

Division 7A Agreement Review Checklist.

For PTY LTD Companies.

Make sure your loan agreement is Division 7A compliant.

3-Part Checklist.

Has a Pty Ltd company provided a loan or financial accommodation which is a Division 7A loan and the lender or the borrower wants to review the loan agreement to ensure that it is Division 7A compliant?

Below is a checklist that can help flag some of the key issues that lenders and borrowers should think about in relation to their agreements. If you aren't sure about the rules for Division 7A loan agreements, please contact us for assistance.

This checklist provides a general information in relation to details that might be required for Division 7A loan agreements to be compliant. The basis of this checklist is legislation and Australian Taxation Office guidance (including Taxation Determination 2008/8) that is current as at January 2021.

In particular, as no draft legislation has been released as at the date of drafting of this checklist, this checklist does not provide for any implications of the proposed replacement of 7 year and 25 year loan structures with a single 10 year loan model.

1 COMPANY DETAILS	
A	Name of Company:
B	Current Directors:
C	Current Shareholder(s):
D	Company Governance: Constitution Articles of Association Replaceable Rules
E	Type of Company: Pty Ltd
F	Date of ASIC Company Extract:
2 SUMMARY REPORT	
A	<i>Details of any actions required at the present time:</i>
b	<i>Details of any actions required in the future:</i>

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3	DIVISION 7A AGREEMENT		
A	Parties		
i	Who are the named parties and is this clearly stipulated?		
ii	Is the borrower/are the borrowers shareholders or associates of a shareholder? (refer to section 318 of the <i>Income Tax Assessment Act 1936</i> (Cth) to determine if parties might be an associate)		
iii	If a party is a company:		
	(a) Who are the directors?		
	(b) Are the details of the company/companies correct? Name ACN/ ABN, etc.		
iv	If a party is a trust:		
	(a) Who is the trustee? Is the trustee correct – check the trust deed.		
	(b) Has there been a change of trustee between execution of the trust deed and signing of the agreement?		
	(c) Does the trustee have the power to enter into the agreement?		
B	Does the agreement clearly stipulate the terms of the loan?		
i	What does the agreement cover?	Single loan Multiple loans Financial accommodation	
ii	Does the agreement contemplate amalgamated loans?	Yes	No



iii	Is the period of the loan:	7 years	
		25 years	
	What was the date that the loan amount was drawn?		
iv	What is the basis of the loan?	Unsecured	
		Secured	
		Secured and unsecured	
v	Does the agreement contemplate a conversion of the loans from secured to unsecured or from unsecured to secured?	Yes	No
vi	If the term of the loan is 25 years:	Yes	No
	(a) has the loan been secured by way of a mortgage over land in Australia?	Yes	No
	(b) has the mortgage been registered with the relevant State or Territory Titles Office?	Yes	No
	(c) Is there evidence that the market value of the land was at least 110% of the amount of the loan at the time that the loan was made?	Yes	No
vii	What interest rate is specified?	Benchmark interest rate, which is published annually by the Australian Taxation Office.	
		Specific rate	
		Another mechanism	
		Comment:	
viii	What repayments are specified?	Principal and interest	
		"Minimum yearly repayment". The ATO has an online calculator to help taxpayer's calculate their minimum yearly repayment.	



		Other	
		Comment:	
c	Proper execution and agreement to be bound		
i	Has the loan agreement been properly executed?	Yes	No
		Comment:	
ii	Has every named party actually signed?	Yes	No
		Comment:	
iii	Has every named party properly signed? i.e. has the company signed in accordance with section 127 of the Corporations Act or in accordance with its constitution.	Yes	No
		Comment:	
iv	Have signatures been witnessed where required?	Yes	No
		Comment:	
v	Are trustee execution clauses correctly worded?	Yes	No
		Comment:	
vi	Is the date of the agreement prior to the earlier of the day that the company lodged its tax return or the due date for lodgement of the company's tax return for the relevant year?	Yes	No
		Comment:	
vii	Was there a lodgement extension that year? If yes, is there a copy to evidence?	Yes	No
		Comment:	
d	Variation		
i	Is there a power in the loan agreement for the loan agreement to be varied?	Yes	No
ii	If yes, what are the requirements?		



iii	Has the agreement been varied? If so, has it been done in accordance with the terms of the agreement? Has the variation been properly signed?	Yes	No
		Comment:	
e Loans over a number of years			
i	If the agreement covers loans or financial accommodation over a number of years:		
	(a) Has there been minutes of amount owed, and new loans or financial accommodation, on a yearly basis?	Yes	No
		Comment:	
(b) Have any of the minutes been countersigned or the subsequent loans been acknowledged by the Company and the shareholder/associate?	Yes	No	

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For an assessment of your circumstances and advice on whether your loan agreement is Division 7A compliant, contact Taryn on (07) 3014 6513, or at thartley@mcw.com.au.

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