The bank of Mum and Dad: A top 10 mortgage lender

According to data from Legal & General (L&G), lending from parents to help their children get on the UK property ladder will amount to £5bn in 2016. This represents 25% of all UK mortgage transactions this year, with an average amount of £32,500 (or 7% of the average purchase price) being provided by the so-called Bank of Mum and Dad. If this lending value was combined into a formal business, it would be a top 10 UK mortgage lender.

Whilst the Bank of Mum and Dad is currently playing a key role in helping people onto the property ladder, it does bring with it a complex set of issues. Mum and Dad will need to choose between the following options:

Making a gift

The mortgage lender will need to provide confirmation that such funding from parents is acceptable. This will need to be dealt with at the initial stages of the mortgage application to ensure that there are no delays with the legal matters. If the contribution is an outright gift, Mum and Dad will have no further control over what subsequently happens to the money. Parents need to carefully consider how their contribution would be treated in tax on any future breakdown of the child’s relationship.

For inheritance tax (IHT) purposes the value of the gift is a potentially exempt transfer and provided the donor survives 7 years, that value will not be subject to IHT on death. If death occurs within 7 years, the value is brought back into the estate for IHT purposes. Gifting is a good tax planning idea in principle, but would be treated in law on any future breakdown of the child’s relationship.

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Making a loan

In some cases, Mum and Dad may be looking to recover the monies used to acquire a property if it is sold or remortgaged in the future. There are a number of mechanisms available to help protect their investment. This time there are no IHT issues, however CGT could still be an issue if the assets are sold and any profits made.

Any commercial lender involved in the purchase will need to be aware of, and happy with, the loan and will certainly require priority over Mum and Dad in terms of repayment when the property is sold on later.

It is sensible for the lenders and borrower to enter into a loan agreement where the terms of the loan can be set out, e.g. the circumstances in which repayment is required, whether any interest is to be charged, obligations as to insurance of the property and keeping it in good repair. Mum and Dad should consider whether they wish to register a charge on the property at the Land Registry, to protect their right to repayment of the loan, but this will require agreement with any commercial lender (who will demand priority).

Making an ownership share

Mum and Dad could purchase a stake in the property so that they share the beneficial ownership of the property. This should be documented in a declaration of trust which will set out the ownership shares so that the parties know how the equity in the property will be split on a future sale (or death of any of the parties). This document should also cover related matters such as who is to contribute towards the expenses of the property (council tax, insurance, outgoings and repairs etc) who is going to be responsible for any commercial mortgage, and any rights of occupation.

For IHT, an ownership share is an asset in the estate and therefore this option is IHT neutral.

CGT may be a problem in raising the funds to purchase the ownership share, and could also be an issue if the property increases in value before it is sold, unless the property is the owners’ main residence.

Stamp Duty Land Tax (SDLT) may also be an issue if Mum and Dad already own another property. If so, then a 3% surcharge over the normal SDLT rate is likely to be charged on the purchase price.

Any commercial lender will need to agree the ownership structure and, if Mum and Dad are not to be the legal owners or party to the commercial loan, they may still be required to guarantee the commercial loan.

With the Bank of Mum and Dad due to provide deposits for more than 300,000 mortgages for homes worth £77bn in 2016, getting the right processes and documents in place will help to ensure a successful outcome for all.

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Congratulations to our three new Partners!

We are delighted to announce three partner promotions effective from 1 July this year.

Dermot Carey, Managing Partner, said: “We are delighted to promote these three new partners. Our new partners have all demonstrated that they support the firm’s ambition for growth through their hard work and commitment to providing excellent client service.”

“I am particularly pleased to see two of the three promotions being made in our St Albans office where our range of services, number of staff and number of clients continues to increase year on year.”

EVENT: The banks of Mum, Dad, Grandma and Grandad.

3 November at Sopwell House, 4-6pm

Register at www.taylorwalton.co.uk/events or email marketing@taylorwalton.co.uk

The summer has brought with it a number of changes that will affect us all. As the implications of Brexit start to unfold we are focusing on maintaining an outstanding level of support to our owner and family managed business clients.

This edition includes our initial thoughts on Brexit and how it may affect you, as well as details of how to protect your business from debts and much more.

I very much hope you enjoy this edition of Aspire. If you have any questions or feedback regarding this newsletter, or indeed any of our services, please do not hesitate to contact us.

Dermot Carey, Managing Partner of Taylor Walton

Aspire: helping owner and family managed businesses

Proud sponsors: Renaissance: St Albans

We are delighted to be gold sponsors of this high profile redevelopment of the museum and gallery at the heart of the city. Construction is already underway and we can’t wait to see the new facilities when it re-opens.

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Brexit: key issues affecting your business

Following the unprecedented vote to leave the EU, we find ourselves in a time of uncertainty. Nobody knows what the UK’s future relationship with the EU will look like, however businesses should start planning now to protect their interests.

In this article we will look at some of the common questions asked and the key areas of law affecting owner managed businesses.

1. When will the UK stop being an EU member state?

The UK will cease to be an EU member state when either a withdrawal agreement has been concluded or two years from the date that the UK government serves notice to trigger the Article 50 process. Theresa May has indicated that this will not be done this year.

2. Do businesses still have to comply with EU law?

During the negotiation period UK businesses operating in the UK must continue to comply with EU law. EU law will still be enforced in any event.

3. What happens if there is no trade deal in place with the EU before we leave?

If there is no trade deal agreed within the relevant time periods, the UK and the EU will continue to trade under the terms of the World Trade Organisation. In this case the EU will be obliged to impose tariffs on goods entering the UK from the EU and the UK would be free to impose tariffs on UK imports and the UK would be free to impose tariffs on goods entering the UK from the EU and elsewhere.

4. What happens to trade with the rest of the world?

Once the UK leaves the EU it will lose the benefit of the EU’s trade deals with non-EU countries. The UK cannot conclude any trade agreements until it actually leaves the EU, however it can negotiate trade agreements which would be concluded on Brexit.

5. What happens to areas of law derived from the EU on Brexit?

Much will depend upon the terms of the UK withdrawal. However if the UK is not required to comply with any EU laws as part of a withdrawal agreement, the EU treaties will no longer apply to the UK and EU law will no longer be supreme over UK law.

6. Do businesses targeting or monitoring sales activity of EU citizens have to comply with GDPR?

Businesses targeting or monitoring sales activity of EU citizens from the UK will be directly caught by the EU legislation. This means that UK businesses will have to comply with GDPR regardless of Brexit.

KEY CONSIDERATIONS FOR YOUR BUSINESS:

1. Contracts and Trading Relationships

All businesses that trade with the EU, whether as a supplier or buyer, will be affected by Brexit.

Your existing and any new contracts which will remain in force post Brexit will need to be assessed. In particular attention to all pricing formulas - it is likely that your current pricing formulas do not take into consideration any tariffs that may be imposed after Brexit. For new contracts, consider including break clauses and price adjustment mechanisms to minimise potential cost impacts. Territory - note that the agreements which refer to the “territory” as the EU will not include the UK.

2. Data Protection

Much of the current data privacy and public access to information laws in the UK will be unchanged. However the new General Data Protection Regulation (GDPR) which will take effect from 2018, is an EU regulation and may fall away on Brexit depending upon the terms of the UK withdrawal agreement.

If the GDPR does fall away, it is likely that the UK will adopt legislation mirroring most of the GDPR into UK law. However this may not happen in time for Brexit and businesses targeting or monitoring sales activity of EU citizens from the UK will be directly caught by the EU legislation. This would also allow transfers of personal data between UK and EU businesses.

Businesses should therefore proceed to prepare for GDPR regardless of Brexit.

The end of the business relationship: removing a shareholder

Disputes between shareholders are bad news for any business. While prevention is always better than cure, where disputes ultimately result in the need to remove a shareholder from the business there are key aspects that should always be considered.

In terms of prevention, a shareholders’ agreement (“SHA”) or carefully drafted Articles of Association is the most sensible place to start as this will help to alleviate difficulties between shareholders. In the later date, Shareholders’ agreements can cover a wide range of issues and will often contain provisions of help in the event of a dispute between shareholders. In particular:

Deadlock provisions can allow one or more parties to buy out a dissenting shareholder if the shareholders would otherwise be unable to reach a decision.

Share valuation provisions can be included so there is an agreed method for valuing shares on an exit. This will often be the fair value as agreed between the parties or, in the absence of agreement, by an independent accountant.

Pre-emption provisions on transfer so that shares must first be offered to existing shareholders before their sale to outsiders. This prevents a disgruntled shareholder selling to a third party with which the existing shareholders do not wish to be in business.

Good leaver/ bad leaver provisions can provide for a compulsory transfer if an employee shareholder ceases to be an employee. Different valuation mechanisms can apply depending on the circumstances in which the employee/ shareholder leaves. For example, a ‘good’ leaver (such as a retiring employee) may receive fair value for their shares whereas a ‘bad’ leaver (for example, an employee shareholder dismissed as a result of disciplinary action) may receive only a nominal sum for their shares. Without appropriate provisions in an SHA or the Articles, an employee shareholder cannot be forced to sell their shares on leaving the company.

In the event that a business is already in a dispute which cannot be resolved, and a shareholder needs to be removed from the business, legal advice should always be taken.

Protecting your business from debts

Whether you are a small business or a multi-national conglomerate, it is a commercial reality that all businesses will at some point be required to deal with customers or suppliers who fail to pay debts on time, or at all.

Here are our top five tips for protecting your business against late payments and bad debt:

1. Ensure your terms and conditions are incorporated and that they include charges/interest for late payment
2. If dealing with a company consider obtaining personal guarantees, if creditworthiness checks indicate a higher than average risk
3. Ensure that customers are made aware of payment terms
4. If dealing with a new business, obtain trade references to identify a payment history profile
5. Ensure that a complete “paper” trail is maintained for all orders

And if, despite the above, invoices remain late or unpaid, what can be done?

• Chase debts promptly
• Consider suspension of services/ credit accounts, or withholding delivery of goods (subject to contractual restrictions)
• If legal intervention is threatened, do not make it an empty threat (word travels fast within industries)
• Consider instigating court or insolvency proceedings

Remember, he who shouts loudest often gets paid first.

If you require any advice or legal assistance with pursuing commercial debts or ensuring that you have compliant terms and conditions, then please do contact us on 01582 731161.

Saljuq Haider can be contacted on 01582 731161 or email saljuq.haider@taylorwalton.co.uk

EVENT: The end of the business relationship.
21 September at Sopwell House, 4-6pm
Register at www.taylorwalton.co.uk/events or email marketing@taylorwalton.co.uk

YOUR TAYLOR WALTON BREXIT TEAM:
Heather Cowley, Employment 01582 730431, heather.cowley@taylorwalton.co.uk
James Carpenter, Commercial Litigation 01582 730442, james.carpenter@taylorwalton.co.uk
Mike Pettit, Corporate & Commercial 01582 730420, mike.pettit@taylorwalton.co.uk
Annelise Aulton, Commercial Litigation 01582 730486, annelise.aulton@taylorwalton.co.uk

Dispute Resolution

Brex creates uncertainty for businesses involved in cross-border litigation whether that relates to the underlying claim or enforcement of judgments. For those involved in (or considering) cross-border litigation it is recommended that you contact our commercial litigation team. While proceedings started during 2016 should be completed prior to Brexit, disputes appeals are involved there may be a rush to get disputes processed which is likely to place burdens on the system which may cause delay. In any dispute that involves cross-jurisdictional issues (particularly involving other EU member states) you should consider the possibility of expedited trials or consider other options.

Also, consider and review your standard form contracts in light of evolving policy statements. It is important to ensure that your business rights with respect to jurisdiction and enforcement are not adversely prejudiced.

4. Employment Law

Most commentators do not expect significant change in this area as many EU employment laws have been entrenched into UK law through long established practice. However, if the future government may look to reduce the effect of some employment laws originating from the EU however it is expected that employers would be given a reasonable period of notice prior to any significant change and an opportunity to participate via a government consultation process on change.

Event: The end of the business relationship. 21 September at Sopwell House, 4-6pm