**COVID-19** Coronavirus Business Impact Broadcast Series

# Paycheck Protection Program: Considerations for PE Portfolio Companies


APRIL 06, 2020

On April 6, 2020, Dechert's Private Equity group presented ''Paycheck Protection Program: Considerations for PE Portfolio Companies," an episode of the firm's COVID-19 Coronavirus Business Impact Broadcast Series. The episode was hosted by John LaRocca (moderator), a partner in the firm's Philadelphia office; Christian Matarese, a partner in the firm's New York office; and Allie Misner, an associate in the firm's Philadelphia office.

The presenters gave a high-level overview of the Paycheck Protection Program (''PPP") created by the Coronavirus Aid, Relief and Economic Security Act (''CARES Act"), with particular emphasis on its implications for the eligibility of private equity portfolio companies.

## HIGHLIGHTS FROM THE EPISODE

### PPP Loan Eligibility

PPP is a US$350 billion loan program created pursuant to the CARES Act that expands access to the Small Business Administration's (''SBA") existing loan program for qualifying small businesses. Generally, a business must have 500 or fewer employees to qualify. In determining the number of employees of a business, the SBA aggregates the employee headcount of companies that are considered affiliates. This means that a portfolio company seeking a PPP loan must aggregate its U.S.-based employees with the U.S.-based of all portfolio companies affiliated to the same private equity fund or even GP to determine whether the company has 500 or fewer employees.

### Affiliation Issues

The affiliate aggregation rules present a significant barrier to portfolio companies hoping to qualify for a PPP loan. Affiliation is defined broadly based on a concept of control and the application of the rules can require a fact-intensive analysis. There are some limited exceptions to the affiliation rules for: (i) companies in the hospitality and food services industries; (ii) certain franchises; and (iii) businesses that receive financial assistance from a small business investment company, or SBIC. Although there are lobbying efforts underway for Treasury and the SBA to waive the affiliation rules or at least interpret them narrowly, they remain intact as of now.

### Overview of Loan Terms

The terms of PPP loans are attractive. Eligible borrowers can receive a forgivable loan that is equal to 2.5 times their average monthly payroll over the last twelve months, and can use the funds to pay payroll, mortgage interest or rent, and utilities. The entire loan amount can be forgiven if spent on qualifying expenses. Any amount not forgiven carries a 1% interest rate with maturity after two years, with payments deferred for six months. No guarantee or collateral is required.

### Immediate Advice

Companies interested in a PPP loan are encouraged to act quickly, as the program is running on a first-come, first-served basis. Companies should start a conversation with their lenders, carefully consider the application itself and the required documentation, review their existing credit agreement for any issues with receiving a PPP loan, and reach out to us to discuss any questions.