Directors Loans

Financing your Company

Martin Tolhurst
SOLICITORS

About Martin Tolhurst Soliciitors

Martin Tolhurst is one of Kent's leading law firms. With our award winning and modern approach, all of our clients can benefit from our years of experience and vast array of specialisms.
Our clients' cases will be handled thoroughly, professionally, in an approachable and understandable way.

As our client you can benefit from:

- The wide spectrum of experience and knowledge our experts have
- Friendly and approachable teams who care
- Our efforts to minimise 'legal jargon'
- A dedicated 'New Enquiries' team when you have a new legal matter
- Fixed Fee Consultations - 45 minutes, no obligation specific legal advice sessions for just £180!

What's more:

- We are members of the Association of Leasehold Enfranchisement Practitioners (ALEP)
- The firm is 'Lexcel' Accredited by The Law Society - The Legal Practice Quality Mark, and have ISO9001 accreditation
- We are accredited under the Conveyancing Quality Scheme by the Law Society
- We are members of The Conveyancing Association

Other services:

We also offer advice in:

- Residential Property
- Family Law
- Wills & Probate
- Disputes
- Commercial Property
- Lease Extensions
- Business Law
- Equity Release

Introduction - Directors Loans

If you own a company the likelihood is that you will need to obtain finance at some point during the life of the business. You will certainly need finance at the outset but also at other times such as when you are looking to acquire assets, take on new staff, new premises or expand and develop your business in some other way.

Obtaining company finance from a lender can be difficult, drawn-out and complicated especially if you already have existing loans. Bringing in investors through issuing new shares, selling existing shares or other incentives may carry onerous obligations which need to be fulfilled and may dilute your control over the company decision or your dividend share.

If you have personal wealth available that you wish to use for the furtherance of your company, a directors loan can offer a more straightforward and quicker way to obtain finance for your company on potentially more favourable terms.

Your questions answered

What is a Directors Loan?

A Directors Loan is a loan made to a company by one or more of the company’s directors.

Whether you are just starting up or you have been up and running for a number of years, a directors loan can be a simple and tax efficient way to inject cash into your company. The loan can be given in one lump sum or drawn down at various intervals.

How to make a Directors Loan?

A director can make a loan to a company simply by paying money to the company from their personal funds. It is necessary to show the loan properly in the Company accounts so you will need to make the company accountant aware of any directors loans. The accountant will usually recommend any such loan is supported by a formal directors loan agreement which serves as evidence of the type of loan (to support the entry in the company accounts) and also governs the terms between the director and the company in the event of any future dispute.

The loan will be documented in a directors loan agreement which a member of the corporate team at Martin Tolhurst Solicitors can prepare for you. The terms and conditions of the loan will be included in this document which will be entered into by the borrowing company and the lending director.

Approval by shareholders and directors is likely to be required to finalise a directors loan. The extent of the approvals will depend on the structure of the company. Our commercial team can review the company's articles of association, shareholders agreement (if applicable) and current legislation to establish what approvals are required and prepare the required documents.

If you are the sole director and shareholder of the company this will be more straightforward, providing the company's articles of association allow it.

What if there are existing loans and/or security?

If the borrowing company has existing loan arrangements, the documents will need to be reviewed to confirm the borrowing company is able to obtain further finance from elsewhere. The articles of association and memorandum will also need to be checked to confirm the company can borrow from a director. In some circumstances it may be necessary to obtain consent from a prior lender before further company borrowing can be completed.

Occasionally a director may require some security for the loan they are making and that security will usually be dealt with in security documents, which we can also prepare. If there are existing loans and security has been provided in connection with those loans, the related documents will need to be reviewed to confirm additional security can be taken against the directors loan to not breach the terms of the existing loan and security.

How to repay a Directors Loan?

The terms of the repayment will need to be agreed and set out in the directors loan agreement.

The full amount could be repaid in one lump sum following a triggering event or instalments can be paid over a specified period. Where a company has only a single director/shareholder it may be the intention for the loan to be repaid only when the company is sold in the future.

The director may also require interest to be paid on the loan and these terms will need to be agreed with the company. The director will be liable to pay tax on interest received on the loan.

Can I obtain any protection?

If you are the sole director and sole shareholder of the borrowing company it is unlikely that you will want to carry out due diligence on the company. If you are one of many directors and shareholders of the company you are more likely to want to carry out due diligence to ensure the borrowing company will be able to make repayments as and when they fall due. Breach of a representation will entitle you to damages and termination of the loan agreement whereas warranties entitle you to damages.

The directors loan agreement can include representations and warranties that you can require the borrowing company to provide. These can be repeated at each draw down of the loan so the representations and warranties apply at the time of draw down as when they were initially given. This can assist in affording you protection at each draw down by the company confirming the status of the company is the same as it was at the date of the loan agreement.

Are there any tax advantages or considerations?

Redeeming a directors loan either in full or in instalments can be a tax effective way to withdraw funds from the company, particularly in the early stages of the company's life or on the sale of the company. For example, if the directors loan does not attract interest, it can be repaid to the director without incurring a charge to tax on the part of the director. It is difficult to extract funds from a company as a shareholder without incurring tax liabilities on dividends or a salary. Making an investment in a company by way of loan (provided it is interest free) can enable you to strategically withdraw funds by way of loan repayments without a tax liability, thereby hopefully minimising the need to withdraw funds by way of dividends.

You should discuss the benefits of using a directors loan with your accountant as we do not provide tax or other financial advice.

What should I do?

Call us and arrange a free no-obligation telephone conversation with one of our experts.

01634 728111

Please contact Martin Tolhurst Solicitors to discuss Directors Loans

Martin Tolhurst Solicitors

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We offer a wide range of business services, including:

- Shareholders agreements
- Directors Loan agreement
- Partnership and LLP agreements
- Franchise advice
- Advice on exiting a business
- Commercial litigation and dispute resolution
- Debt recovery
- Commercial Property
- Buying and selling businesses

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