

## Guidance Note on Making Directors

Directors can be involved in loans to the company in the following ways:

- a) a company may make a loan to a director or
- b) a director of a company may make a loan to the company.

There are very strict criteria involved in making loans to directors, this is set out below. The criteria involved where a director (or shareholder) makes a loan to a company are also set out below. However, there are still issues which a company must consider, most particularly in relation to substantial property transactions and the prohibition on loans to directors.

### 1. Loans to directors and the prohibition on loans to directors

The Companies Act 2006 replaced the previous prohibition on loans to directors, replacing it instead with a requirement for loans to directors to be subject to shareholder approval.

A private company may make a loan to a director, or give a guarantee or security for a director, or provide security in connection with a loan to a director, or give a guarantee or security for a third party to such a director. However, the transaction must be approved by an ordinary resolution of the shareholders.

#### *Exception for loans under £10,000*

If the aggregate value of the loans to a director does not exceed £10,000, there is no need to obtain shareholder approval (note that the £10,000 is an aggregate value, meaning that if a director has several loans to a director combine to a value over £10,000, it would still require approval.)

#### *Other exceptions to the requirement for shareholder approval*

There are other exceptions to the requirement for shareholder approval. For example, shareholder approval is not required for expenditure (of under £50,000) on company business, or to provide the director with funds to defend civil or criminal proceedings with the company.

#### *Connected persons*

Companies should watch out for the 'connected persons' provisions. Where a transaction with a director requires shareholder approval, such approval will also be required in respect of a transaction with a company and a person 'connected' with the director. Thus a loan to a company and a person 'connected' with the director would also require shareholder approval.

Connected persons include

- Members of the director's family (including spouse, civil partner, live-in partner, children or step children, children-in-law, and parents).
- A company in which the director exercises more than 20% of the share capital, or can exercise more than 20% of the share capital.
- A trustee, where the director exercises more than 20% of the trust.
- A partner of the director, where the director exercises more than 20% of the share capital, or can exercise more than 20% of the share capital.
- A legal firm where the director exercises more than 20% of the share capital, or can exercise more than 20% of the share capital.

We have more detail on the [Note: Directors' Duties, Conflicts of Interest and Loans](#).

This guidance note does not cover the implications of borrowing from a company and it is always recommended that specialist advice particularly if borrowing is being used as a means of obtaining a salary or dividend. HMRC has strict rules in place as regards company loans and this should always be investigated and considered in detail by tax professionals.

## 2. Loans from Directors to the Company

A director (or shareholder) may borrow from the company on the same basis as any other employee. This could be as an alternative to borrowing from a commercial organisation or in addition to funds the company has available.

Companies will sometimes borrow from directors in order to ease their cash flow requirements, particularly if the director is a sole shareholder. It may be cheaper and more convenient for the company to borrow from the director than to access other sources of funding. It is however important that the director will make the loan on less favourable terms than the company would. This may be the case where the director is the sole shareholder and sole director of the company. It is unlikely that the company will have sufficient control over the director to include extensive conditions in the loan agreement, as the director will have sufficient control over the company already. It is also probable that the events of the loan agreement will be more limited.

### *Security & interest*

Whether a director will require security for the loan is a commercial matter. However, the director should consider their own personal tax position and consult HMRC. If the director is a sole shareholder and sole director of the company, it may fall within the scope of the Companies Act 2006 – substantial property transactions. If it does, the director will need to obtain shareholder approval. Further details are available in the [Note: Directors' Duties, Conflicts of Interest and Loans](#). Note that the loan agreement will be more limited and it is recommended that the director should seek specialist advice in order to ensure that the loan is on commercial terms.

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A company in which the director exercises more of the share capital, or can exercise more of the share capital.

the trust.

the director.

connected person is a partner.

[Note: Directors' Duties, Conflicts of Interest and Loans](#).

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### *Conflicts*

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company's articles from vo

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company. The key questio  
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tion of security, transactions at an

se conflict of interest issues. The  
that the loan is on terms that will  
Companies Act 2006). If the lender  
to comply with his duty to declare  
the proposed transaction under  
or may be prohibited under the  
concerning the transaction.

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Any subsequent loan made by a  
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