

## Guidance Note on Loans to 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 a loan by a company to one of its directors, this is set out below. The criteria involved where a director (or shareholder) makes a loan to a company are less strict. However, there are still issues which a company must consider, most particularly in relation to substantial property transactions and loans to directors.

### 1. Loans to directors and the Companies Act 2006

The Companies Act 2006 replaced the previous prohibition on loans to directors, requiring that all loans to directors to be subject to shareholder approval.

A private company may not provide security in connection with a loan to a director, or give a guarantee or indemnity to a third party to such a director. However, the transaction may be approved by an ordinary resolution of the shareholders.

#### *Exception for loans under section 102*

If the aggregate value of all loans made by a company to a director does not exceed £10,000, there is no requirement for shareholder approval (note that the £10,000 is an aggregate value of multiple of small loans to a director combine to a value over £10,000).

#### *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 if the loan is for expenditure (of under £50,000) on company property or the loan is to provide the director with funds to defend civil or criminal proceedings in connection with the company.

#### *Connected persons*

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

Connected persons include

- Members of the director's family (including spouse, partner, or civil partner, live-in partner, children or step children, and children of live-in partner, and parents).
- A company in which the director holds 10% or more of the share capital, or can exercise more than 10% of the voting power.
- A trustee, where the director holds more than 10% of the trust.
- A partner of the director, or someone connected with the director.
- A legal firm where the director or a connected person is a partner.

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 you seek specialist advice particularly if borrowing is being used as a means of paying a salary or dividend. HMRC has strict rules in place as regards director's loans and this should always be investigated and considered with your tax professionals.

## 2. Loans from Directors to Company

A director (or shareholder) can lend money to the company on the same basis as any other lender. This could be as an alternative to a bank loan or in addition to funds the company has raised commercially.

Companies will sometimes need to raise funds in order to ease their cash flow requirements, particularly if they are growing. It may be cheaper and more convenient to borrow from a third party funding. It is however likely whatever the reason, a director will make the loan on less restrictive or onerous terms than a commercial organisation would. This may particularly be the case where the director is the sole director and sole shareholder of the company. It is unlikely that such a loan will include extensive conditions precedent and representation and warranties. The director will have sufficient control over the company already. It is also probable that the events of default under the loan agreement will be more limited.

### *Security & interest*

Whether a director will require security for the loan is a commercial matter. However, if a director is to charge interest on the loan is a commercial matter. However, if a director is to charge interest should consider their own personal tax position and seek to a specialist tax advisor and consult HMRC. If the director is to charge a charge over the assets 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 this is never a straightforward matter and it is recommended that you seek specialist advice is always sought in order to

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### *Conflicts*

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