

'Division 7A' Loan Agreement

Prepared for **jttd**
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What to do next

Before you print your document

You must press "CTRL + A" then "F9" to repaginate the table of contents once you have opened this document. If you forget to do this, you may see errors in the Table of Contents when you print, and there will be important omissions in the clauses of the document itself.

You need to arrange for the documents to be signed

How to establish the loan is explained in the *Division 7A Loan Establishment Kit*, prepared by Maddocks. The Kit starts on the next page.

Questions or further information

If you have any questions, you can call Cleardocs on 1300 307 343.

Cleardocs will answer all your administrative queries. These include, queries about our service, our website, registering as a user, payment or feedback.

Maddocks will answer all your questions about the nature, content, use, consequences, drafting and effectiveness of our documents.

All the legal information contained in this document is provided by our lawyers at Maddocks.

Division 7A Loan Establishment Kit

This Kit has been prepared by Maddocks.

Introduction: Understanding the loan's purpose

The Cleardocs division 7A loan agreement (Loan Agreement) is a loan agreement under which a company, or the trustee of a trust associated with the company, can make loans to shareholders or associates of shareholders of the company, without those loans being deemed dividends. This means that the loans do not attract the unfavourable tax consequences of Division 7A of the *Income Tax Assessment Act 1936*.

Process: Establishing the Loan Agreement

To effectively establish the Loan Agreement, you need to arrange for the Loan Agreement to be signed by all parties to the agreement.

The executed Loan Agreement does not need to be lodged with any authority. Nor is stamp duty payable in relation to the Loan Agreement.

Copies of the Loan Agreement

Each party to the Loan Agreement should keep an original executed version of the agreement.

Any questions?

If you have any questions, you can call Cleardocs on 1300 307 343.

Cleardocs will answer all your administrative queries. These include, queries about our service, our website, registering the user, payment or feedback.

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Loan Agreement

between

ABC Pty. Ltd., ACN 092 695 086

123 Smith St
Melbourne, ACT, 3000
(‘the company’)

and

Ash Jones

123 Main St
Melbourne, ACT, 3000
(‘the borrower’)
(a shareholder, or associate of a shareholder, of the company)

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Background

The borrower is a shareholder, or associate of a shareholder, of the company.

The company has made one or more loans to the borrower, and may make one or more loans to the borrower after the date of this agreement.

The parties wish to enter into this agreement to govern the repayment of the loans by the company to the borrower.

A The facility

Loan at company's discretion

The company, ABC Pty. Ltd., ACN 092 695 086, may make one or more loans to the borrower:

Ash Jones of 123 Main St
Melbourne, ACT, 3000

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

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*.

Minimum annual repayment

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

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

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 of the loan as from the date it became due.

Company may require security

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

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

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

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

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

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

The parties can only vary this agreement in writing.

Severability

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

This agreement is governed by the law of Victoria. 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.

Definitions

Amalgamated loan means the total of all the loans made pursuant to 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

a payment that would be deemed to be a dividend under Division 7A of the *Income Tax Assessment Act 1936*, but for which the borrower has taken 'corrective action' within the meaning given to that term in the Australian Taxation Office Practice Statement Law Administration PS LA 2007/20

it includes any of these that is deemed to have been made under the *Income Tax Assessment Act 1936*.

Execution

Executed as a deed.

Dated: _____

EXECUTED by ABC Pty. Ltd., ACN 092 695
086 in accordance with Section 127(1) of the
Corporations Act 2001:

Signature of sole director and sole company
secretary

Belinda Sample

Name of sole director and sole company
secretary

Signed by Ash Jones

123 Main St
Melbourne, ACT, 3000

Witnessed by: _____

Full name of witness: _____