



Secured lending to SMEs: What should lenders consider?

In 2018, we saw a number of household names struggling on the high street. Despite that, the SME lending market is thriving. SME loan approval rates remain high and the demand for finance amongst SMEs has increased. Many high street banks have set up their own SME lending teams, looking at alternative solutions to the traditional lending options such as bank loans and overdrafts. There has also been a rise in invoice and asset finance.

With the level of uncertainty surrounding Brexit, unsecured loans seem to be a thing of the past. Ensuring the lender has security is key to protecting the lender's interest, provided there is some value in the security. So what steps should lenders be considering?

Here are our top tips:

1. Appoint an experienced team

It is vital that lenders appoint an experienced banking lawyer who understands the nature of the facility and the security required. Not all transactions are the same, and our experience has shown that appointing a specialist banking lawyer can be extremely beneficial for a lender to help guide them through the complicated process and for ensuring that their security is protected.

2. Type of security

Depending on the assets being secured, there may be a wide range of security options for lenders. The most attractive form of security is a fixed charge granted over permanent, identifiable assets, such as buildings or intellectual property.

A floating charge is more useful where the borrower's assets are regularly changing, for example stock or equipment used by the business. A qualifying floating charge allows the lender to make an out of court appointment of an administrator, in the event the borrower defaults in payment.

3. Due diligence and legal status of the borrower

It is important for lenders to carry out a comprehensive due diligence exercise to understand and evaluate the risks associated with the borrowers and also to understand the borrower's legal status. A number of differences exist when lending to different types of borrower, e.g. companies, LLPs, partnerships or charities.

Our experienced banking lawyers can steer you through the different types of borrower to ensure that:

- documents are executed correctly
- correct approvals have been sought
- relevant regulations have been complied
- security requiring registration is registered correctly.

If the borrower has an overseas entity, our lawyers will work closely with the lender's appointed local lawyers to ensure a smooth completion. In cross border transactions it is highly advisable to obtain a legal opinion from a local lawyer to provide comfort that the transaction documents have been properly executed in order to bind the parties involved in the transaction and be enforceable.

4. Corporate capacity and authority

It is crucial that the constitutional or governing documents of the borrowers and any security providers (e.g. guarantors) are checked for any restrictions on the ability to borrow the funds and grant any security. The lender would want to ensure that the borrower and any security provider have the authority to enter into the documents and that the relevant resolutions are passed.

5. Perfecting the security and registration

Any security which is capable of being registered needs to be registered at Companies House within the prescribed time period. If the security is over property, it should also be registered at HM Land Registry.

The key to any successful transaction is getting the right professional advisers on board from the outset to ease the stress. Our Financial Services sector team has the relevant lawyers and professional contacts in the UK and internationally to help lenders. For more information please get in touch with a member of the team at financialservices@roydswithyking.com

Your key Financial Services contacts



John North
Partner, Corporate & Commercial
T: 020 7842 1490
john.north@roydswithyking.com



Tony Roberts
Partner, Corporate & Commercial
T: 020 7842 1473
tony.roberts@roydswithyking.com



Gareth Williams
Partner, Real Estate
T: 020 7842 1431
gareth.williams@roydswithyking.com



Milan Kapadia
Senior Associate, Dispute Resolution
T: 020 7842 1497
milan.kapadia@roydswithyking.com



Priya Pandya
Senior Associate, Real Estate
T: 020 7842 1521
priya.pandya@roydswithyking.com



Bharti Moore
Solicitor, Corporate & Commercial
T: 020 7842 1522
bharti.moore@roydswithyking.com



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