



## Template intercompany loan agreement

### User notes

Technology businesses in Southeast Asia often have group structures. For example, a business may have trading subsidiaries in Indonesia, Malaysia and/or the Philippines, and a holding company in Singapore. Loan arrangements within such group structures are relatively common.

This is a simple intercompany loan agreement that records an unsecured loan between group companies. For tax and audit purposes, companies should enter into written agreements reflecting the terms of their intercompany loans (including the applicable interest rate).

### applicable law

This document is intended for use by companies domiciled in Southeast Asia. Because the laws in each Southeast Asian country are different, you may need to have the document reviewed by a local lawyer. We have suggested (as a placeholder) that the document be subject to Singapore law as this is the most common domicile of tech companies raising capital in Southeast Asia, and Singapore is well respected as a jurisdiction.

Companies should take tax and accounting advice before putting an intercompany loan in place, as the loan may give rise to tax liabilities and (in the case of a cross-border loan) transfer pricing issues.

### using this template

The **User Notes** and the statements in the footer below (all marked in red) are included to assist in the preparation of this document. They are for reference only – you should delete all user notes and the statements in the footer from the final form of your document.

The use of *[square brackets]* around black text means that:

- ▲ the requested details need to be inserted
- ▲ there are different options for you to consider within a clause
- ▲ the whole clause is optional and you need to consider whether to include it, based on the company's circumstances and the user notes.

Before finalising your document, check for all square brackets to ensure you have considered the relevant option and ensure that all square brackets have been deleted. Also, if you delete any clauses or schedules, remember to cross reference check the document.

# INTERCOMPANY LOAN AGREEMENT

DATE

PARTIES

1 **[User note: Use this description for the lending company.]**

**[INSERT NAME OF COMPANY]**, company number *[insert]*, a company incorporated in *[insert]* whose registered office is at *[insert]* (**Lender**)

2 **[User note: Use this description for the borrowing company.]**

**[INSERT NAME OF COMPANY]**, company number *[insert]*, a company incorporated in *[insert]* whose registered office is at *[insert]* (**Borrower**)

AGREEMENT

The Lender has agreed to provide to the Borrower a loan on the terms set out in this Agreement.

**SIGNED** for and on behalf of **[INSERT** )  
**NAME OF LENDER]** by: )

\_\_\_\_\_  
Signature of authorised signatory

\_\_\_\_\_  
Print full name of authorised signatory

**SIGNED** for and on behalf of **[INSERT** )  
**NAME OF BORROWER]** by: )

\_\_\_\_\_  
Signature of authorised signatory

\_\_\_\_\_  
Print full name of authorised signatory

## TERMS OF THIS AGREEMENT

**1 INTERPRETATION**

1.1 **Definitions:** In this Agreement, unless the context requires otherwise:

| <b>Definition</b>       | <b>Meaning</b>  |
|-------------------------|---|
| <b>Agreement</b>        | this Agreement, including the Schedule.   |
| <b>Business Day</b>     | Monday to Friday, other than any public holiday that occurs in [insert].  |
| <b>Drawdown Date</b>    | the date that is two Business Days after the date of this Agreement, or such other date as the parties agree.   |
| <b>Event of Default</b> | has the meaning given in clause 5.2.  |
| <b>Interest Rate</b>    | <b>[User note: For tax purposes, the interest rate of an intercompany loan may need to be on arms' length terms. We suggest consulting your tax advisor.]</b><br><br>[insert]% per annum. |
| <b>Loan</b>             | [\$insert amount of loan] or the principal amount outstanding under that loan from time to time.  |

1.2 **Interpretation:**

- a a reference to:
- i a **clause** or a **Schedule** is to a clause in or a schedule to this Agreement;
  - ii a **person** includes a body corporate, an association of persons (whether corporate or not), a trust, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal personality;
  - iii **including** and similar words do not imply any limitation;
  - iv a **statute** includes references to that statute as amended or replaced from time to time;
  - v a **party** is a reference to a party to this Agreement, and includes that party's permitted successors and permitted assigns; and
  - vi **\$ or dollars** are to [insert] currency;
- b the **headings** in this Agreement are for convenience only and have no legal effect; and

c the **singular** includes the plural and vice versa.

## 2 THE LOAN

2.1 **Loan:** The Lender must make the Loan available to the Borrower in one drawing only on the terms set out in this Agreement.

2.2 **Drawdown:** The Lender must pay the full amount of the Loan to the Borrower on the Drawdown Date in cleared funds into the nominated account of the Borrower.

## 3 INTEREST

3.1 The Borrower must pay interest on the Loan at the Interest Rate, accruing and compounding annually and payable on the date of repayment of the Loan.

## 4 REPAYMENT AND PREPAYMENT

4.1 **Repayment of Loan:** The Borrower will repay the Loan, together with any unpaid interest accrued on it (less any tax required to be withheld by law), within 30 days after receipt of a written demand from the Lender.

4.2 **Prepayment:** At any time after the Drawdown Date, the Borrower may prepay all or any part of the Loan, or any interest accrued on it (less any tax required to be withheld by law). All such payments must first be applied against any unpaid interest accrued on the Loan, and then against the principal of the Loan.

## 5 EVENTS OF DEFAULT

5.1 **Undertaking:** While the Loan remains outstanding, the Borrower must notify the Lender promptly in writing upon the occurrence of an Event of Default and provide a statement of steps being taken to remedy the Event of Default.

5.2 **Default:** An **Event of Default** will have occurred if any of the following occurs:

- a a material breach of any term of this Agreement by the Borrower which is not remedied within 15 Business Days after the Borrower becoming aware of the breach;
- b if:
  - i an order is made, resolution passed or legal proceedings issued, or corporate action is taken, notice given or other step taken for the dissolution of the Borrower;
  - ii a liquidator, receiver, manager, statutory manager, inspector, trustee or other similar person is appointed in respect of the Borrower, or some or all of its assets;  
or
  - iii any distress, attachment, or execution is levied, issued, enforced or obtained on or against all, or substantially all, of the Borrower's assets; or

c any security over the assets of the Borrower is enforced.

5.3 **Acceleration:** Despite any other provision of this Agreement, at the time of or at any time after the occurrence of any Event of Default, the Lender, without limiting any other rights it might have, may by notice to the Borrower declare all or any part of the Loan, together with all interest accrued on it, immediately due and payable, in which case those amounts will become immediately due and payable.

## 6 WARRANTIES

Each party represents and warrants to the other that the following is true as at the date of this Agreement:

- a it is a company duly incorporated and validly existing under the laws of the jurisdiction of its incorporation;
- b it has the power and has taken all necessary action (including the passing of all resolutions and obtaining any necessary consents) to enter into, execute and deliver, and exercise its rights, and perform its obligations, under this Agreement; and
- c it has validly executed and delivered this Agreement and its obligations under this Agreement are legal, valid and binding and this Agreement is enforceable against it in accordance with its terms.

## 7 PAYMENTS

7.1 **Payments:** Any payment made under this Agreement is to be made:

- a during normal banking hours on the due date;
- b in same day cleared funds;
- c without deduction, withholding or set-off (other than as provided for in this Agreement or as required by law); and
- d to the bank account specified by the payee, by notice to the payer.

7.2 **Date of payment:** If the date for payment of any amount under this Agreement is not a Business Day, then the payment must be made on the next day which is a Business Day.

7.3 **Full discharge:** Payment of any amount to the account specified in clause 7.1d is a full discharge of a party's obligation to pay that amount.

## 8 GENERAL

8.1 **Confidentiality:** Each party must keep this Agreement and information it receives about the Company and its business in connection with this Agreement (**Confidential Information**)

confidential, and must not use or disclose that Confidential Information without the prior written consent of the other party except to the extent that:

- a disclosure is required by law;
- b the relevant information is already in the public domain;
- c it is reasonably required to obtain professional advice; or
- d it is reasonably necessary in connection with any proposed:
  - ▲ financing of that party;
  - ▲ sale of that party's interest in the other party; or
  - ▲ sale of all or part of the business of, or the shares in, that party,

and the party receiving the Confidential Information has entered into confidentiality undertakings substantially the same as those set out in this clause.

8.2 **Notices:** All notices and communications given under this Agreement must be in writing and will be delivered personally, sent by post or sent by email to the address or email address set out in the Schedule (or at such other address as notified from time to time by the party changing its address).

8.3 **Time of service:** Any notice given under this Agreement will be deemed to be validly given:

- a in the case of delivery, when received;
- b in the case of posting, on the second day following the date of posting; or
- c if emailed, one hour after the email is sent unless a return email is received by the sender within that one hour period stating that the addressee's email address is wrong or that the message cannot be delivered,

provided that any notice received after 5 pm on a Business Day or on any day that is not a Business Day will be deemed to have been received on the next Business Day.

8.4 **Entire agreement:** This Agreement contains all of the terms, representations and warranties made between the parties relating to the matters dealt with in this Agreement and supersedes and cancels all prior discussions and agreements covering the subject matter of this Agreement. The parties have not relied on any representation, warranty or agreement relating to the matters dealt with in this Agreement that is not expressly set out in this Agreement, and no such representation, warranty or agreement has any effect from the date of this Agreement.

8.5 **Further assurances:** The parties must each sign all further documents, pass all resolutions and do all further things as may be necessary or desirable to give effect to this Agreement.

8.6 **Amendment:** This Agreement may only be amended by agreement of the parties in writing.

- 8.7 **Waiver:** No exercise or failure to exercise or delay in exercising any right or remedy will constitute a waiver by that party of that or any other right or remedy available to it.
- 8.8 **No assignment:** No party may assign any of its rights or obligations under this Agreement without the prior written consent of the other parties.
- 8.9 **Costs:** Except as otherwise provided in this Agreement, the parties will meet their own costs relating to the negotiation, preparation and implementation of this Agreement.
- 8.10 **Partial invalidity:** If any provision of this Agreement becomes invalid or unenforceable to any extent, the remainder of this Agreement and its application will not be affected and will remain enforceable to the greatest extent permitted by law.
- 8.11 **Signature:** This Agreement may be executed in two or more counterparts, each of which is deemed an original and all of which constitute the same Agreement. A party may enter into this Agreement by signing and sending (including by email) a counterpart copy to each other party.

## 9 GOVERNING LAW

This Agreement, and any disputes or claims arising from or in connection with it, will be governed by, and interpreted in accordance with, the laws of *[insert]*.

**SCHEDULE****Details for notices**

| <b>BORROWER</b>      |          |
|----------------------|----------|
| <b>Contact Name</b>  | [Insert] |
| <b>Company</b>       | [Insert] |
| <b>Address</b>       | [Insert] |
| <b>Email address</b> | [Insert] |

| <b>LENDER</b>        |          |
|----------------------|----------|
| <b>Contact Name</b>  | [Insert] |
| <b>Company</b>       | [Insert] |
| <b>Address</b>       | [Insert] |
| <b>Email address</b> | [Insert] |