



**DIVISION 974 (CREDIT)
LOAN AGREEMENT ORDER FORM**

NAME:

FIRM:

PHONE:

E-MAIL:

FREECALL 1800 773 477

BORROWER

#1 Borrower Name/s _____
(include ACN if Company)
 Trust Name _____
(if applicable)
 Street Address _____

Names of ALL Directors _____
(1st listed to be Chairman)
(1st 2 listed to be signatories)

Guarantor/s _____
 Optional – Individual/s who will guarantee the Borrower's obligations

LOAN DETAILS

#1 Lender Name/s _____
(include ACN if Company)
 Trust Name _____
(if applicable)
 Street Address _____

Names of ALL Directors _____
(1st listed to be Chairman)
(1st 2 listed to be signatories)

Commencement Date of Loan _____ Term of Loan 10 Years OR _____

Interest Rate Percentage _____ % NOTE: Interest Rate can be NIL if the term is 10 years or less

Security given _____
(if applicable)

#2 Lender Name/s _____
(include ACN if Company)
 Trust Name _____
(if applicable)
 Street Address _____

Names of ALL Directors _____
(1st listed to be Chairman)
(1st 2 listed to be signatories)

Commencement Date of Loan _____ Term of Loan 10 Years OR _____

Interest Rate Percentage _____ % NOTE: Interest Rate can be NIL if the term is 10 years or less

Security given _____
(if applicable)

STATE/TERRITORY OF PROPER LAW (i.e. jurisdiction): _____
(PLACE OF BUSINESS)

PAYMENT DETAILS: Please debit the following credit card in the amount of \$ 198.00 for the first loan and \$27.50 for each additional loan ordered at the same time for this Borrower.

TYPE OF CARD: Visa Mastercard *Diners Club *Amex * 3% surcharge applies.

CARD NUMBER: _____ EXPIRY DATE: (/)

NAME ON CARD: _____ SIGNATURE: _____

Please return this Form on FREEFAX 1800 655 556 or call with any queries.

THE NEW ACIS DIV 974 LOAN AGREEMENT

The new ACIS Div 974 Loan Agreement has been designed and drafted for maximum flexibility. It may be used as a fixed sum or a facility agreement and for a single or for multiple lenders. This is achieved by adopting a standard set of terms for each loan to the relevant entity which is then incorporated into each individual loan when it is made. Loans can be made as further advances under an existing loan agreement (retaining the original term of the loan) or as a new loan by completing a new loan agreement. In all cases further advances or new loans must be documented by minute under a completed loan agreement.

SMALL BUSINESS CARVE OUT

On 15 July 2005, the Assistant Treasurer announced a new carve-out which is intended to operate to exclude from the debt/equity rules, those companies whose annual turnover is less than \$20 million. Effectively, this exempts all small business from the rules.

HOW TO ORDER AN ACIS DIVISION 974 (CREDIT) LOAN AGREEMENT

The new rules establish tests for determining whether a financial benefit received under a scheme constitutes a debt interest, that is, a debt owed by one entity to the another entity ('the Providing Entity'), or whether the scheme gives rise to an equity interest in one entity to the Providing Entity. The difference is significant because if the financial benefit is deemed to be a debt owed to the Providing Entity then the repayment of the capital component of the debt is not income in the hands of the Providing Entity and any interest paid by the first entity is tax deductible. On the other hand, if the rules determine that the Providing Entity has an equity interest as a result of the financial benefit, then the repayment of monies to the Providing Entity will be deemed a dividend, which can be franked (and not deducted) but which is income when received by the Providing Entity.

In order to be a debt, rather than equity, the scheme needs to satisfy the debt test, which requires that:

1. the scheme is a financing arrangement for the entity (unless it gives rise to an interest as a member or shareholder of the a company by the Providing Entity);
2. the entity receives a financial benefit (which means anything of economic value and includes property and services) under the scheme;
3. the entity who has received the financial benefit has "an effectively non contingent obligation under the scheme" to provide a financial benefit to the Providing Entity; and
4. the financial benefit provided by the entity under 3 above is at least equal to the financial benefit received by the entity from the Providing Entity under paragraph 2 above. The rules provide that if the term is greater than 10 years, the values of the financial benefits provided and received are calculated in present value terms, using a rate calculated in accordance with Section 974-50 of the Act. *Put simply, where the term is 10 years or less, the values are calculated in nominal terms only. If the term is greater than 10 years, to satisfy the debt test, the loan cannot be interest free.*

The transitional provisions of the Act provide that if a scheme was entered into before 1 July 2001 and the scheme was intended to create a debt but does not pass the debt test, then *as from 1 July 2005* the scheme will be treated as creating an equity interest. They further provide that if the scheme was entered into on or after 21 February 2001, provided it is a loan to an entity by a connected entity, the loan has no fixed term and is repayable on demand and if it was intended that the scheme would be a debt but it does not pass the debt test then it shall be treated as a debt until 1 January 2003 from which time it will be treated as an equity interest.

Completing the Order Form: Whilst the Order Form is largely self explanatory, we wish to advise that the following should be taken into consideration at the time of completing the form:

1. the rules do not require the Lender to take any security over the Borrower's property, or otherwise, in respect of the loan to meet the debt test. Security may be taken at the Lender's discretion;
2. the rules do not require a particular interest rate to apply to the loan in order for it satisfy the debt test, however in the event the interest rate percentage is nil, the term of the loan must be 10 years or less; and
3. our loan agreement may be used for a fixed sum loan or as a loan facility agreement and whether for a single lender or for multiple lenders.

For more information please refer to our Explanatory Memorandum which can be provided upon request – simply call 1800 773 477.