

According to us

newsletter

Summer 2011/12



Will 2012 bring much needed investment joy?

by Geoff Greetham, Executive Director

With 2011 almost done and dusted, the overriding issues which dogged us at the start of the year in large part remain.

How Europe will deal with its sovereign and bank debt problems is still front and centre. The US, whilst showing signs of recovery, still has only made marginal inroads into unemployment and the best that can be said of its housing market is that maybe it has finally found a floor; all against the backdrop of a towering debt. And, as to China, the sustainability of its high growth (circa 8% GDP growth p.a.) continues to be questioned.

Europe though is of most concern and will continue to impact market sentiment until a credible plan is not only presented but also enacted. This was very much the subject of our Christmas Investment Forum, with Paul Kasian, our Chief Investment Officer, providing his updated thoughts post the much anticipated European Union Summit of 9 December.

Elsewhere, in this edition, but from a financial advisory perspective, Jackie Cook, our Financial Strategist, stresses the importance of having an Enduring Power of Attorney in place as it relates to Self Managed Superannuation Funds (SMSF). Our regular client review programme and liaison with accountants and administrators of our clients' SMSFs, particularly with regard to financial year end accounts, has highlighted this as an area sometimes overlooked and certainly requiring attention.

And, as an addition, there is a new section entitled "Striking A-cord" which in future will provide you with a little known investment fact or piece of information.

On a separate note, 2011 has been a year of significant change for the financial advice and investment management industries with the outcomes of several government reviews, initiated last year, now being publicised. What has been comforting for us is that the outcomes of these reviews, whose primary aim is to improve the quality and accessibility of advice, has vindicated the business model we have in place.

We trust this, along with an undertaking to continually enhance our offering eg. the recent broadening of our Fixed Income offering into term deposits and bonds (government and corporate), demonstrates a commitment to providing you with the best advice as well as investment options.

That said, as this newsletter is for you, we continue to welcome any feedback as to requests for information and suggestions for topics you would like addressed in future editions and wish you and your family well for the festive season and holiday period.

And may 2012 yield a healthy return for all.

EU uncertainty continues to weigh on markets

By Paul Kasian, Chief Investment Officer

In our presentation to clients on 6 December, I stated that I was looking for three things to occur before I could feel confident that the European Union (EU) had finally come up to a long term solution to its problems. Firstly I wanted to see that they had addressed the large differences in competitiveness amongst the EU nations. At the moment Germany is running a massive trading deficit with its EU neighbours. This is not sustainable over the long term. It will be difficult for the other EU nations to maintain a high standard of living, without resorting to increased borrowings, while running large trade deficits. Secondly, I was hoping for a plan that gave us confidence that over time the highly indebted EU nations unkindly referred to as the PIIGS (i.e. Portugal, Ireland, Italy, Greece and Spain) could balance their budgets. This would have to be done with some care as trying to achieve this too rapidly could result in these countries plunging into a very deep recession. This could lead to social unrest and effectively make some of these countries ungovernable.

To achieve this orderly restructuring of the EU it is necessary for the debt markets to remain relatively open to the PIIGS. In other words, the cost of debt does not rise to levels that are virtually unaffordable and thus forcing them into default. To achieve this, the third thing was a commitment from the European Central Bank (ECB) to act as a lender of last resort. In other words if the yield on the PIIGS debt was to start to blow out the ECB would buy the debt.

Unfortunately, the EU summit on 9 December only addressed the second issue. They largely confirmed measures which had previously been announced. Little progress was made on enforcing the undertakings that each government maintain fiscal discipline and maintain balanced budgets. Debt markets have reacted slightly positively in that cost of Italian debt has fallen slightly. It is back at November levels but well above the levels seen at the beginning of the crisis. However this has done little to allay equity investors concerns that the crisis in Europe could morph into a global recession. The concern is that the EU banks would be insolvent if the PIIGS had to default on even a part of their debt.

Given the lack of real action by the EU to deal with its issues, the plan to recapitalise the European banks has now become more urgent. While this is set down to be completed by July 2012 it is important that the European Financial Stability Fund is properly funded to achieve this. If the investors feel that the European banks will be recapitalised then markets will probably become less volatile. This won't prevent Europe falling into a recession but it will alleviate concerns about contagion risks to the rest of the world's banking systems. The excessive risk aversion built into equity market prices is then likely to dissipate and share markets rise to levels more closely reflecting fair value.



Enduring Powers of Attorney: Safety Proofing Your Self Managed Superannuation Fund

By Jackie Cook, Financial Strategist

An important question that all Self Managed Superannuation Fund (SMSF) trustees need to ask themselves is, "what would happen if I am unable to fulfil my duties as trustee for a certain amount of time? Or ever again?" While this issue is often not given a second thought, it should be a matter of concern for all trustees. Why? If a trustee is unable to fulfil their duties as trustee, and no procedure is in place to rectify this, the SMSF could become non-complying and may need to be wound up.

Please note that for the purposes of this article, when references to trustees are made, this relates to both individual trustees AND directors of a corporate trustee. Incapacity will have the same effect on both trustee types.

Fortunately, there is a simple solution to this problem, which is to appoint an Enduring Power of Attorney (EPOA). The appointed "attorney" will then be able to step in for you as a trustee of the fund in the event of your incapacity.

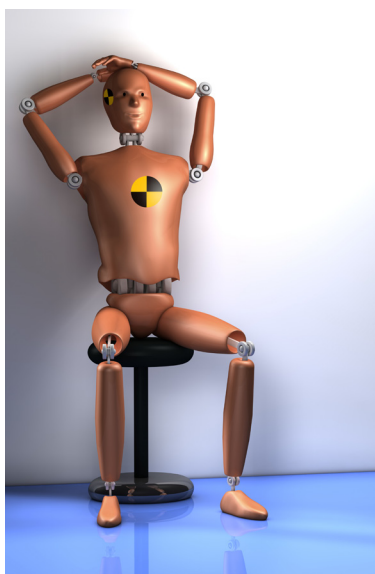
An EPOA is a legal agreement that enables you to appoint a trusted person (or persons) to make decisions on your behalf. An EPOA is an agreement made by choice, which can be executed by anyone over the age of 18 who has full legal capacity.

'Full legal capacity' means that the person must be able to understand the nature and effect of the document they are completing and the nature and extent of their estate. This means that if there is any doubt as to the person's mental capacity, an EPOA could be contested and made void. This is why it is always best to ensure these types of arrangements are made while you are still fit and mentally stable.

It is important to note that an EPOA does not permit an attorney to make personal and lifestyle decisions (which includes decisions about medical treatment). The authority of the attorney is limited to decisions about the person's property and financial affairs.

In the case of SMSFs, according to superannuation legislation, all members of the fund must also be trustees. In the event a member / trustee loses capacity, they are no longer able to be a trustee (although under most SMSF governing rules, upon loss of capacity, a person is able to continue to be a member).

However, superannuation legislation does permit a person who is a Legal Personal Representative (LPR) for a member to be a trustee in that member's place. The legal definition of a LPR includes a person who holds an EPOA granted by another person. Note that this does not make the LPR a member of the fund. The LPR is simply taking on the responsibilities of the trustee on behalf of the member. As such, the incapacitated member will be officially removed as a trustee (but remain as a member) and the LPR will be appointed as a trustee in their place.



Take, for instance, a SMSF comprising of two members, Phillip and Anne Smith (husband and wife). Phillip and Anne have EPOAs in favour of each other. Phillip loses capacity. As a result, Phillip will have to be removed as a trustee. However, given Anne is Phillip's LPR, the SMSF will remain complying. Note that if Phillip instead had an EPOA in favour of his son (for example), his son would have to be appointed as a trustee of the fund in order for it to remain complying.

As you can see, in the event a trustee suffers a loss of capacity, appointing an EPOA is a relatively simple and straightforward way of ensuring that your SMSF will continue as a complying superannuation fund and thus continue to enjoy the tax concessions associated with being a complying superannuation fund.

The matter of a replacement trustee must be resolved within 6 months of the incapacitated member ceasing to be a trustee. The EPOA does have the option to refuse to become a trustee, however this will result in the SMSF no longer remaining a complying superannuation fund. Therefore, it is important to explain to a prospective EPOA their likely responsibilities in the event of your incapacity.

If no EPOA has been appointed, the following options are available:

- Roll the incapacitated member's funds into an alternative complying superannuation fund and appoint a new trustee for the SMSF (or the remaining member can become a sole director in the case of a trustee company).
- Wind up the SMSF

There is also the option of applying to the relevant state tribunal (i.e. in Victoria it is the Victorian Civil and Administrative Tribunal) to become a person's LPR, however there is no guarantee that the person applying will be selected. Another person may be selected, or an independent administrator (such as State Trustees) may be appointed to be the person's LPR. Furthermore, this would be the last thing a person would want to be doing at a time when a loved one has lost capacity.

As you can see, the importance of appointing an EPOA is paramount, and it is a simple procedure that can make a very devastating time just that little bit easier. So please ensure this has been taken care of before it's too late!

If you would like to discuss this further, or for us to refer you to an estate planning specialist, please contact our office and we would be more than happy to assist.

Striking A-c-cord

Did you know....

Over the last century, a dollar invested in the Australian share market for 10 years has never had a negative return – and this does not include dividends.

Source: Ashley Owens, share market historian, based on 1200 10-year observations of the Australian Share Market in "Bulls, Bears and a Croupier: The New Bull Market and How to Profit from It", October 2011



Please note that the information in this publication is for general use only. We would be pleased to talk with you in regard to your particular circumstances should you wish to explore any particular aspect further. Any tax planning matters should be discussed with your accountant before proceeding.

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