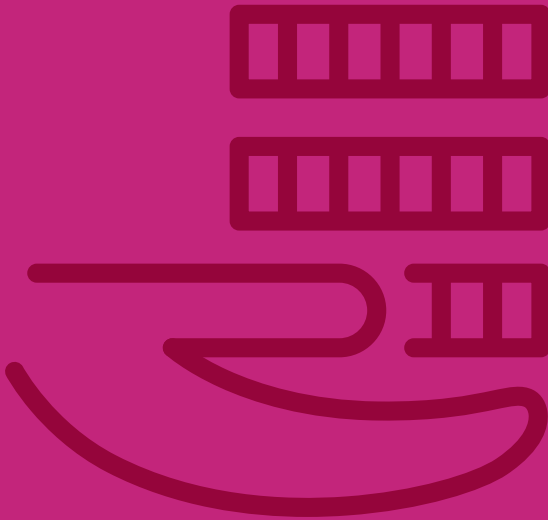


Transactions Involving Directors

A quick guide



Oifig an Stiúirthóra um
Fhorfheidhmiú Corparáideach
Office of the Director
of Corporate Enforcement

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About this guide

We have produced this quick guide to explain some of the rules for:

- directors who borrow from their company or holding company; and
- directors who buy or sell property assets (land, buildings, machinery and so on) 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’. These include parents, children, husbands, wives, civil partners, brothers and sisters. They also include companies that the directors control.

Directors’ loans

What is the general rule?

The general rule is that companies are not allowed to:

- give loans to directors of the company or its holding company, or to connected persons;
- enter into a credit transaction as creditors for directors or connected persons, for example, hire-purchase agreement or lease agreement;
- provide a guarantee or security for a loan or credit transaction for a director or connected person.

This is to protect the company’s assets in the interests of the business and all its owners and creditors.

Are there any exceptions?

Yes, there are several exceptions to this general rule.

Exception 1 – Amount of the loan

The loan is legal if all the company's loans taken out by all the directors and connected persons come to less than €65,000 or one-tenth (10%) of the company's 'relevant assets'.

Relevant assets are the net assets on the company's balance sheet at its last annual general meeting (AGM).

The following examples show how the rule works.

Example 1

Let's say the stated value of a company's relevant assets is €500,000. In this situation, the total of all company loans to all directors and connected persons must be less than €50,000 (10% of relevant assets).

Example 2

If 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 is stated on the company's balance sheet. This figure can be as low as €2. In such a situation, the total of all company loans to all directors and connected persons cannot be more than 20 cent (which is 10% of the called-up share value of €2).

Exception 2 – Summary approvals procedure

A company can lend money and guarantee or provide security in connection with a loan to a director or connected person if the company's owners approve the arrangement at a general meeting. Three-quarters of those voting must approve the arrangement.

The directors must also sign a statutory declaration (a statement in a specific format required by law) that the loan will not affect the ability of the company to pay its debts as they fall due. This process is known as the 'summary approvals procedure'.

If a director signs the declaration and the company gets into financial difficulties afterwards, the director may become liable for (have to repay) the debts of the company.

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 companies within the same group. There are rules that say exactly when a company is part of a group. If you are not sure, you should talk to a solicitor.

Exception 4 – Expenses

The company can pay the directors' business expenses. For example, the company can give 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. However, the loans must be on the same terms as the company would offer to an ordinary person taking out the same loan.

What if the value of the relevant assets falls?

If the value of a company's relevant assets falls, the loans may then breach the rules. The directors must correct this situation within two months. This may involve repaying some loans.

What terms and conditions apply to directors' loans?

Directors and their companies can decide the terms and conditions that will apply to loans to directors, provided they put these in a formal written agreement.

If there is no written agreement, the law sets out standard terms and conditions. These say that:

- the loan must be repaid whenever the company demands it; and
- the loan has an interest rate of 5% a year.

If a director lends money to the company and there is no formal written agreement:

- the loan is presumed to be interest free; and
- the loan will be repaid only after all the other debts of the company have been repaid.

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

Borrowing more than is allowed is a criminal offence. A director may face prosecution in the courts if they allow their company to loan more than is allowed by the law.

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 demand:

- repayment of the full amount;
- reimburse the company for any loss suffered; and
- repayment of 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), and the directors have borrowed more than is allowed from the company, the court may say that the directors must:

- repay the loans; and
- personally pay some or all of the money that the company itself owes.

This is likely if the directors have used the summary approvals procedure to make the loans legal (see Exception 2 above).

Property or non-cash transactions

What is the general rule?

A director or connected person is allowed to buy a property asset from the company or sell a property asset to the company if the company's owners or shareholders agree at a general meeting **before** the transaction takes place.

What is a property asset?

A property asset is any asset which is not 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:

- €5,000; **and**
- either €65,000 **or** one-tenth (10%) of the value of the company's relevant assets, whichever is smaller. See page 3 for an explanation of relevant assets.

How do I know 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 A

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 €10,000, and one-tenth (10%) of this equals €1,000.

Even though the equipment's value of €1,100 is more than this, it is still less than €5,000. This means that the daughter can buy the equipment without needing to get owner or shareholder approval.

Example B

A company's relevant assets are valued at €200,000. One-tenth (10%) of these relevant assets equals €20,000. A director wants to sell her car to the company for €40,000.

As the value of the car at €40,000 is more than €5,000 **and** more than one-tenth (10%) of the company's relevant assets, the director will need the approval of the owners or shareholders before she can sell the car to the company.

Example C

Another director wants to sell his car to the company for €50,000. The company's relevant assets are €800,000. One-tenth (10%) of the relevant assets is €80,000.

The value of the car at €50,000 is more than €5,000 but less than both the €65,000 and the '10% relevant assets rule'. As a result, the director does not need owner or shareholder approval before selling his car to the company.

What happens if the owners or shareholders do not approve a transaction?

The company can cancel the transaction and look for either the asset or the money back. If the director or connected person makes a profit from the transaction, the company may look for the full amount and the profit to be repaid.

Similarly, if the company makes a loss on the transaction, the director or connected person may have to repay the full amount as well as any loss suffered by the company.

Can owners or shareholders approve a transaction after it has taken place?

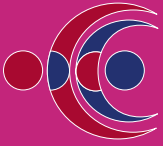
Yes. They can agree to the transaction at a general meeting held within a reasonable time of the transaction taking place.

Where can I get more information?

Transactions involving directors can be a complicated area. If you are thinking about entering into such an arrangement or transaction, you should get independent legal advice.

Disclaimer

This Quick Guide set out some of the rules in relation to transactions involving directors. It is not a legal interpretation of any part of the Companies Act. The Director of Corporate Enforcement accepts no responsibility or liability for any errors, inaccuracies or omissions in this guide.



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