



LOAN AGREEMENT

“Contrato de Comodato”

What is a “Contrato de Comodato” (loan agreement)?

This is a loan contract by which one party (the lender) delivers to the other (the borrower) the temporary use of a property or movable asset, without payment or compensation, with the obligation to return the asset to the lender in good condition.

Why do we recommend that you use this loan agreement?

Sometimes people feel compelled to assist their loved ones, friends and family, without requiring any form of monetary compensation. While such arrangements can often be informal in nature, it is sometimes appropriate to validate such agreements so the loan of the asset can be legally recognised.

In the case of a Company that owns an asset, such an agreement allows for the following:

- A formal approval by the Company for shareholders or an authorised third party to use the Company’s property as seen fit;
- Clarify the responsibility for the upkeep of the property;
- Authorise the shareholder the right to use and derive any associated benefits from the usage of the Company’s asset without creating a tax liability to the company that could jeopardise its non-commercial status .

What types assets that can be subject to a loan agreement?

Any moveable and immoveable assets are eligible. The agreement can be in relation to a specific property or to the controlling share of a property holding company.



According to the loan agreement, is payment required in exchange for the use of the asset?

No. The loan agreement is a “free” contract, ie the lender has no right to require payment from the borrower in return for the use of the asset.

When does the contract enter into effect?

The contract only enters into force when the lender turns over control of the asset to the borrower. Once returned to the lender by the borrower, the contract is considered terminated. Thus, the duty to return the asset is also an essential element of the agreement. The loan agreement must necessarily be temporary in nature.

Are there specified formalities to enter into a loan agreement?

No. The agreement can be either concluded orally or in writing. Both are valid. However, in agreements between a Company and its shareholders, we advise a written contract entered into the Company Minutes.

What are the obligations that the parties assume in the contract?

by the lender:

Apart from the obligation of delivery of the asset, the lender has the duty to refrain from any acts that prevent or restrict their use by borrower. If the borrower is deprived of his/her rights or disturbed in their exercise, the borrower may bring legal action against lender in order to defend the possession of property.

by the borrower:

- Keep and care for the borrowed asset;
- If contracts stipulating binding obligations exist in relation to the borrowed asset, the borrower will assume responsibility for these commitments during the period of the loan;



- Authorize the lender to examine it;
- Only use the asset for the purpose for which it is intended;
- Exercise prudence in its use;
- Tolerate and accept any improvements that lender wished to make;
- Only provide third party use of the asset when agreed with the lender;
- Warn the lender of any problems or potential danger in relation to use of the asset as well as acknowledge any possible threats from third parties that may be unknown to the lender;
- Restoring the asset upon completion of the contract.

At what point should the asset be returned to the lender?

- If the contracting parties have not agreed to a certain deadline for the return of the asset but was lent for a specific purpose, the borrower shall return it to lender as soon as use is complete;
- If the contracting parties have agreed to a restitution deadline, the borrower must return the asset at the end this designated period;
- If no agreed period is defined nor any specific use stipulated for the asset, the borrower must return the asset in good condition when so requested by the lender.

Who is responsible if the asset is lost or becomes deteriorated?

- The borrower is expected to return the asset in good condition, except for normal wear and tear;
- If the borrowed asset is destroyed or becomes seriously damaged, the borrower is responsible if it was in his/her power to have prevented the deterioration.
- If the borrower makes improper usage of the asset, he/she is responsible unless it can be proven that the damage would have occurred regardless.



When will the contract be dissolved?

- If a deadline has been agreed for termination of the contract, the agreement reached an end at the completion of that period of time;
- If no term was agreed, the agreement is dissolved when the necessary usage is over;
- In case of death of borrower, the contract shall terminate automatically. However, the same is not true in the event of death of lender.

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