



## The "Credit Crunch" Hits

### The Market

The "Credit Crunch" is the in vogue phrase, the reduction in the availability of credit and, therefore, money supply in the market place. The press is largely responsible for promoting fears of a property slump, but that said, a price adjustment is certain to take place and a downturn will be seen.



by Justin Neal

The exit of Northern Rock from the market has seen a reduction in competition for the Banks, which have not (currently) passed on the full benefit of the interest rate cuts to the market, possibly due to the decrease in competition to the customer. This has allowed the Banks to increase their margin and profit. A commentator may say that the Banks are trying to build up a contingency in anticipation of leaner times over the next 12-18 months!

Inter-bank lending is considerably down, possibly due to concerns as to the liquidity of banks requiring funding, and this has had an adverse impact on money supply.

In addition to the above, Halifax has announced the highest fall in house prices nationally since the early 1990's. The National market has got many variables, as does the price of the varying types of housing stock.

I expect to see a reduction in the price of flats, whilst the middle part of the market remains relatively static in the local area. The top end of the market, £4,000,000 plus, is experiencing growth and this may continue as it is driven by a global market and not affected by the availability of mortgages.

### Central Banks

Throughout the world Central Banks are considering their position and we have seen interest rate cuts and injections of funds, particularly in the States. The Bank of England has not been so aggressive, but it is certain that the domestic market is expecting to see interest rate cuts of up to 0.5% over the next 6-12 months together with an injection of liquidity with a view to increasing money supply, availability of funds and stimulating confidence. If this happens, it is expected that whilst a price adjustment of 5-15%, nationally, may be seen, the local market will eventually stabilise, though it is doubted we will see the same level of transactions that have occurred over the past few years.



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## Affiliations

### Morgan McManus Solicitors

Harris Cartier LLP is delighted to announce their affiliation with Morgan McManus Solicitors who have offices in both the Republic of Ireland and Northern Ireland. The association permits us to expand our existing Commercial Property business from Dublin whilst developing Company Commercial and Company Corporate business throughout Ireland. It also allows our Personal Injury and Clinical Negligence Departments to work together for the benefit of our clients

## New Arrival



We welcome **Stuart Treadaway** who has joined our Commercial Litigation Department and is working from both London and Slough offices.

## Congratulations

We congratulate **Paul Norris**, our Chief Executive, on being elected President of Eurojuris, a Pan-European association of more than 600 legal firms. He will take over the Presidency on November 1st.



# hc

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by  
*David McIntosh*

# Unit Trusts V Investment Bonds

One area of financial planning affected by the Chancellor's decision to introduce a single 18% rate of Capital Gains Tax is that of the main 'tax-wrappers' in which investments can be held, and in particular the respective merits of mutual funds (unit trusts and OEICs) and Investment Bonds.

Both mutual funds and investment bonds provide access to essentially similar equity, fixed interest, property and other funds. However, mutual funds have always had the advantage that dealings by the managers are exempt from Capital Gains Tax. Now, they will have the additional advantage for higher-rate tax-payers that the tax payable on sale in respect of gains which exceed the annual exemption will be reduced from 40% to 18%.

Investment Bonds are technically single premium life policies, and they do not enjoy the CGT exemption on internal dealings but are subject to life company taxation on investment returns. Furthermore, gains made by the policyholder on disposal do not have the benefit of the annual CGT exemption and are potentially subject to higher rate Income Tax rather than Capital Gains Tax – though this can often be avoided by assigning the Bond to a standard rate taxpayer.

Offshore Investment Bonds are rather more complicated, because although there is no local tax on the investment returns, there is equally no relief for the taxes levied at source on the companies in which shares are held, and the charges are higher. In addition, both accrued income and capital gains are subject to Income Tax when the bond is sold, with no reliefs. Hence the appeal of offshore Bonds to people who expect to be non-UK resident when the Bond is encashed.

So, from a tax perspective, the balance has swung in favour of mutual funds, particularly when the underlying investments consist of equity holdings which produce capital gains; and particularly when the investor is a higher rate taxpayer.

There are, however, a number of situations in which Investment Bonds are a particularly suitable vehicle for investment, and these derive from their status as life policies.

One important characteristic of Bonds is the ability of the investor to draw an 'income' of up to 5% of the value of the original investment each year without any immediate tax consequences. These payments take the form of capital rather than income, and so they do not affect eligibility for the Age Allowance enjoyed by the over-65s, nor are they normally taken into account for means testing for residential care funding.

Another situation where the 5% withdrawal facility provides an advantage is that of payments to beneficiaries of Discretionary Trusts. For complicated technical reasons the income tax payable on distributions of dividends income is 20% higher than the normal levels and would amount to 46% for higher-rate taxpayers. But this could be avoided if the investments were wrapped in an Investment Bond from which 5% withdrawals were made.

A third area where Investment Bonds shine is that of Inheritance Tax planning. The fact that a Bond is a life policy means that it can be written in trust for nominated beneficiaries, which makes it a convenient vehicle for making gifts the effect of which will be to reduce Inheritance Tax. Under the so-called discounted gift scheme, the donor retains the right to draw an 'income' from the Bond, and the value of the gift is 'discounted' by reference to the resulting potential reduction in the value of the gift.

However, tax is not the only factor in favour of Bonds. Convenience is also important, in that there is no need to report any transactions to the Revenue until the Bond is sold, and funds can be switched within the Bond without any tax consequences.

So, although mutual funds will usually be the preferred medium for building investment portfolios, particularly in

relation to equity holdings, there are some sound reasons for using the Investment Bond wrapper, and existing holdings should not be sold without careful consideration of the pros and cons.

## ISA AND PEP INCOME

The tax efficiency of ISAs and PEPs from the point of view of income and capital gains tax is well understood, but investors tend to overlook the disadvantage, that these holdings will potentially be subject to 40% inheritance tax on death.

Older investors who have no need of the income from their holdings might sensibly consider using this to make tax-free gifts to their family, perhaps to assist with school fees or pension planning. If contributed to a stakeholder plan, the Government would top-up the payment with basic rate tax relief.

## THE PENDULUM SWINGS TOO FAR

Investors may be feeling buffeted by volatile investment markets, but it is at times like these that fund managers can prove their worth. Legendary US investor Warren Buffett was reported recently to be excited by the opportunities which are emerging, and New Star's Mark Harris commented that for him a 'buy' signal was when the bad news was broadcast on News at Ten. The pendulum of market sentiment always swings too far, in both directions, as the herd instinct takes over from rational analysis.



# When stress leads to dismissal



by  
Nina Gurney

In a recent case, the Court of Appeal ruled that even when an employer's conduct leads to an employee's inability to perform their job through work-related stress, their subsequent dismissal on the grounds of that incapacity is not necessarily unfair.

The complicated case in question centred on a Customer Services Officer who worked for a high street bank. It featured a series of claims and counter-claims firstly to an Employment Tribunal and eventually the Employment Appeal Tribunal (EAT).

The EAT decided that the dismissal was fair at the time that it took place. Otherwise, it declared, "employers would be obliged to keep on their books indefinitely employees who were incapable of any useful work." This decision was upheld by the Court of Appeal.

However due to the individual circumstances of the case, employers would be wise not to conclude that its decision absolves them of their duty of care to employees. Every case is unique, and any employer in serious dispute with an employee should seek specialist legal advice from us before taking any action.



# HIPs Hop in-house



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email: [hyps@hclaw.co.uk](mailto:hyps@hclaw.co.uk)

\* The cost of the Freehold Pack is £350.00 (£370.00 for the Leasehold Pack) out of which a refund of £75.00 will be made upon the successful completion of the sale of the property, provided the conveyancing is dealt with by Harris Cartier

\*\* Additional £20.00 for an Official Copy of the Lease (where applicable)

\*\*\* All orders are subject to acceptance by Harris Cartier LLP, subject to availability and subject to properties in the UK

# New pensions regime on the way

Future generations of workers cannot be left struggling to pay for an ageing population. This was the key message from Government, ahead of the second reading of the Pensions Bill 2007.

A main proposal of the bill is the automatic enrolment of all eligible employees into either a qualified workplace scheme or personal accounts, with employer contributions of a minimum three per cent and employee contributions of four per cent.

In this way, it is hoped to overcome the inertia that currently sees just four workers in every 10 saving into a private pension scheme. Under the new scheme, the minimum employer contribution and tax relief will mean individuals' contributions are matched pound for pound.

While the Government emphasised the responsibility that an individual has for saving towards his or her own future, in time the new regime will place an additional responsibility on employers too - and many will seek to have their systems in place before the Act is implemented.

Any business seeking an independent review of their current employee benefit arrangements would be well advised to talk through their plans with

Nina Gurney in our Employment Dept and Chris Sheard an IFA in our Financial Services Dept.



by  
Chris Sheard

# Implications of the new Companies Act



by Greg McDonagh

The Companies Act 2006 ("the Act") received Royal Assent in November 2006 and all of its provisions must be implemented by October 2009. This new Act replaces almost all earlier companies legislation to ensure that it reflects the modern business world.

The Act is being phased in over a period of three years and many of the provisions are already in force. This article highlights only some of the many key changes already in force or coming into force in 2008 and 2009

## Ten things for private companies to know about The Companies Act 2006:

- 1. Company Secretaries** - Private companies are no longer required to have a company secretary.
- 2. Directors** - All companies will need to have at least one natural person as a director, so that a company may not be a sole director of another company. A single director in the presence of a witness can now sign simple contracts or deeds on behalf of the company.

**3. Shareholder Meetings** - Private companies no longer need to hold an AGM. If private company meetings take place, they now require a 14-day notice period (previously 21 days).

**4. Decision Making** - Written resolutions have become easier to use, requiring a simple majority (for ordinary resolutions) or 75% (for special resolutions) of eligible votes.

**5. Electronic Communications** - With shareholder agreement, companies can now make more use of electronic methods and documents, such as resolutions, can be circulated by e-mail or other electronic means.

**6. Directors' Duties** - The Act confirms existing case law by stating that the duty of directors is to act in a way which they consider most likely to promote the success of the company for the benefit of its shareholders as a whole.

**7. Accounts** - Private companies must file their annual report within 9 (previously 10) months of the year-end. The medium-sized group exemption from preparing consolidated accounts has now been removed.

**8. Financial Assistance** - From October 2008, statutory restrictions on financial assistance by private companies for the acquisition of their own shares will be abolished.

**9. Directors' Conflicts of Interests** - From October 2008, non-conflicted directors of private companies will be able to authorise what would otherwise be a director's conflict of interest, rather than refer to shareholders.

**10. Capital Reductions** - From October 2009, private companies may reduce share capital without court approval.

It is imperative that you and your company are up to date with the changes and if you require further details on the Act and its implications, please contact our Corporate Department on 020 7405 7100.

For more information about Harris Cartier LLP, visit [www.hclaw.co.uk](http://www.hclaw.co.uk)

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