

USING COMPANY LOANS FOR BUSINESS EXPANSION AND INVESTMENT

This fact sheet provides an overview of the key legal components and considerations for loan arrangements between a company and its shareholders or directors.

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KEY COMPONENTS OF A LOAN



- **Loan Amount:** Specify the amount the lender will provide to the borrower.
- **Interest Rate:** State the interest rate, if any, charged on the loan and the method for calculating interest.
- **Repayment Terms:** Define the repayment schedule, including instalment amounts, due dates, and any other relevant terms.
- **Security:** Determine if any collateral or security is required for the loan. This could be in the form of assets or guarantees.

TAX IMPLICATIONS



- Each party should consider potential tax implications or transactions arising from the loan, including forgiving the loan.
- These loans can attract specific tax rules, including those relating to Division 7A loans, transfer pricing, deemed dividends, and thin capitalisation rules. Seeking professional tax advice is recommended.

CORPORATE GOVERNANCE



- **Section 260A:** Comply with financial assistance provisions under section 260A. This section prohibits a company from providing financial assistance to purchase its shares or shares in a related corporate body, subject to certain exceptions.
- **Directors' Duties:** Directors should consider their directors' duties, such as the duty to act in the best interests of the company, to exercise care, skill, and diligence, to avoid conflicts of interest and to not trade while insolvent.
- **Related Party Transactions:** Disclosure obligations and potential approval requirements may apply under section 208, which deals with related party transactions. Disclosure to shareholders may be necessary in certain circumstances.

CORPORATIONS ACT 2001 (CTH)



- **Approvals:** The company's constitution or shareholders agreement may require directors, shareholders, or both to approve the loan.
- **Conflict:** A shareholder/director may be prohibited from approving the loan due to a conflict of interest.