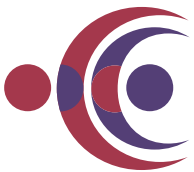


Transactions Involving Directors



Oifig an Stiúirthóra um
Fhorfheidhmiú Corparáideach

Office of the Director
of Corporate Enforcement

Quick Guide



Plain English

Approved by NALA

For more information on plain English go to www.simplyput.ie

Transactions Involving Directors

A Quick Guide

Contents

About this booklet	2
Who do the rules apply to?.....	2
Directors' loans.....	2
What are the general rules?.....	2
Are there any exceptions?.....	2
What might happen if more money is borrowed than is allowed?..	4
Property transactions.....	4
What is the general rule?.....	4
What is a property asset?.....	5
Which property assets does the rule cover?.....	5
How do I work out when approval is needed?.....	5
What happens if the company's members do not approve the transaction?.....	6
Can members approve a transaction after it has taken place?...	6
Where can I get more information?.....	6



About this booklet

We have produced this booklet to give a summary of the strict rules for:

- directors who borrow from their companies; and
- directors who buy or sell property assets from or to their companies.

Who do the rules apply to?

The rules apply to company directors and people who are close to them, called 'connected persons'. This includes parents, children, husbands, wives, civil partners, brothers and sisters. It also includes companies that the directors control.

Directors' loans

What are the general rules?

Directors and connected persons are not generally allowed to borrow money from the directors' companies.

Where a bank or other person gives a loan to a director or connected person, a company is also not allowed to give a guarantee that the company will repay the loan if the director or connected person fails to repay it.

Also, a company is not allowed to give an asset of the company as security for such a loan as this asset could be sold if the loan was not repaid.

The purpose of these general rules is to protect the company's assets in the interests of the business and all its owners and creditors.

Are there any exceptions?

There are a number of exceptions to these rules.

Exception 1 – Amount of the loan

This exception says that the loans are legal if all the company loans taken out by all the directors and connected persons total less than one tenth of the company's 'relevant assets'. The following examples show how this rule works.

Example 1

In general, the company's 'relevant assets' are the net assets on the company's balance sheet at its last Annual General Meeting (AGM). If, for example, the stated value of a company's 'relevant assets' is €500,000, then the total of all company loans to all directors and connected persons must be less than €50,000.

Example 2

If, on the other hand, there has never been an AGM, the 'relevant assets' are the 'called up share capital' of the company. Called up share capital means the original cost of the shares of the company, and this is stated on the company's balance sheet. This figure can be as low as €2. In such a situation, the maximum value of permitted company loans to all directors and connected persons is only 20 cent.


Directors should bear in mind that where the value of a company's 'relevant assets' falls and they know that the loans then breach the 'one tenth' rule, they must act within two months to correct the situation. This may mean repaying some loans.

Exception 2 – Approved arrangements

A company can enter into a guarantee or provide security in connection with a loan to a director or connected person if the arrangement is formally approved at a general meeting of the company's owners by three quarters of those voting. There are a number of other detailed conditions which are explained in the ODCE information book called 'A Guide to Transactions Involving Directors'.

Exception 3 – Loans between companies in the same group

Companies can lend money and provide guarantees and security to one another provided they are all controlled by the same company. There are rules that say exactly when a company is part of a group. Our more detailed information book called 'A Guide to Transactions Involving Directors' explains these rules. However, if you are not sure, you should talk to a solicitor.



Exception 4 - Expenses

The company can cover business expenses that the directors pay for. So, for example, the company can provide money or guarantee a director's credit card as long as this is used to pay the business expenses of the company.

Exception 5 - Lenders

If a company (such as a bank) lends money as part of its business, it can lend to its directors as long as the loans are on the same terms as the company would offer to an ordinary person taking out the same loan.

What might happen if more money is borrowed than is allowed?

Borrowing more than is allowed is a criminal offence. Any director may face prosecution in the courts if they allow their company to provide such a loan.

If a director or connected person borrows more than is allowed, the company can decide to cancel the transaction and look for the money back. The company can require repayment of the full amount where the transaction has suffered a loss. It can also demand repayment of the full amount and may also demand any profit earned by the director or connected person on the transaction.

If the company cannot pay what it owes and is closed down (goes into liquidation), the court may look at why this has happened. If the directors have borrowed excessive amounts from the company, the court may say that as well as repaying the loans, they have to personally pay some or all of the money that the company itself owes.

Property transactions

What is the general rule?

If a director or connected person wants to buy a property asset from the company or sell a property asset to the company, the members (that is, the owners or shareholders) of the company must agree to this at a general meeting before the transaction takes place.

However this rule does not apply to property transfers within the same group of companies.

What is a property asset?

A property asset is any asset except cash. Examples include land, buildings, machinery, cars and so on.

Which property assets does the rule cover?

The rule applies to any property asset whose value is greater than:

- €1,270; and
- either €63,487 or one tenth of the value of the company's 'relevant assets', whichever of these two is the smaller. The meaning of 'relevant assets' is explained on page 3 of this guide.

How do I work out when approval is needed?

This is quite complicated and depends on the value of the company's 'relevant assets'. The following examples may help.

Example 1

Let's say that a director's daughter (a connected person) wants to buy computer equipment owned by the director's company and valued at €1,100. In this example, the company's 'relevant assets' are valued at €10,000, and one-tenth of this equals €1,000. Even though the equipment's value of €1,100 is more than this, it is still less than €1,270 which is the minimum value for obtaining members' approval. Accordingly, the transaction can proceed without needing that approval.

Example 2

In this example, the company's 'relevant assets' are valued at €200,000. One-tenth of this equals €20,000. A director wants to sell her car to the company for €40,000. As the value of the car (€40,000) exceeds both the minimum value of €1,270 and the smaller of the €20,000 and €63,487 figures according to the above rules (namely €20,000), the director will need the approval of the company's members before this transaction takes place.

Example 3

In this case, a director again wants to sell his car to the company for €40,000 where the company's 'relevant assets' are valued at €800,000. One-tenth of this equals €80,000. Although the value of the car (€40,000) exceeds the minimum value of €1,270, it is less than €63,487, the smaller of the two options of €63,487 and €80,000 specified in the rules. Accordingly, this transaction does not need the approval of the company's members.

What happens if the company's members do not approve the transaction?

The company can cancel the transaction and look for either the asset or the money back. Also, if the director or connected person makes a profit from the transaction, they may be obliged to pay back the full amount and account for any profit. Similarly if the company makes a loss on the transaction, the director or connected person is liable for the full amount, including any loss suffered by the company.

Can members approve a transaction after it has taken place?

The members can agree to the transaction at a general meeting within a reasonable period of the transaction taking place.

Where can I get more information?

Our detailed information book, 'A Guide to Transactions Involving Directors', gives the complete law in this area. It is available from www.odce.ie. Print copies are also available.

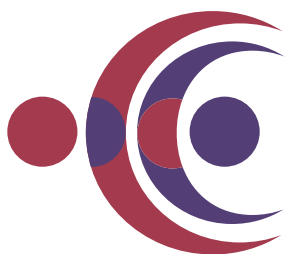
Notes





Notes

Notes



For Further Information contact:



Office of the Director of Corporate Enforcement
16 Parnell Square
Dublin 1
Ireland



01 858 5800
Lo-call 1890 315 015



01 858 5801



info@odce.ie



www.odce.ie

*Tá leagan Gaeilge den leabhrán seo ar fáil
An Irish version of this booklet is available*