety organisation, extend the period once by two years, i.e. to a maximum of seven years.

14. Can the bank demand amortisation during the term of the bridging loan, introduce a limit reduction or terminate the loan prematurely?

According to the loan agreement for loans of up to CHF 500,000, the banks reserve the right to introduce amortisation or limit reductions during the term of the loan. In practice, they will probably do so, for example, if the warranties given by companies subsequently prove to be false. In addition, the banks can also terminate the bridging loans granted at any time with immediate effect for regulatory or legal reasons. In particular, they will do so if the standards for combating money laundering or terrorist financing or the loan agreement are violated.

For loans in excess of CHF 500,000, these conditions will depend on the loan agreement of the bank, which will use its own template.

15. Can a company combine a bridging loan with another loan outside the programme?

Yes, it is possible to combine a bridging loan with another loan outside the programme that is not secured by a joint and several surety of the federal government.

16. Are the companies restricted in the use of the bridging loans received or otherwise?

The joint and several sureties under the emergency ordinance serve exclusively to secure bank loans for the ongoing liquidity needs of the companies. This includes, in particular, the coverage of obligations arising from third-party goods and services, the payment of wages and the payment of rent.

In this sense, the emergency ordinance excludes the following for the duration of the joint and several surety:

- Granting of loans to third parties, group companies or shareholders.
- Refinancing of existing loans, with the exception of offsetting against account overdrafts since 23 March 2020 at the bank that granted the bridging loan. According to the FDF's explanatory comments on the emergency ordinance, ordinary amortisation and interest payments on existing bank loans should continue to be permitted.
- Payment of dividends or shares of profits paid to board members or repayment of capital contributions to shareholders.
- Repayment of group loans.
- Financing of foreign group companies with credit funds (e.g. through cash pooling).
- New investments in fixed assets, provided they are not replacement investments.

The banks must contractually preclude the improper use of the bridging loans to the company and the company must provide written warranties to this effect. Corresponding false statements by the company may have criminal consequences (see question 18 below). As far as can be seen, the banks have no further obligations to monitor the use of the funds received for the intended purpose.

The described earmarking of the bridging loans substantially restricts the entrepreneurial freedom of the borrowers and their shareholders. This creates a strong incentive for companies to repay the bridging loans they have taken out as quickly as possible. It is to be hoped, however, that the banks will not restrict all capacity to act so that the aid programme does not become a "golden cage" for the companies.

17. What effects do the bridging loans have on the company's balance sheet (capital loss and overindebtedness)?

As a rule, the bridging loans taken out must be booked as normal debt capital. There is thus a risk that the borrowing companies will suffer a capital loss relatively quickly or even fall into overindebtedness (Art. 725 CO) and, in the worst case, would have to file for bankruptcy.

The emergency ordinance provides a significant and welcome relief in this respect for loans of up to CHF 500,000: these loans do not have to be taken into account when calculating a capital loss or overindebtedness; however, this is only possible until 31 March 2022.

However, this relief does not apply to loans in excess of CHF 500,000. Here, the borrowing companies must carefully monitor their balance sheet situation and, if necessary, restructure their balance sheet (e.g. by subordinating loans, reducing the share capital or raising new equity capital).

18. How can abuses in relation to or in the use of the bridging loans be prevented?

Since the bridging loans are to be granted quickly and easily, the emergency ordinance does not provide for any drastic monitoring mechanisms with regard to compliance with the conditions and the purpose of use.

After all, the companies applying for the loans must provide the banks with corresponding warranties in writing. According to the emergency ordinance, anyone who deliberately obtains a bridging loan with false information or uses the loans obtained for purposes other than those for which they were intended is liable to prosecution and a fine of up to CHF 100,000. Appropriately, it was decided to dispense with a requirement for negligence. In principle, additional offences under criminal law, such as fraud and forgery, could also be considered, although the hurdles for a conviction are very high.

The threats of punishment will have a certain deterrent effect. However, they cannot completely rule out abuses.

19. What is the deadline for a company to apply for a bridging loan?

Companies must have submitted their loan agreements or loan applications to a bank participating in the programme by 31 July 2020 at the latest.

Depending on the situation at that time, we do not rule out the possibility that the federal government may extend the programme beyond that date.

If you have any questions on this topic, the members of the VISCHER Banking and Finance team will be happy to assist you.

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