

## 'Division 7A' Loan Agreement

Prepared for James  
Matter name 26522  
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### What to do next

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#### 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

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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. All the legal information contained in this Kit is provided 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?

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

# Loan Agreement

between

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**Lily Author**

**Marie Kyle**

**Peter Parker**

as trustees for the Author Lily & trust

sample

22 street

Melbourne, ACT, 3000

('trustees')

and

**Wings International Pty. Ltd., ACN 004 986**

**270**

as trustee for the Marie Kyle & Trust

sample

22 street

Melbourne, VIC, 3000

('the borrower')

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

770 Industrial Street  
5653 Bourke Street  
Ballarat SA 3350  
Tel: 000000000  
Fax: 03 98869123  
admin2@cleardocs.com

Maddocks Lawyers  
Tel: 1300 307 343  
(c/- Cleardocs)  
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## Background

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

The company is presently entitled to an amount from the net income of the trust.

The trustee 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 trustee to the borrower.

### A The facility

#### Loan at trustee's discretion

1 The trustees, Lily Author, Marie Kyle and Peter Parker, may make one or more loans to the borrower:

Wings International Pty. Ltd., ACN 004 986 270 of sample  
22 street  
Melbourne, VIC, 3000

This agreement applies to all loans made by the trustee to the borrower, except loans to which the trustee 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*.

#### 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*. However, the parties acknowledge that, if:

- the borrower fails to pay a minimum yearly repayment or all of a minimum yearly repayment (shortfall);
- the borrower is experiencing hardship due to COVID-19;
- the borrower makes an application to the regulator in the requisite form for an extension of time to repay the shortfall;
- the regulator makes a decision not to regard the shortfall as a payment of a dividend under section 109RD of the *Income Tax Assessment Act 1936*; and
- the borrower repays the shortfall to trustee no later than 12 months after the due date,

then the trustee will accept those arrangements, and that repayment of the shortfall, as complying with the borrower's obligations under this agreement in relation to the relevant

minimum yearly repayment.

### **Repayment of loan and interest**

- 4 The borrower must repay each loan to the trustee, 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 trustee 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.

### **Trustee may require security**

- 6 The trustee 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 trustee 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 trustee 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 trustee.
  - 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 trustee.
  - 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..
- The borrower passes a resolution to appoint an administrator or an administrator of the borrower is appointed.
- An order is made that the borrower be wound-up.
- An order is made appointing a liquidator or a provisional liquidator of the borrower.
- An order is made or a resolution is passed for the borrower to enter into any arrangement, compromise or composition with or assignment for the benefit of its creditors or any class of them, except for the purposes of a solvent reconstruction or amalgamation previously approved by the trustee.
- The borrower is, or states that it is, or under applicable legislation is taken to be, unable to pay its debts (except as a result of a failure to pay a debt or claim that is the subject of a dispute in good faith) or stops or suspends or threatens to stop or suspend payment of all or a class of its debts.
- A receiver, receiver and manager, administrator, controller or similar officer of any of the assets or the whole or any part of the undertaking of the borrower is appointed.
- The borrower is or makes a statement from which it may be reasonably deduced by the trustee that the party is the subject of an event described in section 459C(2) of the *Corporations Act* 2001.
- An event occurs that is analogous or has a substantially similar effect to any of the events specified in this clause.

## **C General provisions**

### **Method of payment**

- 9 The trustee 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 trustee 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 Jervis Bay. 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*.

**Company** means Bosch international Pty. Ltd., ACN 143 526 096.

**COVID-19** means the coronavirus known as COVID-19.

**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*.

**Regulator** means the Commissioner of Taxation.

**Trust** means the Author Lily & trust.

## Execution

Executed as a deed.

Dated: \_\_\_\_\_

Signed by Lily Author in the capacity as trustee

\_\_\_\_\_

Witnessed by: \_\_\_\_\_

Full name of witness: \_\_\_\_\_

Signed by Marie Kyle in the capacity as trustee

\_\_\_\_\_

Witnessed by: \_\_\_\_\_

Full name of witness: \_\_\_\_\_

Signed by Peter Parker in the capacity as trustee

\_\_\_\_\_

Witnessed by: \_\_\_\_\_

Full name of witness: \_\_\_\_\_

THE COMMON SEAL of Wings  
International Pty. Ltd. ACN 004986270 as  
trustee for the Marie Kyle & Trust was  
affixed in accordance with Section 127(2) of  
the Corporations Act 2001 in the presence  
of:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director

Smith John

Warn Stefen

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Name of director

Witnessed by: \_\_\_\_\_

Full name of witness: \_\_\_\_\_