Myerson Corporate

Our guide to corporate loan facilities and security

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Welcome

We understand the complexities of modern life and the importance of taking care of your business interests. So it's a deep source of satisfaction that so many businesses choose Myerson as their trusted adviser, from assisting with day to day commercial issues, to advising on growth strategies, investment and business sales.

Why Myerson?

At Myerson, we put our clients and their business at the heart of everything we do, establishing long term relationships, acting as trusted advisers.

We are proud to be ranked as 'Top Tier' in the prestigious international directory The Legal 500, and commended by The Times 'Best Law Firms 2019'. Therefore, you can rest assured you will receive a high quality and truly personal service.

Our corporate clients include those with local, national and international business interests across a wide range of sectors including: technology, creative and media, private healthcare, professional services, charities, manufacturing, retail and leisure, fashion and textiles and agriculture.

How we work.

Every client is different, and we are here to support you every step of the way.

Personal, partner-led service. Our most experienced solicitors get to know you and your business inside out. We strive to become your trusted advisers, providing added value and most of all, a genuinely personal service.

The highest level of expertise. Combining commerciality, practicality and legal expertise enables us to deliver every time. From company formation to floatation, our solicitors have a wealth of knowledge gained from advising clients of all shapes and sizes.

A team you can trust. You're in safe hands. We help clients nationwide with complex business matters and issues on a daily basis - our expert team knows its stuff!

Your corporate partners

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You can find out more about our Corporate Team by clicking here.

Corporate loan facilities and security

Granting a loan to a company is never without risk.

Ensuring that you choose the correct structure is key to minimising risk by providing the lender with the required protections, whilst enabling the borrower to be able to perform commercially and consequently maintain cash flow to ultimately repay the loan.

Regulated lending

Certain secured loans are regulated by the Financial Conduct Authority. Loans granted to a company registered in England and Wales will not usually be subject to such regulations, but the regulatory aspect of any loan should be considered on a case by case basis.

Capital repayment or interest only?

Repayment terms vary based upon the specific needs of the borrower and the requirements of the lender based upon the borrower's risk profile. The most common methods of repayment are capital repayment or interest only loans.

Capital repayment loans require the borrower to repay the capital (i.e the amount borrowed) and the interest thereon over the term of the loan, either equally or unequally.

Interest only loans do not require payment of capital during the term of the loan, only the interest. The capital is then repaid in one payment at the end of the loan (sometimes referred to as a balloon payment).

Secured or unsecured?

Most, if not all, corporate loans require some form of security to be granted by the borrower in favour of the lender.

The main aim of security is to grant the lender with power to take control of some or all of the borrower's assets in the event that they fail to repay the loan, for example appointing an administrator or receiver.

Security also provides the lender with protection on insolvency of the borrower. A lender with security is a secured creditor of the borrower, meaning that they will have priority over other creditors on insolvency and have a greater chance of making a recovery.

Forms of security

Security will usually be by way of a fixed or floating charge.

A fixed charge is a charge that attaches to a defined or ascertainable asset, for example, a property.

A floating charge is a charge that does not attach to a specific asset, but instead floats over a changeable class of asset, for example, stock or cash.

It is critical a lender understands the assets a borrower holds and the nature of the charge (either fixed or floating) that they have over a relevant asset.

A charge stated to be fixed can be deemed floating in certain circumstances.

Floating charges may be unenforceable if they relate to historic debt or the lender is connected to the borrower, for example as a shareholder or director.

The consequences of enforcement, particularly in an insolvency scenario, also differ between fixed and floating charges.

Security can take several forms, including:

Debenture

A debenture is a charge over all chargeable assets of a company. It grants a lender both fixed and floating charges over all assets (other than certain assets that may be specifically carved out), along with a negative pledge that prevents the borrower from charging the charged assets to a third party without the consent of the lender.

Legal charge over property

Is a fixed charge over a specific defined property or properties. The charge contains a negative pledge that prevents disposal of the property without the lender's consent. It would also be registered at the Land Registry and show on the title to the property.

Corporate guarantee

A borrower may be part of a larger group structure, either as a subsidiary or holding company. A lender may require that other members of a borrower's group provide a corporate guarantee, making the group company liable for the obligations of the borrower. A corporate guarantee would contain several forms of protection, including a principal obligor provision enabling a lender to enforce the guarantee without first taking action against the borrower, along with an indemnity.

Personal guarantee

Often a borrower will be required to procure that its shareholders / directors provide personal guarantees making them personally liable for the obligations of the borrower. Like a corporate guarantee, a personal guarantee usually contains several forms of protection, including a principal obligor provision and an indemnity. A personal guarantor is usually required to seek independent legal advice from a solicitor before providing a guarantee.

Our experience

We regularly act for both borrowers and lenders entering into corporate loan facilities and associated security. We can advise borrowers proposing to enter into a loan facility with a financial institution, as well as producing standard or bespoke loan facility agreements and security for both institutional and private lenders.

Key terms of a loan facility agreement

Term – a loan arrangement is usually limited in time, both in relation to when the loan can be drawn down by the borrower and when it must be repaid to the lender. The term length will depend upon the requirement of the borrower and their risk profile.

Repayment – the parties should consider whether the loan will be repaid in instalments over time, or whether the loan will be repaid in one single payment at the end of the loan or upon the occurrence of a trigger event.

Interest – commercial loans will carry a rate of interest. This may be fixed or variable and will be calculated either daily, monthly, quarterly or yearly. Interest may also be compounded on an agreed basis.

Costs – a lender would usually require a borrower to be responsible for their costs. This would be the costs associated with the initial creation, negotiation and completion of the loan facility agreement, along with any amendment or variation of it, and any action taken by the lender pursuant to the loan.

Fees – a lender may require the borrower to pay an arrangement fee or an exit fee, or both. This may be a fixed amount or calculated by reference to a percentage of the capital borrowed. Entry fees may be added to the overall capital amount borrowed following drawdown, deducted from the first advance on its drawdown or paid by the borrower prior to completion of the loan. An exit fee is usually payable in cash at the same time as the final repayment of capital and interest.

Covenants – a covenant is a promise by the borrower to do or not to do something. Covenants regulate the actions of the borrower whilst the loan remains outstanding, which is of particular importance to a lender for longer term loan arrangements.

Covenants will include information covenants, financial covenants and non-financial covenants. Information covenants may require a borrower to regularly disclose information to the lender, for example, company circulars, notices issued to shareholders and management accounts. Financial covenants are used to test the performance of a borrower, for example liquidity, cash flow and so on. Non-financial covenants can include prohibitions on certain actions such as further borrowing and payments to shareholders or third parties whilst the loan remains outstanding.

Don't just take our word for it...

"Their response time and communication is excellent and I would have no hesitation in recommending Myerson in the future."

"The legal team have the rare ability to combine strong legal knowledge, procedural and strategic acumen but delivered with client care and overwhelming compassion."

"We would be very happy to recommend the team at Myerson. Faultless."

"Your professionalism, efficiency and pragmatism are admirable."

"I have total confidence in the advice and support I received."

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You're in safe hands!

If you would like further information about how we can help you, or if you have any questions, please don't hesitate to contact a member of our Corporate Team today.

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Because life is rarely **black** and **white.**

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