



# Commercial Briefing

## Loans to directors – joint and several liability

Under company law, it is **ILLEGAL** for a private company to make a loan of more than £5,000 to one of its directors or a director of its holding company. Neither may a private company guarantee or provide security in connection with a loan made by any person to one of its directors.

If a company contravenes this provision, the director or directors who were aware of the loans are **JOINTLY AND SEVERALLY** liable to indemnify the company for any resulting losses, i.e. any of the non-borrowing directors could be liable for the full amount.

A director will have a **DEFENCE** if he is able to prove that, at the time the transaction was entered into, he was **NOT AWARE** of the relevant circumstances which constituted the breach.

## Recent case law

The Court of Appeal has recently considered the legal issues surrounding the liability of directors in respect of loans made to fellow directors in circumstances where the company went into administration.

Where a director is **AWARE** of and **ALLOWS THE PRACTICE** of a co-director to borrow money from the company, he too would be jointly and severally liable to repay all sums which were borrowed from the company.

For liability to arise, the other directors do not need to be aware of all of the individual payments made by the company. It is sufficient that a director **KNOWINGLY ALLOWED** the practice to continue.

In circumstances where directors' loans are seen as acceptable, all of the directors are **DEEMED TO HAVE AUTHORISED** each of the individual payments which were made to their co-director.

Therefore, any of the directors could become liable to repay all outstanding sums. This may be of particular importance if a company becomes insolvent as an administrator, receiver or liquidator has a duty to recover all sums due to the company.

To discuss how Berg Legal can assist you with these issues, please contact Stephen Foster, Head of our Corporate and Commercial Department at [stephenf@berg.co.uk](mailto:stephenf@berg.co.uk). Alternatively you can call Stephen on 0161 833 9211.

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