

'Division 7A' Loan Agreement

Prepared for Test Client
Your client 123456
account number
Matter name Div7A Loan for Test Pty Ltd
Matter number 121212
Prepared by Test Person
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Questions or further information

If you have questions:

- **about how to use Cleardocs**, contact Cleardocs on (02) 9555 4849.
- **about legal issues**, contact the law firm Maddocks on (03) 9288 0555 and ask for Geoff Musgrove, or Julian Smith.

Loan Agreement

between

Test Company Pty. Ltd.

100 Fabrication Street

Sydney, NSW, 2000

('the company')

and

David Borrower

10 Disneyland Street

Sydney, NSW, 2000

('the borrower')

(a shareholder, or associate of a shareholder, of the company)

Test Organisation Pty Ltd

1 Test Street
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SAMPLE

A The facility

Loan at company's discretion

1 The company Test Company Pty. Ltd. may make one or more loans to the borrower:

David Borrower of 10 Disneyland Street

Sydney, NSW, 2000

This agreement applies to all loans made by the company to the borrower, except loans to which the company and the borrower agree that this agreement is not to apply.

Interest

2 As from 1 July after a loan is made, the borrower must pay interest on the outstanding amount of that loan at the Benchmark Interest Rate as defined in the *Income Tax Assessment Act 1936*. The interest accrues daily. It is to be computed quarterly.

Minimum annual repayment

3 In relation to each amalgamated loan, the borrower must make annual repayments by 30 June each year that are at least the minimum yearly repayments as defined in section 109E(5) of the *Income Tax Assessment Act 1936*.

Repayment of loan and interest

4 The borrower must repay each loan to the company, plus all interest that remains unpaid on it, no later than 7 years from the date the loan is made or is deemed by the *Income Tax Assessment Act 1936* to have been made. The borrower may repay any part of a loan, and any interest on a loan, before that date.

Capitalising interest

5 The company may capitalise any interest that has become due but remains unpaid. That interest is then to be treated as having been added to the amount loan as from the date it became due.

Company may require security

6 The company may at any time require the borrower to provide reasonable security for the performance of the borrower's obligations under this agreement.

Costs

7 The borrower must pay the company the costs it reasonably incurs in connection with this agreement, and any security the borrower offers or provides under it. This includes stamp duty.

B Default

Acceleration of amounts owing under this agreement

8 The company may elect to treat all loans made to the borrower under this agreement, and any interest that has accrued but remains unpaid as payable automatically and immediately if any of the following happens:

The borrower fails to pay an amount in accordance with this agreement.

The borrower assigns any of the borrower's property for the benefit of creditors or any class of them.

The borrower's interest in or under this agreement is attached or is taken in execution under any legal process.

A mortgagee or person with a similar legal interest in any of the borrower's assets takes possession of them or takes a step in that direction, or exercises a power of sale over them.

The borrower ceases to conduct or suspends the conduct of a major part of its business, or threatens to do, so except for the purpose of a solvent reconstruction or amalgamation that has been approved by the company.

The borrower disposes of its assets, or threatens to do so, except for the purpose of a solvent reconstruction or amalgamation that has been approved by the company.

A security interest becomes enforceable or is enforced against the borrower.

A distress, attachment or other form of execution is levied or enforced against the borrower for more than \$1,000.

The borrower takes any step to obtain protection under legislation against the borrower's creditors, or is granted that protection.

The borrower commits an act of bankruptcy or becomes insolvent.

C General provisions

Method of payment

9 The company may inform the borrower in writing that it requires payment under this agreement to be made in a specified way.

Joint and individual liability

10 The obligations imposed on a borrower by this document are imposed on them individually as well as jointly. A breach by any of them is a breach by all of them.

Waiver

11 The company only waives the exercise of a right or the performance of a duty under this agreement by specifically waiving it in writing, and then only to the extent it is specifically waived. Nothing else suffices.

Variation

12 The parties can only vary this agreement in writing.

Severability

13 Each provision in this agreement is to be interpreted in a way that makes it enforceable. If anything in this agreement is unenforceable, it is to be disregarded to that extent. All other provisions remain unaffected.

Jurisdiction

14 This agreement is governed by the law of . Each party submits to the jurisdiction of the courts of that jurisdiction. No party may argue, on the basis of the doctrine of forum non conveniens or any other basis, that the courts of that jurisdiction should not exercise jurisdiction.

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Definitions

Amalgamated loan means the total of all the loans made under this agreement that are made in a particular year of income and are not repaid by the end of that year.

Associate means what it means in Division 7A of the *Income Tax Assessment Act 1936*.

Loan means any of the following:

- an advance of money
- a provision of credit or of some other financial accommodation
- a payment of an amount for or on behalf of or at the request of the borrower where there is an express or implied obligation to repay the amount
- a transaction which in substance effects a loan of money.
- it includes any of these that is deemed to have been made under the *Income Tax Assessment Act 1936*.

SAMPLE

Execution

Executed as a deed.

Dated: _____

Signed for Test Company Pty. Ltd.

John Smith
Director

Witnessed by

Full name of witness

Signed by Test Company Pty. Ltd.

10 Disneyland Street
Sydney, NSW, 2000

Witnessed by: _____

Full name of witness: _____