



In this issue

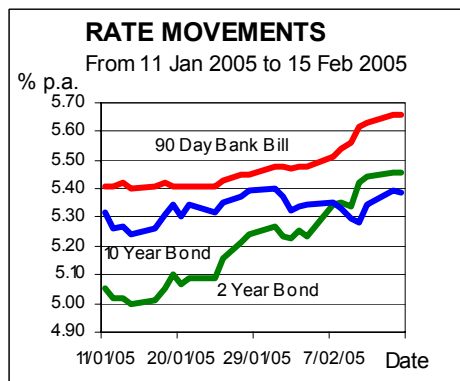
- **Interest Rates & Current Market Information**
- **Your Questions Answered**
- **MCP Commercial Lawyers**
 - *Why Directors Need a Will*
- **MCP Finance**
 - *Guarantors and Borrowers*
 - *Financier News*
- **MCP Corporate Services**
 - *Registration of a Business Name at the ASIC*
- **Australian Organ Donor Registry**
- **MCP Group Footy Tipping**
- **Interest Rate Schedule**
- **Tipping Registration Form**

INTEREST RATES

What a week in Money Markets! While the official cash rate remains at 5.25% per annum there have been some substantial rate movements in the past week.

Latest data regarding the economy, combined with rising concerns with inflationary pressures, have seen short term rates jump by as much as 25 basis points in the past week.

This effectively builds an expectation of an increase in the official cash rate in the coming 90-180 days.



There has been substantial upside in money market rates due to increased inflationary concerns.

Opening Quote:

"What is defeat? Nothing but education, nothing but a step closer to something better."

- Wendell Phillips (1811-1884)

Current Market Information As at the 17 February 2005

Official Cash Rate: 5.25%
U.S. Federal Funds Rate: 2.50%

90 Bank Bill Dealers Rate: 5.65%
10 Year Bonds (Indicator): 5.41%

Source: Australian Financial Review (17 Feb 2005)

Predictably, fixed rates have started climbing due to frenzied secondary markets as expectations grow about the prospects of a rate rise. As a result, many borrowers are seeking to fix their loans before the opportunity passes them by.

Please consult our team if you wish to review your current balance of personal or business borrowings.

YOUR QUESTIONS ANSWERED

The MCP team will answer a selection of our clients' questions from our legal, corporate and finance divisions in each issue of our monthly newsletter. Should you wish to ask our team any questions please contact our office on (03) 9620 2001 or by email (enquiries@mcpgroup.com.au).

Legal

Can I enter into a contract with a family member?

In ordinary commercial contracts, there is a strong presumption that there is an intention to create a legally binding relationship. Though possible to rebut this presumption, it is often difficult to do so. In domestic and family arrangements there is a weaker presumption of such an intention, and this presumption is easier to displace.

Finance

Can I use my unencumbered overseas property to obtain housing loan approval in Australia?

There are many aspects of mortgage lending that would prohibit this from occurring. Most importantly, a question would arise as to whether the concerning financier would need to go through legal avenues in Australia or overseas to recoup their monies in the event that you default with your loan.

The lending institution would also be subject to currency risk as the security property would have to be sold in the local currency. Additionally, the lender would be required to make provisions for property price fluctuations that may occur in the overseas property market.

As you could appreciate, the above mentioned variables/risks may be too great for the bank to assume.

Corporate

What are replaceable rules?

A company's internal management may be governed by provisions of the Corporations Act 2001 (the Act) that apply to the company as replaceable rules, as a constitution, or a combination of both. There are also additional requirements concerning internal management practices contained in the ordinary provisions of this Act and also in common law. Replaceable rules apply to companies registered after the commencement of s 135(1) of the Act, and to companies registered prior to the commencement that repeal their constitution after 1 July 1998. A company may modify some or all of the replaceable rules by adopting a constitution.



MCP
COMMERCIAL
LAWYERS

WHY DIRECTORS NEED A WILL

Company - A Company is an association of a number of people with a

common object. It is owned by Shareholders and managed by Directors.

Once created it is an entity in its own right and has a legal personality to do what a natural person can do. Therefore, a Company can sue and be sued in its own right.

Director - A Director is a person employed as an officer of a company and has a duty to perform the duties of management of the business of the company.

What is a Will – A Will is a legal document which allows you to choose who receives your belongings and assets after you die. It allows you to nominate who will be responsible for managing your estate (the Executor(s)), and can also be used to appoint a guardian to look after children in their minority (see below).

Directors and Wills - Difficulties can arise when an ordinary person dies without leaving a will. Their estate cannot be administered quickly and dependants such as children can be left waiting lengthy periods. Applications to the Court may be necessary.

However, when a sole director of a company dies without leaving a valid will the complications and distress can have an even greater impact. The death will usually leave the company without any person properly authorised to immediately manage the company.

Ordinarily, if a director of a company dies, the surviving directors can continue to manage the company and may even make a temporary appointment, pending the appointment of a new director by the members (shareholders) of the company.

Equally, if the sole shareholder of a company dies, the directors can continue to manage it until the beneficiaries under the will have the shares transferred to them.

Where the sole director is also the sole shareholder, however, the risk of uncertainty is much greater.

Section 201F of the Corporations Act 2001 does provide that, in the event of the death of a single member/director of a proprietary company, the executor or other personal representative appointed to administer the deceased's estate may appoint a new director to the company. The director has all the powers, rights and duties

of the deceased director and can keep the company running until shares are transferred to beneficiaries who may then appoint new directors if they wish.

Generally, the executor is ordinarily and most efficiently appointed by means of a valid will.

Where there is no will, however, a near relative or other person would have to apply to the Supreme Court for letters of administration of the estate for its management. Alternatively, in the absence of any immediate relatives or other obvious people to deal with the estate, the Public Trustee may step in and administer the deceased estate but this process can take months.

During that period when there is no director, the company may be completely unable to operate. With no-one properly authorised to make management decisions or act for the company, it may be unable to trade. Banks and other financial institutions in particular may be unwilling to accept instructions in relation to a company's trading account if they are not satisfied there is someone properly authorized to act for it. Equally, staff and suppliers may not be able to be paid, which can quickly have a deleterious effect on the reputation and value of the company to the beneficiaries of the estate.

If, on the other hand, a person is willing to purchase the company, they may not be able to do so quickly because there will be no recognised owner of the shares who can authorise their transfer until the testator has been appointed and settled the estate. Even if the final decision is taken to wind up the company so all beneficiaries can be paid out, the delay of possibly several months may mean the value of the company will be much less than it might otherwise have been if it had been able to continue operating in the interim period.

To arrange your Will, please call Mike Poynter or Shane Frost for further detail.



BORROWERS AND GUARANTORS EXPLAINED

MCP receives many enquires from clients in respect to the differences

and benefits of being a guarantor as opposed to a borrower. These differences are outlined below:

The Myths

Some myths which need to be immediately discounted include:

- A guarantor is not liable for any debt (**WRONG**);
- A guarantor is protected from the bank (**WRONG**);
- If you do not earn an income you need to be a guarantor (**WRONG**); and
- Anyone can be a guarantor on your loan to help you get it approved (**WRONG**).

The Facts

- As a guarantor you may be liable for **ALL** of the debt. You may be sued and forced to sell your assets (including your home) if the borrower is unable to repay the debt;
- Lenders generally dislike guarantees as they present a greater risk to their portfolio;
- Generally a guarantor must have an interest in the borrowings and demonstrate they will benefit from the transaction for the lender to accept and grant the loan; and
- A guarantor **CAN** be forced into bankruptcy, even if any of the borrowers are involved in illegal activities which result in the inability to repay their debt.

Your Liability as a Guarantor

By being a guarantor you are still liable debt which cannot be repaid from the realisation of any security. You may also be liable for costs incurred by the lender (including unascertainable costs such as the loss of interest revenue and legal costs) for repayment of the debt.

Under a limited guarantee your maximum liability is specified to provide you with protection against unascertainable costs. In the case where the realisation of the security does not repay your maximum liability, the lender may still sue you for recovery. For these reasons, a lender may insist that a Guarantor is able to service the debt in their own right – unless they are the spouse of the borrower. They will also insist, in most cases, that all Guarantors obtain independent Legal and Financial advice which would require subsequent certificates to be obtained. This can become a costly exercise for the client.

Some common scenarios where banks are tolerant to guarantor proposals are:

Spousal Guarantees

This is the most common form of guarantee, and is usually requested where both husband & wife are title holders, but the borrower is to be one of either husband or wife (usually this is at the advice of their accountant). As both parties have an interest in the security, the non borrower needs to provide a guarantee. Where only one of either husband or wife is a titleholder, the lender does not require a guarantee in the reverse situation – i.e. if both are to be borrowers.

Family Guarantees

These are allowed in certain circumstances, mainly to assist first home buyers – some lenders have pledge type products where family members can assist first home buyers in servicing a loan to obtain loan approval which would normally be impossible. Family members may also provide their home or other property as co-security to the first home buyer's loan, to avoid mortgage insurance. In both instances a guarantee would be required by the family member. Lenders are accommodating to this request as they understand most parents (and grandparents) want to help their children purchase their first home.

Corporate Guarantees

In the event that retained company profits are used to assist in servicing debt, the lender may require a company guarantee to be provided.

If a company is providing security and the borrower is an individual or another entity, a corporate guarantee will again be required.

Generally the lender will require the directors and borrowers for the loan to be the same, or will seek to establish the relationship between all parties and ensure each party will benefit.

There are other situations where guarantee proposals would be accepted, but in most instances **the Guarantor will need to demonstrate that they will receive a benefit from the borrowings.**

MCP Group can provide advice for guarantee scenarios. Additionally, our legal division can provide certified legal advice. Please call our finance or legal teams with any further queries.

FINANCIER NEWS

Adelaide Bank

The Adelaide Bank is determined to become the industry leader in the three year fixed rate mortgage market, reducing this product to 6.45% pa from 6.50% pa (January). This new rate even exceeds the respected St George Bank rate in terms of pricing (6.49% pa).

ANZ Bank

The ANZ Bank have now automated the production of their mortgage documents (from the 14th Feb 2005). This process formerly took up to five (5) business days to be completed with manual intervention.

The automation of this process will be advantageous for two main reasons:

- Errors from the manual input of all data into all ANZ Bank mortgage documents will be reduced; and
- The prompt delivery of mortgage documents to our clients (which can be produced within one day).

MCP Group view this new process as a major landmark for the ANZ Bank, especially for deals which are subject to strict timeframes and deadlines.

Bankwest (Residential)

In a bid to be compete with other major lending institutions, Bankwest are now offering substantial discounts off their Gold Home Loan Product for top tier borrowers, which applies to all loans above \$250,000.

The following discount will apply:

- \$250,000 > \$500,000: A 0.20% pa discount applies (rate of **6.57%** pa);
- \$500,000 > \$750,000: A 0.35% pa discount applies (rate of **6.42%** pa);
- \$750,000 or greater: A 0.45 discount applies (rate of **6.32%** pa).

The loan also comes complete with a fully attached offset account, the allowance of additional loan repayments and redraw and the option of P&I or interest-only repayments. Mortgage insurance is also available for this product (up to 95%).

A \$700 establishment fee and a \$12 monthly fee will apply.

Bankwest Business Express (Commercial)

Bankwest allows a loan to valuation

(LVR) ratio of up to 80% for business loans which are secured by residential property (major areas only). Standard business edge loans start at 7.25% pa. with overdraft and line of credit facilities priced approximately 0.5% higher. The LVR for business loans using a commercial security property is a maximum of 70%.

Commonwealth Bank

The Commonwealth Bank has several benefits that other financial institutions may not have including:

- They can loan up to 97% against vacant land (other financiers can do a maximum of 90%) for purchases under \$300,000;
- Family Guarantees are permitted for first home buyers (this may be a cousin, uncle, parent etc). This allows a family relative to guarantee the applicant for a predetermined sum, allowing them to avoid a high loan to valuation ratio and the payment of Lenders Mortgage Insurance;
- Company borrowings are allowed at standard rates (excluding line of credit products); and
- They have loan products that have a fixed rate loan period of up to fifteen (15) years.

ING BANK

ING Bank is a very good financier for all self-employed business owners who may not be able to service a loan by conventional means (standard profits). This is due to their policy regarding the adding back of expenses such as depreciation, interest and abnormal costs (legal fees etc). Many other financiers don't have a consistent and documented 'add back' policy, and are often unable to assist with deals which marginally fail servicing.

The ING Bank are also very competitive in terms of pricing, as they don't have an expensive branch network to maintain. All of their products are fee free.

Westpac Bank

Concluding from last month's financier news, Westpac is now offering a higher discount for their top tier clients (0.7% for new clients who loan an aggregate amount of \$500,000+).

However, existing clients with borrowings in excess of \$500,000 will not be receive a discount on their borrowings. In these circumstances it may be advisable to internally refinance these clients as the 0.1% discount equates to a \$500 interest saving each year (minimum).



REGISTRATION OF A COMPANY NAME AT THE ASIC

The MCP Group is often approached by clients who wish to set up a company, often as a trading or non-trading (holding) entity.

In most circumstances these clients are unaware of the process by which their company name is registered with the ASIC (Australian Securities and Investment Commission).

You will need to discuss the business structure (sole trader or partnership etc) and legal issues (obligations of a company officeholder) with your accountant and/or legal advisor.

However, there are a number of preliminary precautions that may be taken to ensure that your company's registration at the ASIC is a problem free process.

In particular, the selection of a business name has posed several problems for many of our past clients. These clients have requested that our group register names that are already in use by existing Australian businesses, with some of our clients unlucky enough to have planned to name their future entity after a deregistered company with a troubled trading history.

It is recommended that this be avoided, particularly with trading companies, as your new business' reputation may suffer by the negative actions of the predecessor.

Before registering a company, the following procedure is recommended to be undertaken –

- Check and ensure that the name you have chosen for your business is not already in use by an existing Australian company. This is a free service and can be done through

the ASIC website with the National Names Index search site (<http://www.search.asic.gov.au/gns001.html>).

- If the name that you have chosen is available to be used, return to the search page and type in the company name that you have chosen with the 'search for deregistered companies' option selected.
- If the name does not appear on this list, you are free to register your business name at the ASIC.
- If the name chosen matches the title of a deregistered business ensure that the former business name will not impede on your ability to trade as an organization, but it would be wise to ensure there is no negative opinion towards your chosen business name due to the actions of the former company.

The ASIC will allow you to use a name which is spelt differently to another business. However, it would be advisable to avoid the use of a deceptively similar business name, as the opposing entity may take legal action under unfair trade practices related legislation.

Please contact Raulston Macedo, our internal corporate services specialist, with any further queries in regards to the registration of a business name.

AUSTRALIAN ORGAN DONOR REGISTRY

MCP Group endeavors to support local and national charities to the best of our ability. Along with groups such as the Guide Dogs Association of Victoria, the International Peace Foundation and various sporting clubs, the MCP Group is a strong supporter of the Australian Organ Donor Registry.

Over the last 60 years more than 30,000 people have received organ or tissue donations, which often provide them with a second chance at life. Every donor can help make a difference to the lives of up to ten other people.

There is no age limit imposed on prospective donors (although children under the age of 12 will need their parents' authorisation). To register as an organ donor please call 1800 777 203 (free call) or visit the Donor

Register website a which is found at www.hic.gov.au/organ.

Alternatively, our office will be more than happy to mail you an organ donor registration form upon request.

FOOTY TIPPING COMPETITION FOR THE 2005 AFL SEASON

The MCP Group is pleased to announce that we will be hosting an AFL Footy Tipping Competition this year.

The competition will again be accessed through our website at www.mcpgroup.com.au.

There will be prizes for the best tipers as well as prizes randomly awarded throughout the home and away season.

A donation of \$5.00 will be made to a charity (of the \$25.00 entry fee), which will be matched by the MCP Group.

The competition is open to our business partners, clients, friends and football enthusiasts alike. Feel free to invite others to join our competition. A registration form is also located on our homepage for new entrants. Simply click on the red Sherrin to download this form.





INTEREST RATE SCHEDULE

A selection of our financiers' most competitive Interest Rates. Rates displayed are generally discounted - and may not apply to your situation. This is a guide only. Comparison Rates are available upon request.

Retail Lending		Variable Rates (Inclusive of Discounts)				Fixed Rates				Commission Rates (%)	
		Featured	L.O.C.	Basic	Lo Doc	1 Year	2 Year	3 Years	5 Years	Upfront	Trail
MAJORS	ANZ Bank	6.47%	6.47%	6.47%	6.47%	6.89%	6.70%	6.70%	6.95%	0.60%	0.20%
	CBA	6.37%	6.47%	6.56%	6.57%	6.69%	6.69%	6.69%	6.99%	0.70%	0.25%
	NAB	6.57%	6.72%	6.57%	N/A	6.69%	6.79%	6.57%	6.95%	0.60%	n/a
	Westpac	6.37%	6.52%	6.49%	7.07%	6.75%	6.79%	6.69%	6.95%	0.50%	0.25%
OTHER LENDERS	AMP Bank	6.55%	6.55%	6.49%	6.79%	6.89%	6.69%	6.69%	6.99%	0.50%	0.25%
	Adelaide Bank	7.07%	7.17%	6.54%	7.07%	6.65%	6.65%	6.45%	6.99%	0.60%	0.25%
	Bank West	6.57%	6.57%	6.45%	7.27%	6.65%	6.65%	6.65%	6.85%	0.50%	0.25%
	Citibank	6.49%	7.15%	6.49%	6.99%	6.75%	6.79%	6.69%	6.99%	0.65%	0.25%
	GE Money	n/a	n/a	7.85%	7.95%	n/a	n/a	n/a	n/a	1.00%	0.50%
	HSBC Bank	6.60%	6.78%	6.44%	6.97%	6.75%	6.89%	6.85%	7.09%	0.60%	0.25%
	ING Bank	6.99%	7.05%	6.45%	6.99%	6.60%	6.60%	6.60%	6.85%	0.60%	0.25%
	Macquarie	6.55%	7.00%	6.55%	7.30%	6.75%	6.80%	6.80%	6.95%	0.60%	0.25%
	St George	6.37%	6.47%	6.49%	7.07%	6.69%	6.59%	6.49%	6.89%	0.60%	0.25%
	Suburban Management	6.79%	7.29%	6.49%	7.59%	6.90%	6.95%	7.00%	7.10%	0.60%	0.25%

Must be fully secured by Residential Property - Rates are Indicative Only. More lenders available upon Request (Selection provided only).

Commercial Lending		Variable Base Rates		Fixed Rates			
		Standard	Overdraft	1 Year	2 Year	3 Years	5 Years
	ANZ Bank	7.42%	8.35%	7.19%	7.26%	7.31%	7.47%
	ING Bank	7.35%	8.45%	7.40%	7.45%	7.50%	7.55%
	Citibank	8.10%	8.20%	7.59%	7.64%	7.69%	7.79%
	Bankwest	7.75%	8.00%	Available Upon Request			
	Members Equity	7.49%	N/A	Available Upon Request			
	St George	8.05%	8.42%	Available Upon Request			
	Westpac	7.30%	7.70%	6.80%	6.90%	6.95%	7.05%

Must be fully secured by Commercial Property - Rates are Indicative Only. More lenders available upon Request (Selection provided only).

As Comparison Rates may be misleading in some instances (the rates we quote are subject to specific criteria being satisfied). Comparison Rates are provided upon request, tailored to your specific scenario for any number of products. A comparison rate schedule (based on Standard Variable & Fixed Rates only) is provided on our website.