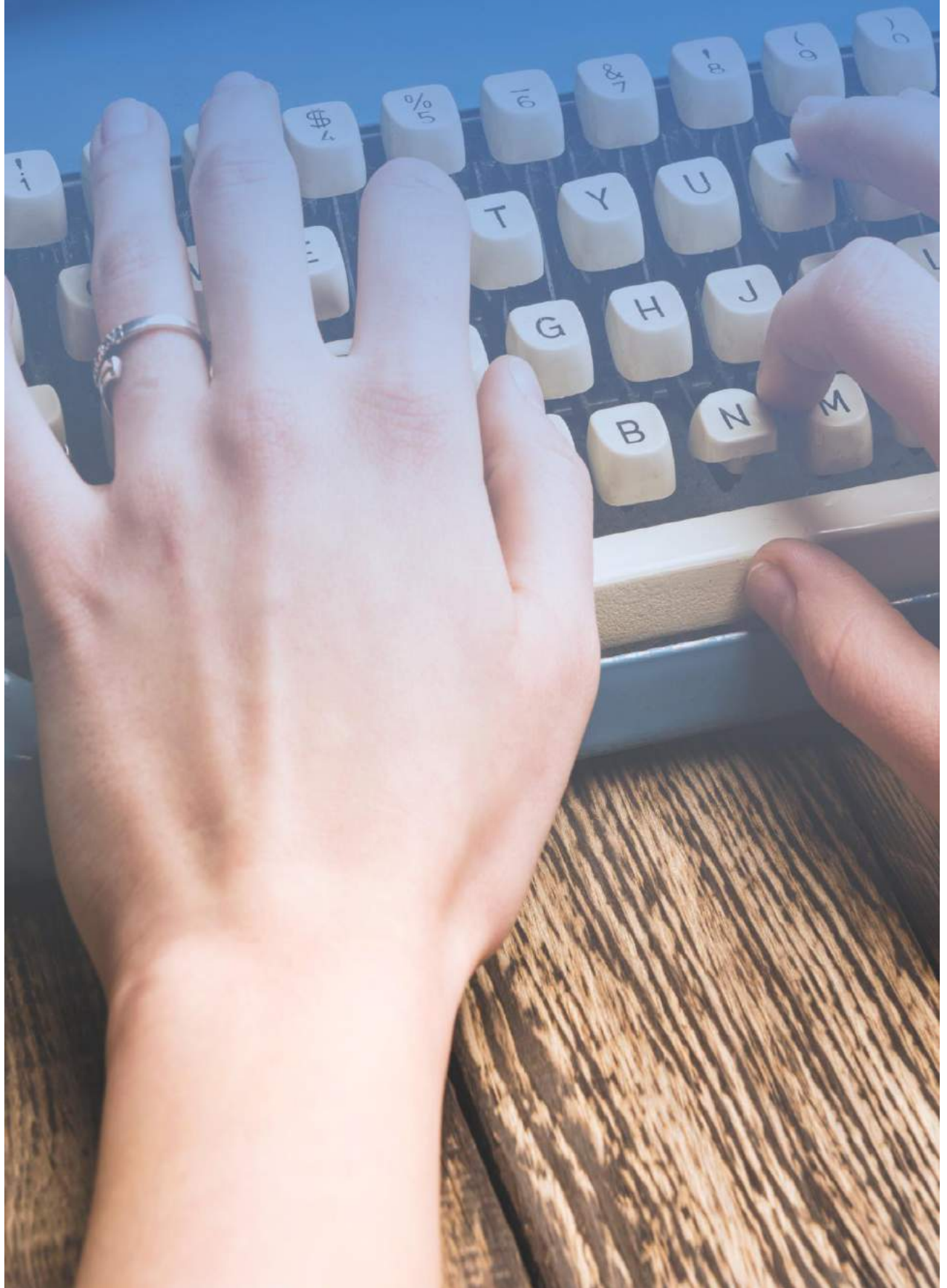


VIEW SAMPLE



Division 7A Loan Agreement

Agreement for loan from a Company

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LOAN AGREEMENT

Between

PTY LTD (ACN) of (Company)

AND

of (Borrower)

RECITALS

- A. The Company has resolved to provide a Loan to the Borrower in accordance with this agreement.
- B. The Company agrees to provide the Loan unsecured on the terms in this agreement.
- C. The Company agrees to provide the Loan secured by way of Mortgage and on the terms in this agreement and Mortgage provisions.
- D. The loan agreement is wholly contained in this document and the Mortgage between the parties to this agreement.

OPERATIVE PROVISIONS

1 Definitions and interpretation

1.1 Definitions

In this agreement:

"**Act**" means, as the context requires, the Income Tax Assessment Act 1936 (Cth) and/or the Income Tax Assessment Act 1997 (Cth), as applicable.

"**Advance**" means any Loan made at any time by the Company (but 2 or more Loans made on the same day will be considered together as one Advance) and includes any loan deemed to have been made if a payment is converted to a loan in circumstances within section 109D(4A) of the Act.

"**Amalgamated Loan**", with respect to one or more Advances made or deemed to have been made in a Year of Income has the meaning provided by section 109E (3) of the Act, and section 109E (3A) and (3B) of the Act if applicable, where the references in those sections to one or more "**loans**" termed "**constituent loans**" are taken to be references to one or more Advances ("constituent Advances") for the purposes of this Agreement.

"**Corporations Act**" means the Corporations Act 2001 (Cth).

"**Division 7A of the Act**" means Division 7A of Part III of the Income Tax Assessment Act 1936 (Cth).

"Excluded Loan" means any payment or Loan that is not treated as a dividend by the Company by virtue of a provision of Division 7A of the Act other than section 109E, section 109N, section 109P or section 109Q of Division 7A of the Act.

"Event of Default" has the meaning given in clause **Error! Reference source not found.**

"Insolvency Event" means the occurrence of any one or more of the following events in relation to any person:

- (a) an application is made to a court for an order that it be wound up, declared bankrupt or that a provisional liquidator or receiver or receiver and manager be appointed, and the application is not withdrawn, struck out or dismissed within 21 days of it being made;
- (b) a liquidator or provisional liquidator is appointed;
- (c) an administrator or a receiver or receiver and manager is appointed to any of its assets;
- (d) it enters into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors;
- (e) it proposes a winding-up or dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;
- (f) it is insolvent as disclosed in its accounts, or otherwise states that it is insolvent, or it is presumed to be insolvent under an applicable law;
- (g) it becomes an Insolvent under Administration or action is taken which could result in that event and the proceeding is not dismissed within 21 days of the date action is taken;
- (h) it is taken to have failed to comply with a statutory demand as a result of section 459F (1) of the Corporations Act;
- (i) a notice is issued under sections 601AA or 601AB of the Corporations Act and not withdrawn or dismissed within 21 days;
- (j) a writ of execution is levied against it or a material part of its property which is not dismissed within 21 days;
- (k) it ceases to carry on business or threatens to do so, other than for reorganisation or restructuring in accordance with the terms of this agreement; or
- (l) anything occurs under the law of any jurisdiction which has a substantially similar effect to any of the above paragraphs of this definition.

"Interest Rate", in relation to a Year of Income, means the rate determined under clauses **Error! Reference source not found.** and **Error! Reference source not found.**

"Loan" has the meaning provided by section 109D (3) of the Act but does not include an Excluded Loan.

"Loan Year" is a Year of Income in which an Advance is made or is deemed to have been made, in accordance with 2, **Error! Reference source not found.** and **Error! Reference source not found.**

"Lodgement Day" has the meaning provided by section 109D (6) of the Act.

"Payment Year" is a Year of Income in respect of which a Repayment Amount is calculated and becomes payable in accordance with **Error! Reference source not found.**

"Principal Outstanding" means, at any time, the outstanding aggregate principal amount of the constituent Advance or Advances of an Amalgamated Loan.

"Prior Year" is a Year of Income that immediately precedes a Payment Year, in accordance with clause 5.3.

"Private Company" has the meaning provided by section 995-1 of the Income Tax Assessment Act 1997 (Cth). **"Remaining Term"**, in relation to an Amalgamated Loan, has the meaning provided by clause 5.3. **"Repayment Amount"** means the amount determined under clauses 5.3 and 5.5.

"Term", in relation to an Advance, means the period of time determined under clause 3.

"Year of Income" means a year of income of the Company within the meaning of the Act.

1.2 Interpretation

In the interpretation of this agreement:

- (a) headings are for convenience only and do not affect interpretation;
- (b) and unless the context indicates the contrary intention:
- (c) if more than one person is identified as the Borrower, that expression refers to them, and the obligations of the Borrower under this agreement bind them, jointly and severally;
- (d) "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
 - (i) "power" in relation to the Company includes all powers, authorities, rights, remedies, privileges and discretions conferred on the Company by acceptance of this agreement, by any deed, agreement, document or instrument, by any statute or otherwise by law;
- (e) a reference to a party includes that party's executors, administrators, successors, and permitted assigns including persons taking by way of novation;
- (f) a word importing the singular includes the plural (and vice versa), and a word indicating a given gender includes every other gender.
- (g) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments and annexures to it;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) "includes" in any form is not a word of limitation; and
- (k) a reference to "\$" or "dollar" is to Australian currency.

2 Advances

2.1 Advances subject to this agreement

- (a) Any Advance by the Company to or for the Borrower is or will be made on, and is subject to, the terms set out in this agreement.
- (b) In the event that the Company has paid an amount to the Borrower at a time in a Year of Income ("Loan Year"), and the payment is converted to a loan before the end of the Company's Lodgement Day for the Loan Year in circumstances within section 109D(4A) of the Act, the Loan resulting from that conversion will be deemed to constitute an Advance under this Agreement and will be subject to all the provisions of this Agreement as if it were an Advance made at the time of the payment.

- (c) In the event that the Company has paid, lent or advanced amounts to the Borrower (other than an Excluded Loan) in a Year of Income ("Loan Year") before the date of this agreement with the intention that the terms of the payment, Loan or advances be reduced to writing in the terms of this agreement within the period permitted by section 109N of the Act ending on the Lodgement Day for the Loan Year, such payments, Loans or advances constitute Advances under this agreement and are subject to all provisions of this agreement as if made after the date of this agreement.

2.2 Amalgamated Loan for an Income Year

- (a) Where one or more Advances are made or are deemed to have been made during a Year of Income ("Loan Year"), the Advances made or deemed to have been made during the Loan Year comprise the constituent Advances of a separate Amalgamated Loan for the Loan Year to the extent that those Advances satisfy the statutory conditions in section 109E (3) of the Act (together with section 109E (3A) and (3B) if applicable).
- (b) Where, pursuant to (a) above, the Company has made or is deemed to have made an Amalgamated Loan during one or more Years of Income ("Loan Years"), the terms of this agreement apply separately to the Amalgamated Loan for each Loan Year and the Company will maintain appropriate records with respect to each Amalgamated Loan for each Loan Year, including the respective Repayment Amounts payable under clause 5 with respect to the Amalgamated Loan for each Loan Year.

3 Term

3.1 Statutory maximum Term

The Term for each Advance will be determined