

## **Instalment Warrant Deed**

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Instalment Warrant Deed prepared by:  
Robert Richards  
Robert Richards & Associates  
Revenue and Corporate Law  
Suite 3, Level 12, 53 Martin Place  
Sydney, New South Wales

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## **Instalment Warrant Deed**

**THIS DEED IS MADE:** 10.09.08. (date)

**Between:** **Maione Co Pty Ltd ACN: 087 297 327**

as Trustee for

**D & M Maione Family Super Fund**  
("the Fund"),

**And:** **Domenic Maione and Maria Maione**  
("the Security Trustee").

### **WHEREAS**

- A. The Fund is a self managed Superannuation Fund;
- B. The Fund wishes to acquire a beneficial interest in the Initial Investment;
- C. The Security Trustee will hold the legal title to the Initial Investment and hold the Initial Investment on trust for the Fund;
- D. The Fund will pay to the Security Trustee capital and moneys borrowed from the Lender, as may be required by the Security Trustee, for the purposes of giving effect to this Deed;
- E. The Security Trustee will issue to the Fund a security known as a Warrant as evidence of the Fund's rights under this Deed;
- F. The Fund may require the Security Trustee from time to time to acquire further or further investments, as replacements to the Initial Investment or as a Further Investment or as additions to the Initial Investment or a Further Investment. Any such Further Investment shall be held by the Security Trustee according to the terms of this Deed.

**NOW IT IS HEREBY AGREED THAT:**

**Acquisition of the Investment**

1. Subject to clause 2 below the Security Trustee will endeavour to acquire the Initial Investment for such amount and on such terms as required by the Fund and declares it will hold the Initial Investment as Bare Trustee and Nominee for the Fund according to the terms of this Deed.
2. The Security Trustee must not acquire an Initial Investment if the terms of any borrowing in respect of the acquisition of that investment do not limit the rights of a lender, if any, to the rights relating to the Initial Investment or any replacement of the Initial Investment.
3. The Fund agrees to pay to the Security Trustee all moneys required by it to acquire the Initial Investment, to pay any stamp duties payable by it in respect of that acquisition, to pay all costs and to pay any stamp duty incurred by it to register its legal title to the Initial Investment.
4. If the Security Trustee is unable to acquire the Initial Investment the Security Trustee will refund to the Fund all amounts received by it from the Fund in respect of the Initial Investment less any costs incurred by it in respect of the proposed acquisition of the Initial Investment which are not refundable to it.
5. If all amounts paid to the Security Trustee by the Fund in respect of the acquisition of the Initial Investment are in excess of the total amount required by it to acquire the Initial Investment, pay any stamp duties payable by it in respect of that acquisition and to register its legal title to the Initial Investment, the Security Trustee will refund to the Fund that excess.

**Beneficial Interest**

6. The Security Trustee acknowledges that the Fund is absolutely entitled to the beneficial interest in the Initial Investment.
7. If required by the Fund the Security Trustee will mortgage the Initial Investment on such terms as the Fund requires and provide a charge over any amounts including interest which relates to the Initial Investment. The Security Trustee must not provide any such mortgage if the provision of that mortgage would breach a prohibition contained within the *Superannuation Industry (Supervision) Act 1993* or any regulation to that Act.

**Issue of a Warrant**

8. On acquisition by the Security Trustee of the Initial Investment the Security Trustee will issue to the Fund a security which is a Warrant which will be held by the Fund as evidence of those rights conferred upon it by reason of this Deed.



**Transfer of Investment**

9. If the Fund after acquiring the beneficial interest in the Initial Investment makes one or more payments to the Lender, or as otherwise required by section 67(4A) of the *Superannuation Industry (Supervision) Act 1993*, the Security Trustee shall if directed by the Fund transfer the Initial Investment to the Fund and on such transfer the Warrant shall be forthwith cancelled.

**Sale of Investment**

10. If requested to by the Fund the Security Trustee shall sell all or part of the Initial Investment on such terms as directed by the Fund. The Security Trustee shall on receipt of the sale proceeds, less any costs incurred by it on the sale of the Initial Investment or part of the Initial Investment, forthwith pay those proceeds to the Fund and on such payment the Warrant is forthwith cancelled in all or in part.

**Management of the Investment**

11. The Fund shall manage the Initial Investment and may retain all income from the management of the Initial Investment and may enter into leases on such terms as it decides in the name of the Security Trustee. The Fund shall pay all of the expenses and will indemnify the Security Trustee for any expenses incurred by it which relate to the Initial Investment.

**Duties of the Security Trustee**

12. The Sole duty of the Security Trustee shall be to hold the legal title to the Initial Investment and to transfer it to the Fund or to a purchaser of the Initial Investment as required by this Deed.

**Mortgage of the Initial Investment**

13. If required by the Fund the Security Trustee shall grant a mortgage or charge over the Initial Investment but shall not otherwise mortgage or charge the Initial Investment.

**Stamp Duties**

14. The Fund shall reimburse the Security Trustee for all stamp duties, goods and services tax, and any similar tax imposed upon the Security Trustee as a consequence of the acquisition, holding or disposal of the Initial Investment by it.

**Investment Investigation**

15. The Fund warrants that it has made and relies on its own investigations as the suitability of the Initial Investment as an investment of the Fund.

### **Indemnity to the Security Trustee, the Security Trustee and others**

16. Neither the Security Trustee nor any person or entity, an advisor to, or an employee of the Security Trustee shall by reason of the execution of this Deed or the acquisition by the Security Trustee of the Initial Investment be liable for any loss or damage suffered by the Fund by reason of it executing this Deed or acquiring a beneficial interest in the Initial Investment unless that loss or damage has been caused by the fraud, gross negligence, or wilful misconduct of that person.

### **Transfer of Legal Title**

17. If directed to by the Fund the Security Trustee shall transfer the legal title in the Initial Investment to such other Trustee as the Fund requires, provided that that other Trustee enters into a Deed mutatis mutandis to this Deed.

### **Further Investments**

18. The Fund may request the Security Trustee to acquire a Further Investment on its behalf. If so, all of the clauses of this Deed apply as if the Further Investment were the Initial Investment and a separate warrant shall be issued by the Security Trustee in respect of that Further Investment.

### **Governing Law**

19. This Deed is to be interpreted according to the laws of that State or Territory of the Commonwealth of Australia in which the Trustee of the Fund resides or in such other State or Territory as the Trustee of the Fund at any time nominates by way of written notice delivered to the Security Trustee.

### **Definitions**

20. In this Deed:

**"Further Investment"** means any Investment in which the Fund will hold or holds a beneficial interest and which was acquired by the Security Trustee at the direction of the Fund to be held according to the provisions of this Deed as identified to the Security Trustee subsequent to execution of this Deed.

**"Initial Investment"** means that Investment in which the Fund will hold or holds a beneficial interest and which was acquired by the Security Trustee at the direction of the Fund to be held according to the provisions of this Deed as identified to the Security Trustee on execution of this Deed.

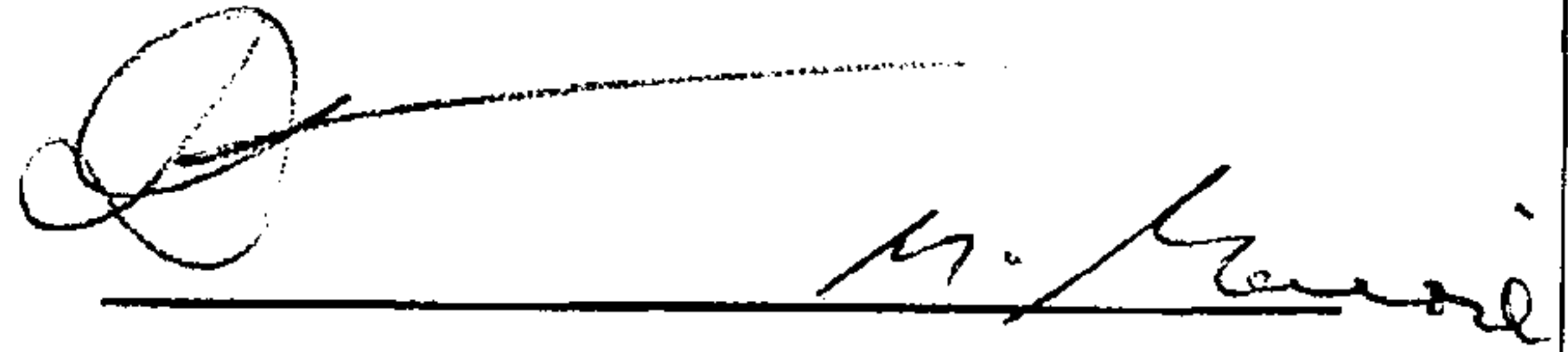
**"Manage"** means if the Investment is real estate the leasing of the Investment, the maintenance of the Investment, and attending to the payment of all costs associated with the holding and leasing of the Investment.

**"Warrant"** means that security which is issued by the Security Trustee pursuant to the terms of this Deed.

**EXECUTED AS A DEED**


**By**

**Maione Co Pty Ltd ACN: 087 297 327  
as Trustee for the Fund.**

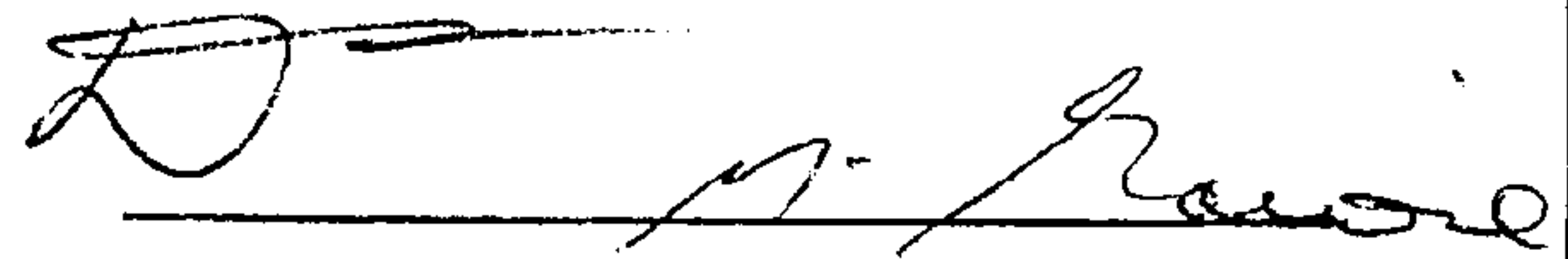
  
(Signature)

in presence of

KATRINA FLEMING

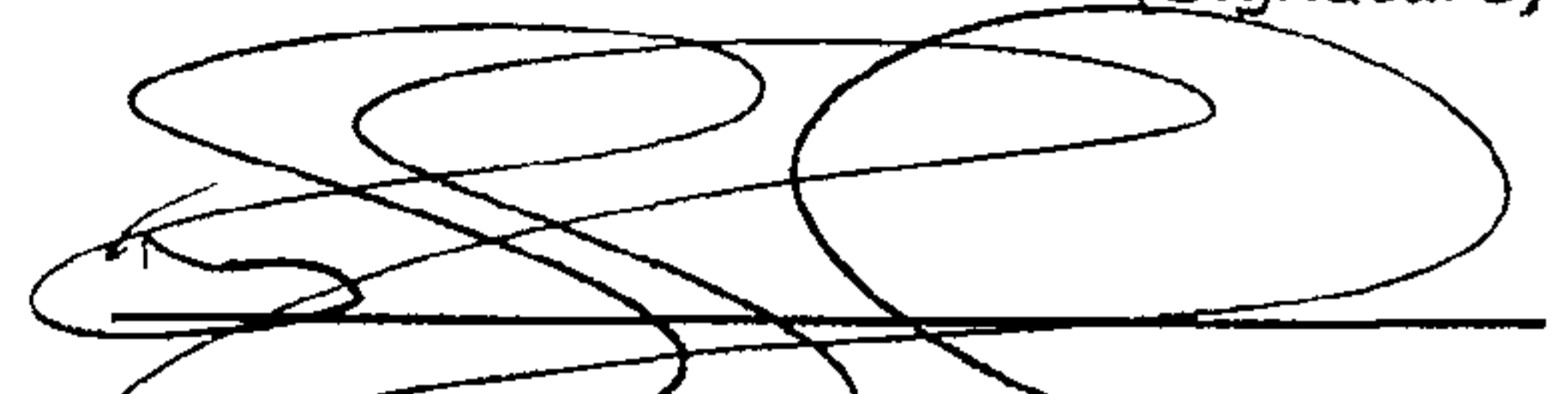
  
(Signature of Witness)

**Domenic Maione and Maria Maione  
as Trustee for the Instalment Warrant  
Deed.**

  
(Signature)

in presence of

KATRINA FLEMING

  
(Signature of Witness)



## **Your Instalment Warrant Guide**

### **Superannuation Funds can now Borrow**

Until September 2007 the *Superannuation Industry (Supervision) Act 1993* ("the SIS Act") prevented Superannuation Funds from borrowing, except for some temporary purposes. However, in September 2007, legislation was passed by the Senate to allow borrowing by Superannuation Funds; these new rules are contained within section 67(4A) of the SIS Act which is included in this Kit. The relevant subsection is headed "Exceptions – instalment warrants" and is not limited to traditional warrants but authorises any borrowings made by a Superannuation Fund provided that:

- the borrowed money is applied for the purposes of acquiring an asset other than one which the Fund is prohibited from acquiring;
- the asset is held on trust so that the Fund acquires the beneficial interest in the asset;
- the Fund has a right to acquire legal ownership of the asset; and
- the rights of the lender against the Superannuation Fund for default on the borrowing, or on the sum of the borrowing and charges related to the borrowing, are limited to rights relating to the asset.

Effectively this means that any borrowing arrangement that is allowed under section 67(4A) of the SIS Act must be done so on a limited recourse basis. Consequently the existing assets of the Fund may not be used as security regardless of the performance of the new investment.

### **How the legislation affects you**

The new legislation means that you can structure borrowing through your Superannuation Fund so as to allow the Fund to acquire any asset that is permitted under the SIS Act.

If properly structured through an Instalment Warrant, a Fund can borrow to acquire an asset. Examples of where a Fund might seek to borrow are:

- to allow the Fund to acquire an investment property;
- to allow the Fund to acquire a share portfolio;
- to acquire units in a Unit Trust (for example a small group of persons might want to set up their own Unit Trust to acquire a substantial investment property).

### **Prohibited Assets**

The reference to assets which the Fund is prohibited from acquiring is a reference to section 66 of the SIS Act, which prohibits the Trustee or an investment manager of a regulated Superannuation Fund from intentionally acquiring an asset from a Member or from an associate of a Member, unless that asset is an 'excepted asset'; i.e. business property and listed securities. Acquisitions must also be made at the present market value.

### **Beneficial Ownership**

The Fund is not allowed to be the legal owner of the investment, however it must be the beneficial owner of the asset. For that reason an entity must hold the asset on trust for the Fund, such as a separate Trustee Company (i.e. not the Corporate Trustee of the Fund).

Furthermore the trust must not be an "active trust" as there may be adverse capital gains tax consequences if the Fund calls for transfer of the legal title. The entity holding the asset will hold it as a Bare Nominee as a result, the asset must be managed by the Fund, for example if the asset is real estate the Fund must collect rent and attend to repairs.

### **Funding**

The essence of the legislation is not directed to warrants but rather to allow Funds to make limited recourse borrowings.

There is no requirement as to whom the lender might be but the most obvious arrangement is for a bank to lend directly to a Fund; some banks have been slow to recognise this new legislation. An alternative is for a Member to borrow from a bank and lend those borrowed monies to the Fund (or for the Member to lend to the Fund their own capital, which may also be used as an asset protection device).

As security, the Fund can only provide the asset itself and income generated from the asset. In some circumstances the Member may also be required to provide the lender with additional security as collateral over the borrowing.

### **Trustees of the Instalment Warrant**

The Security Trustee should not be the Fund Trustee. It would be preferable if a Corporate Trustee Company was established, due to the legal protections and limited liability structure this provides. However, the Members can be Instalment Warrant Trustees providing they are not the Trustees of the Fund.

### **Capital Gains Tax**

The Trustee must be a 'Bare Trustee' in order to avoid capital gains tax and stamp duties on transfer of an asset from a Trustee. If the assets comprise of shares, the Trustee consequently does not have any positive duties. A manager must be appointed to manage the asset if it comprises of real estate.

### **Negative Gearing Advantages**

It is quite likely that any rent received by the Fund (when the underlying asset is real estate) will be insufficient to meet interest expenses incurred by the Fund. Any shortfall may be met by tax deductible contributions made to the Fund.

By making tax deductible contributions, the Member will effectively receive a negative gearing advantage. This advantage sought by Members from borrowing could place the investment in a tax effective structure.



## Requirements & Considerations

- A Self Managed Superannuation Fund (Fund).
- The Fund needs to possess the power to acquire an investment warrant (including borrowing provisions).
- The investment strategy of the Fund needs to accommodate the acquisition of a warrant; an amendment to the Fund's Investment Strategy is included in this package.
- A Security Trustee, which will acquire the asset and hold the legal title of the asset on trust for the Fund.

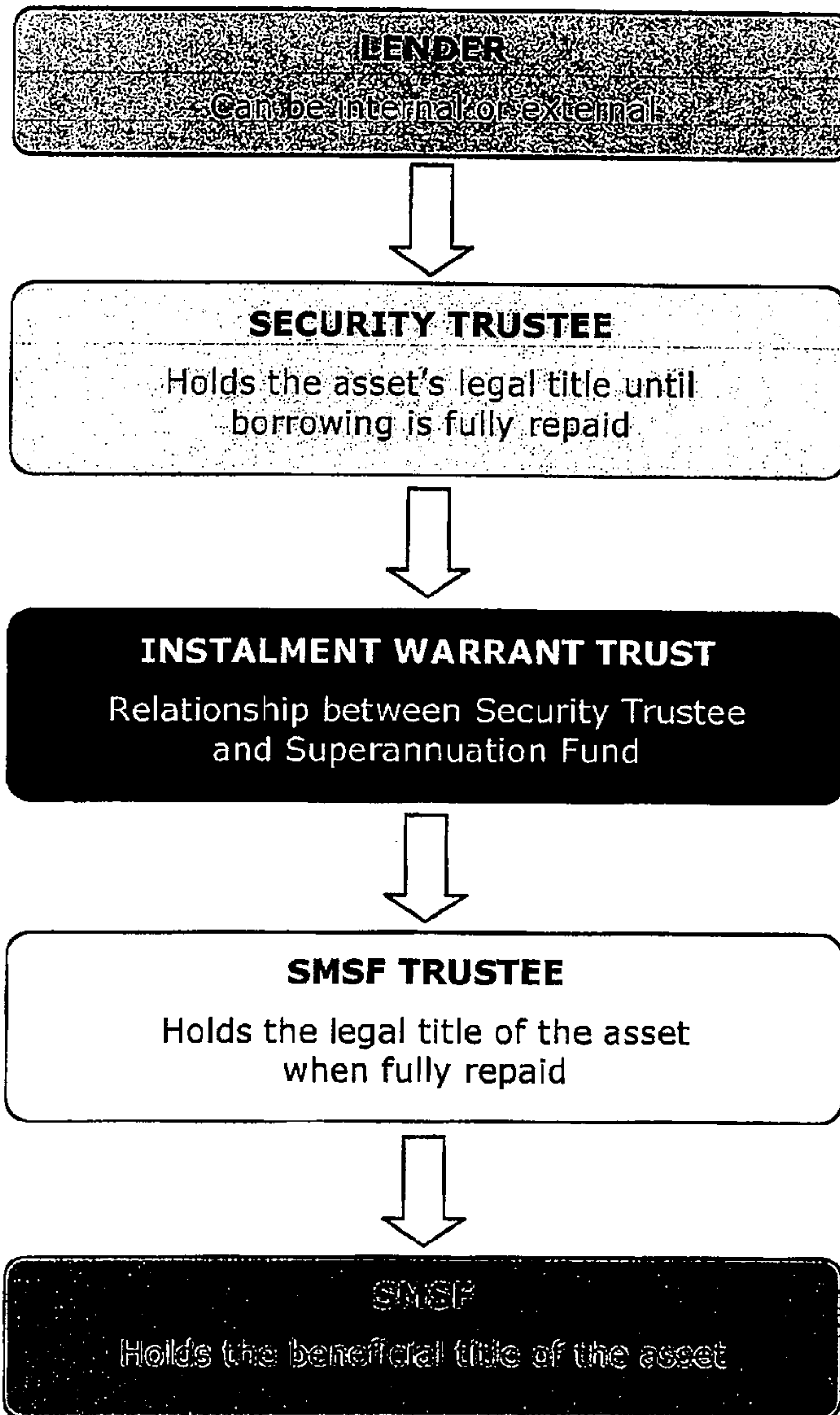
The Security Trustee cannot be the Trustee of the Fund. The Security Trustee may be an Individual or Individuals; however a Corporate entity is preferable given the legal protection it provides.

- A Contract in which the Security Trustee enters to acquire the asset.  
The Security Trustee must be a "Bare Nominee" for the purposes of Capital Gains Tax, as discussed in this guide.
- The Fund is responsible for managing the asset; for example, if the asset is real estate then the Fund must collect the rent and manage all repairs.
- Capital raised by the Fund, to allow the Security Trustee to pay the vendor for the asset being acquired.

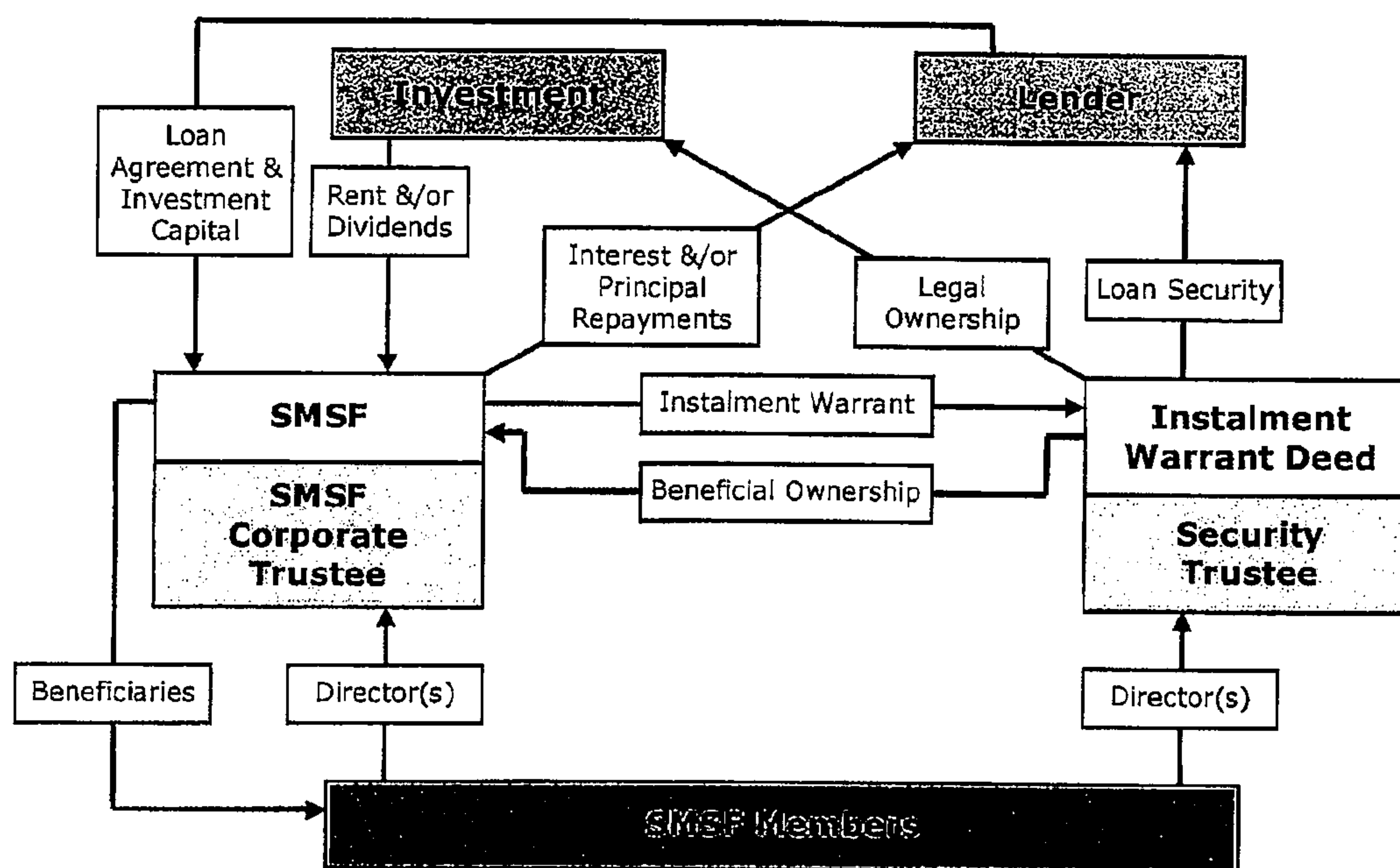
In order for the Security Trustee to take effect, the Fund must utilise the Funds borrowed to acquire the asset; Funds may be borrowed from a financial institution or an Individual. This package contains a loan agreement applicable for an Individual Security Trustee of finance. A financial institution may, however, require the Security Trustee to provide a mortgage on any acquisition of property.

- An Instalment Warrant Deed executed by the Security Trustee and the Trustee of the Fund; a Warrant Certificate and an Instalment Warrant Deed is included in this package.
- An investment, which is to be acquired by the Security Trustee as a Bare Nominee for the Fund.

## Simplified Instalment Warrant Structure



## A Typical Instalment Warrant Setup, with Corporate Trustee(s)

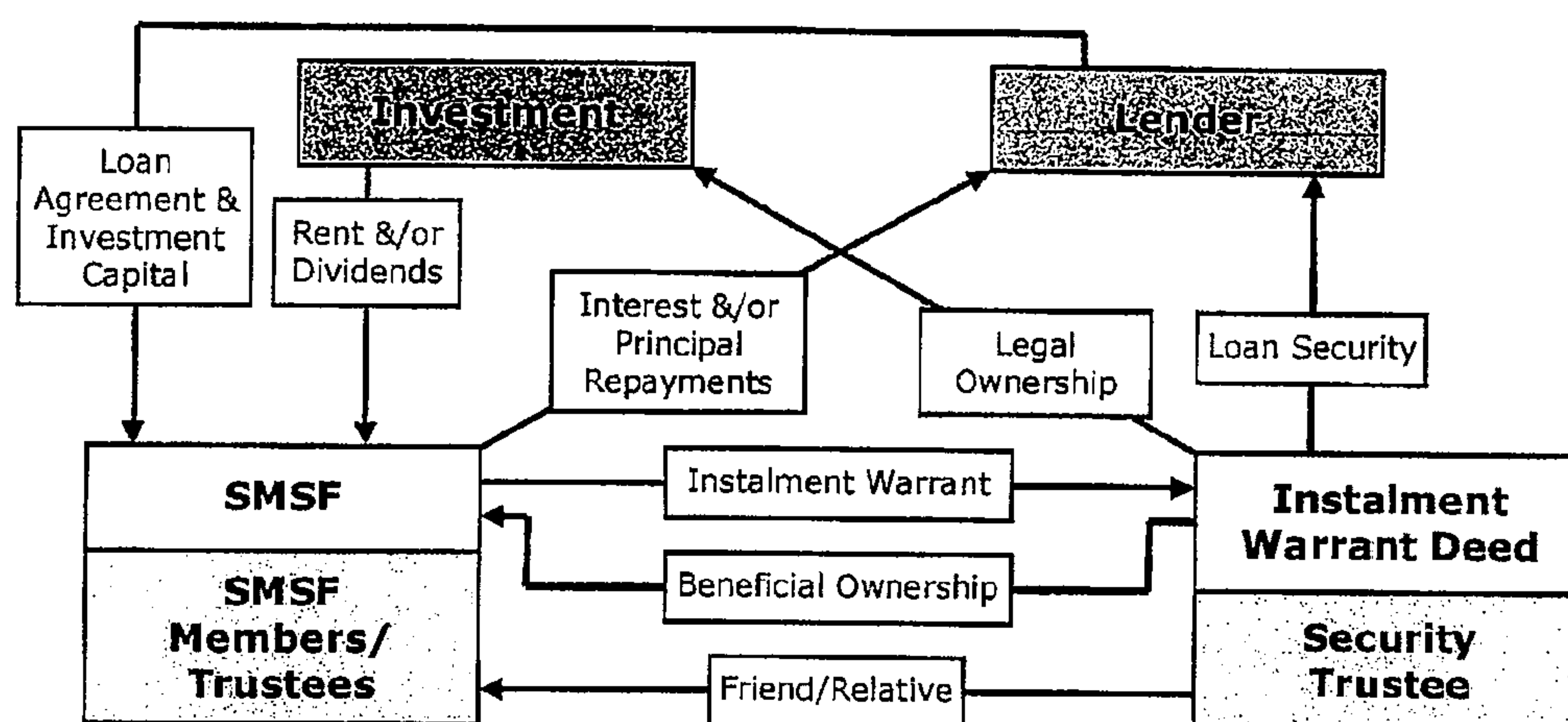


### Please Note

- Red arrows represent the legal processes that occur for the Instalment Warrant to be implemented correctly.
- Black arrows represent the relationship between the two trust structures, the Trustees, and the SMSF Members.
- The SMSF & Instalment Warrant Deed cannot have the same Trustee, however, they can have the same Directors of a Corporate Trustee.
- The Member(s) of an SMSF can also perform the function of the Lender, and it is up to the Lender & SMSF Member(s) to determine what loan security is needed, and what the frequency & structure of the repayments will be. If a Financial Institution is the Lender, and requires additional security over the amount borrowed, then specific professional advice should be obtained.



## A Typical Instalment Warrant Setup, with Individual Trustees

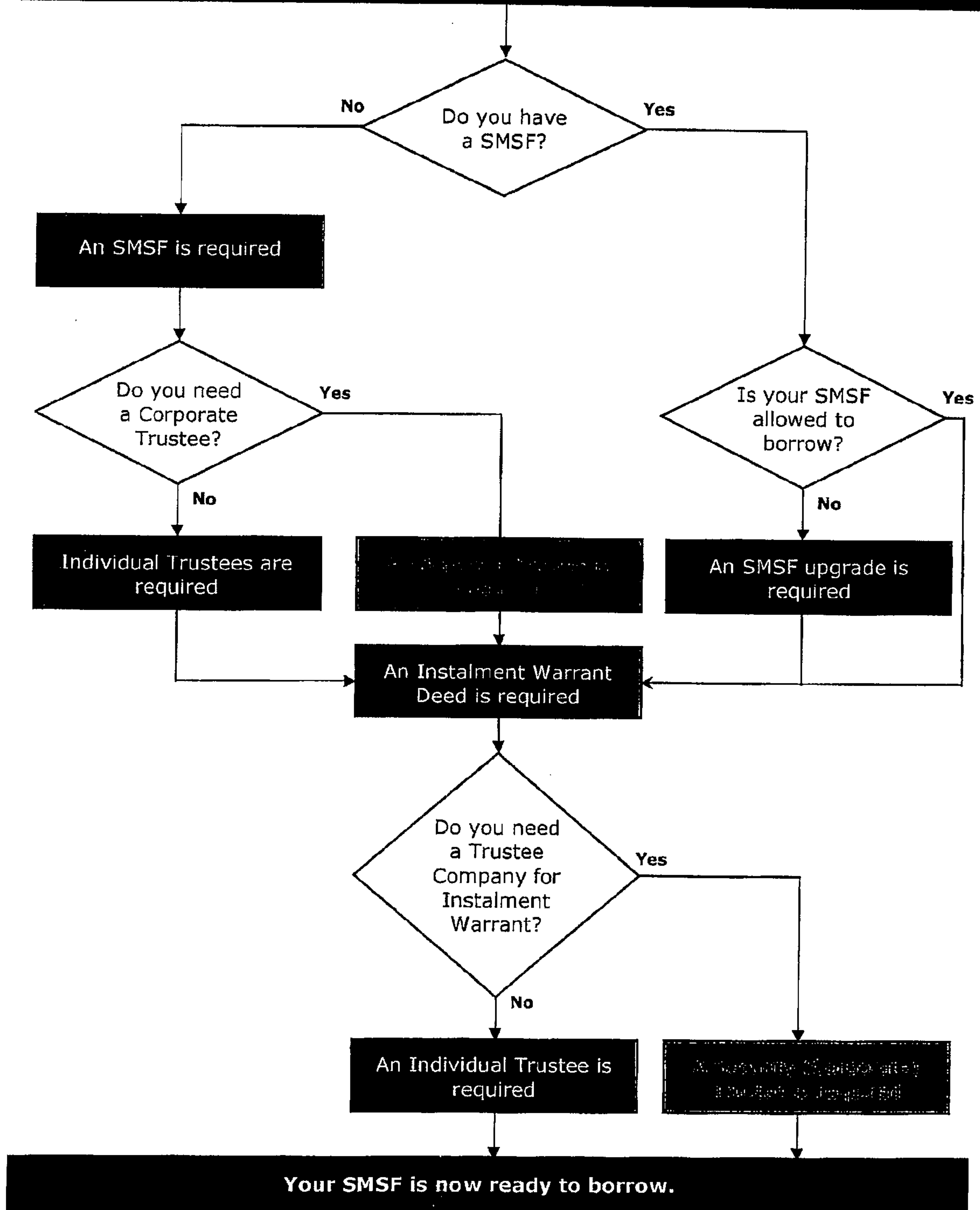


### Please Note

- Red arrows represent the legal processes that occur for the Instalment Warrant to be implemented correctly.
- Black arrows represent the relationship between the two trust structures, the Trustees, and the SMSF Member(s).
- The SMSF & Instalment Warrant Deed cannot have the same Trustee, however, they can have the same Directors of a Corporate Trustee.
- The Member(s) of an SMSF can also perform the function of the Lender, and it is up to the Lender & SMSF Member(s) to determine what loan security is needed, and what the frequency & structure of the repayments will be. If a Financial Institution is the Lender, and requires additional security over the amount borrowed, then specific professional advice should be obtained.

## Instalment Warrant Flowchart

Would you like your Superannuation Fund to borrow to acquire assets?



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**Disclaimer**

Espreon Corporate Services Pty Ltd in providing the kit is not making any recommendation as to whether the acquisition of an instalment warrant is or is not a suitable investment for any particular Superannuation Fund. Rather Trustees of Superannuation Funds should obtain independent financial advice as to whether the acquisition by the Fund of any such instalment warrant (and underlying investment) is an appropriate investment for that Fund.



## **Suggested Investment Strategy Amendment**

### **Real Property**

The Fund will borrow to acquire the beneficial interest in real estate, provided the lenders rights on any default of the borrowing or the sum of the borrowing and charges related to the borrowing are limited to rights relating to that real estate or any replacement to the real estate.

## **Suggested Investment Strategy Amendment**

### **Listed Securities**

The Fund will borrow to acquire the beneficial interest in listed Company shares provided the lender's rights on any default of the borrowing or the sum of the borrowing and charges related to the borrowing are limited to rights relating to those listed shares or any replacement to the listed shares.

## Checklist

The checklist below is provided for guidance and assistance to set-up the Instalment Warrant package for your SMSF to borrow.

TASK	CHECKED	DATE
<p>Ensure that your SMSF Deed is allowed to borrow through a limited recourse loan.</p> <p><i>(If you purchased an Espreon SMSF with this Instalment Warrant package, then your Fund will allow this.)</i></p>		
<p>Ensure that the Fund's investment strategy allows for, or has been amended to allow for, the SMSF to borrow through an Instalment Warrant.</p> <p><i>(If the Investment is Real Estate or Listed Shares, then this package includes suggested amendments to the Fund's investment strategy.)</i></p>		
<p>Identify an investment and ensure that it:</p> <ul style="list-style-type: none"> <li>• can be acquired under SIS legislation,</li> <li>• is suitable for the Fund, considering the trust Deed and investment strategy;</li> <li>• is suitable for the Members of the Fund; and</li> <li>• is appropriately managed.</li> </ul>		
<p>Determine the total amount of monies required to acquire the asset/investment, along with the amount to be borrowed.</p> <p>Select a suitable financier from which the monies will be borrowed to acquire the asset/investment.</p>		
<p>Hold a meeting of Trustees of the Fund to agree to the borrowing.</p> <p><i>(This Instalment Warrant package includes the relevant minutes for this meeting; the Fund Resolution).</i></p>		
<p>Hold a meeting of the security Trustee to agree to execute the Instalment Warrant Deed.</p> <p><i>(This Instalment Warrant package includes the relevant minutes for this meeting; the Security Trustee Resolution).</i></p>		
<p>Ensure that the attached Warrant Certificate, Instalment Warrant Deed and management agreement (if applicable) are completed.</p>		
<p>All documents are to be executed.</p>		

**DISCLAIMER:** In providing these documents, Espreon Corporate Services Pty Ltd is not providing legal, accounting or financial advice and advise the Trustee of the Self Managed Superannuation Fund to seek professional advice as to whether this product is suitable for their needs.



## **Instalment Warrant Exert Superannuation Industry (Supervision) Act 1993**

### **Section 67 – Borrowing**

#### *Prohibition*

- (1) Subject to this section, a Trustee of a regulated Superannuation Fund (RSF) must not:
- (a) borrow money; or
  - (b) maintain an existing borrowing of money.

#### *Exception—instalment warrants*

- (4A) Subsection (1) does not prohibit a Trustee (the **RSF Trustee**) of a regulated Superannuation Fund from borrowing money, or maintaining a borrowing of money, under an arrangement under which:
- (a) the money is or has been applied for the acquisition of an asset (the **original asset**) other than one the RSF Trustee is prohibited by this Act or any other law from acquiring; and
  - (b) the original asset, or another asset (the **replacement**) that:
    - (i) is an asset replacing the original asset or any other asset that met the conditions in this subparagraph and subparagraph (ii); and
    - (ii) is not an asset the RSF Trustee is prohibited by this Act or any other law from acquiring;is held on trust so that the RSF Trustee acquires a beneficial interest in the original asset or the replacement; and
  - (c) the RSF Trustee has a right to acquire legal ownership of the original asset or the replacement by making one or more payments after acquiring the beneficial interest; and
  - (d) the rights of the lender against the RSF Trustee for default on the borrowing, or on the sum of the borrowing and charges related to the borrowing, are limited to rights relating to the original asset or the replacement; and
  - (e) if, under the arrangement, the RSF Trustee has a right relating to the original asset or the replacement (other than a right described in paragraph (c))—the rights of the lender against the RSF Trustee for the RSF Trustee's exercise of the RSF Trustee's right are limited to rights relating to the original asset or replacement.

## Warrant Certificate

**Domenic Maione and Maria Maione**  
("Name of Security Trustee")

**Of 16 Shelton Drive, Athelstone SA 5076**  
(Address of Security Trustee, if an Individual)

hereby acknowledges having received from

**D & M Maione Family Super Fund**  
("the Fund")

the amount of \$ 250,000 and pursuant to the Deed between the Fund and the Security Trustee, dated 10-09-08, issues to the Fund this Warrant to be held by the Fund according to the terms of that Deed.

  
\_\_\_\_\_  
Director

10-09-08  
\_\_\_\_\_  
Date

## Loan Agreement

**This agreement  
is made:**

10-09-08 (date)

**Between:**

Domenic & Maria Maione

**of:**

(“the Lender”),

**And:**

**Maione Co Pty Ltd ACN: 087 297 327**

**of:**

**PBD Partners Pty Ltd 15 Gorge Road, Paradise SA 5075**

(“the borrower”).

### **WHEREAS:**

- A. The Borrower is the Trustee of the [the Fund];
- B. The Fund wishes to acquire the beneficial interest in the Investment;
- C. The Investment will be acquired on trust for the Borrower by a Trustee for the Borrower.
- D. The Lender has agreed to lend monies to the Borrower to allow the Borrower to acquire the beneficial interest in the Investment.
- E. The Lender has agreed that the rights of the Lender in the event of default on the borrowing by the Borrower are limited to rights relating to the Investment or a replacement to the Investment.



1. **DEFINITIONS**

In this Agreement:

**"Investment"** means any asset in which the Fund will hold a beneficial interest and which will be held by a Trustee for the Fund pursuant to that Deed, a copy of which is attached to this agreement.

**"Principal Sum"** means that amount referred at clause 2, below.

**"Trustee"** means that person described as the "Security Trustee" in the copy of the Deed which is attached to this Agreement.

2. **LOAN**

The Lender shall lend to the Borrower, subject to the terms of this Agreement, the amount of \$ 780,000.

The Lender agrees that the Borrower shall pay that sum to the Trustee to be applied in the acquisition of the Investment.

3. **DEFAULT**

- (a) In the event that the Borrower fails to make a payment of principal and interest, as required by this Agreement, the entirety of all of the principal and interest payable by the Borrower to the Lender shall then become due and payable to the Lender;
- (b) If the Borrower does not forthwith pay all the principal and interest due to the Lender, as provided for by clause 3(a) above, the Borrower may seize and sell the Investment or any property acquired by the Borrower as a replacement to the Investment. The Lender may deduct from the amount realised by the Lender from that sale of the Investment or the replacement to the Investment the amount of that principal and interest due to the Lender and shall pay the balance to the Borrower. The Lender shall have no additional rights against the Borrower to require the Borrower to pay more to the Lender than the amount so realised on sale of the Investment or the replacement to the Investment.

4. **PRINCIPAL**

The Borrower shall pay the Principal Sum so lent to it by the Lender, whether in one lump sum or by instalments, as determined by the Lender.

5. **INTEREST**

The Borrower shall pay to the Lender interest.

*[Interest can be based on a specified daily rate, alternatively, on a daily basis calculated at the advertised variable rate for residential investment of the one of Australia's leading Bank's Variable Home Loan interest rate for that day plus a margin of 0.2% per annum on the daily balance of the Principal Sum then outstanding or at such other rate as may from time to time be agreed by the Borrower and the Lender.]*

6. **OTHER CHARGES**

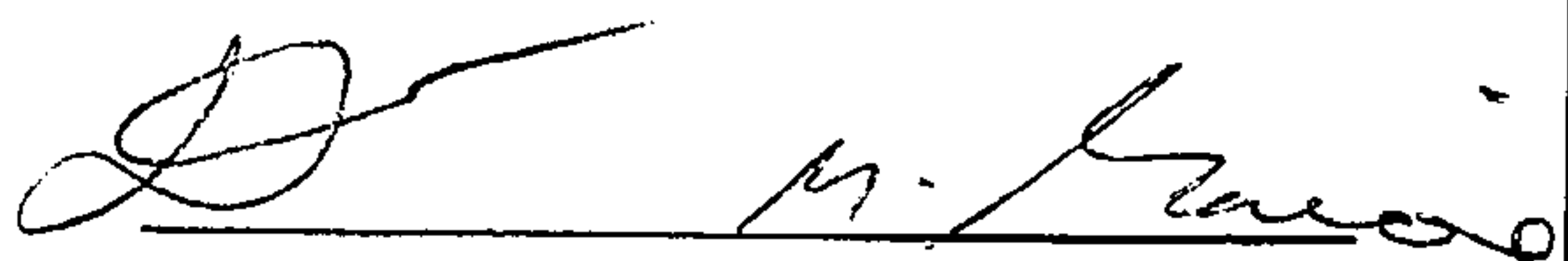
The Borrower shall pay to the Lender such other amounts as may have been incurred by the Lender in:

- borrowing the amount to on-lend to the Borrower,
- any fees which might be payable by the Lender for early repayment of any amount it borrowed to on-lend to the Borrower,
- any fee incurred by the Lender in repaying any amount it had borrowed to on-lend to the Borrower.

**SIGNED AS AN AGREEMENT**

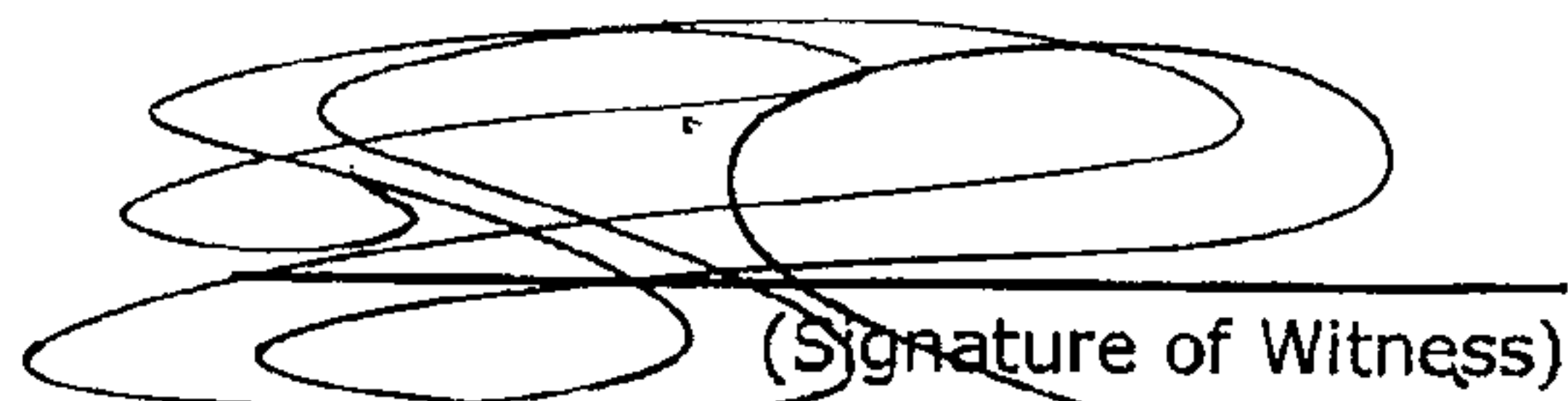
By

DOMENIC & MARIA MAIONE  
as Lender.

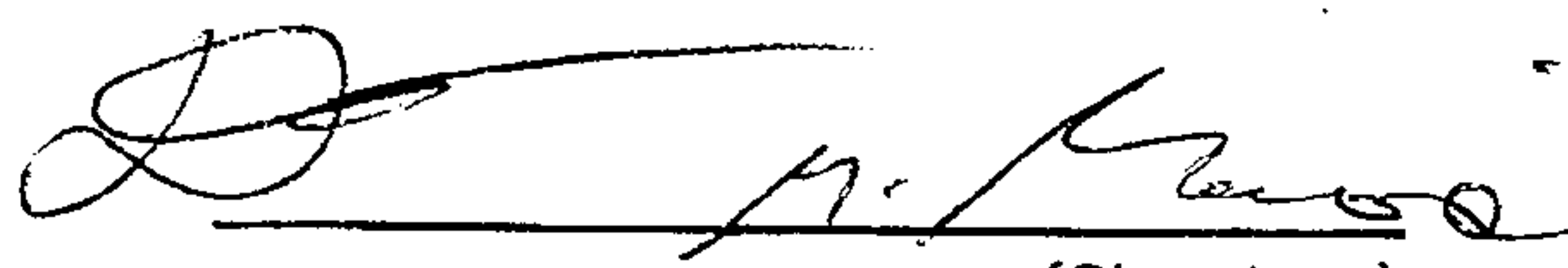
  
(Signature)

in presence of

KATRINA FLEMING

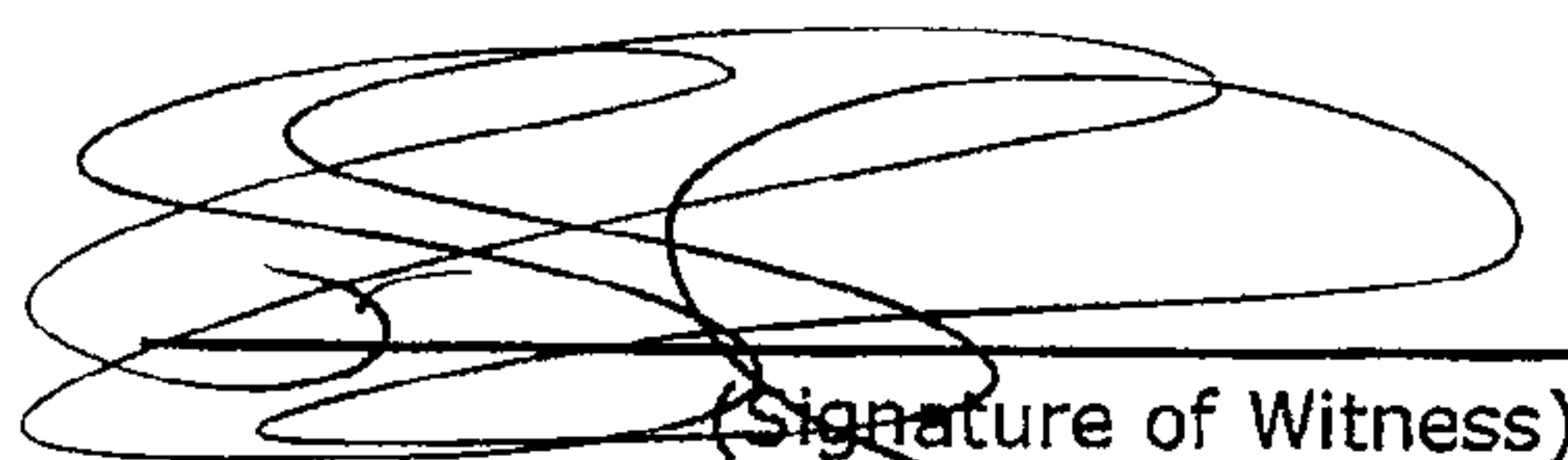
  
(Signature of Witness)

**Maione Co Pty Ltd ACN: 087 297 327**  
as Borrower.

  
(Signature)

in presence of

KATRINA FLEMING

  
(Signature of Witness)

**Minutes of Security Trustee Meeting  
Domenic Maione and Maria Maione  
Purpose of Meeting – Security Trustee Resolution**

**Attended By** Maione Co Pty Ltd ACN: 087 297 327  
as Trustee for  
D & M Maione Family Super Fund

**HELD AT:** 16 Shelton Drive, Athelstone SA 5076

**DATE:** 10.09.08

**TIME:** 10:00 AM

**PRESENT:** Domenic Maione  
Maria Maione

**CHAIRMAN:** Domenic Maione was appointed chairman of the meeting.

**RESOLUTIONS:** The chairman reported that Maione Co Pty Ltd ACN: 087 297 327 as Trustee of D & M Maione Family Super Fund ("the Fund") had provided the Security Trustee with an amount of \$ 850,000 and had requested that the Security Trustee:

- issue it with a warrant for that amount to be held according to the terms of an Instalment Warrant Deed, a copy of which is annexed hereto as the Instalment Warrant Deed;
- purchase 18 CROYDON RD, KESWICK  
("the Investment") the legal title to which will be held by the Security Trustee the beneficial title to which will be held by the Fund by executing a copy of that draft contract ("the Contract"), a copy of which is annexed hereto as the Loan Agreement.

**RESOLVED:** (1) That the Security Trustee executes the Deed.  
(2) The Security Trustee executes the Contract.  
(3) If the Security Trustee acquires the Investment it is to be held according to the terms of the Deed.

**MEETING  
CLOSED:** There being no further business the meeting was then terminated.

  
Chairman



**Minutes of Trustee Meeting  
D & M Maione Family Super Fund  
Purpose of Meeting – Fund Resolution**

**Attended By**      **Maione Co Pty Ltd ACN: 087 297 327  
as Trustee for  
D & M Maione Family Super Fund**

**HELD AT:**            **PBD Partners Pty Ltd 15 Gorge Road, Paradise SA 5075**

**DATE:**              10.09.08.

**TIME:**              10:00AM

**PRESENT:**         **Domenic Maione  
Maria Maione**

**CHAIRMAN:**       **Domenic Maione** was appointed chairman of the meeting.

**RESOLUTIONS:**   It was resolved that:

- the Fund borrow the sum of \$ 780,000 from DOMENIC & MARIA MAIONE on the terms contained within the copy of the annexed Loan Agreement between **Domenic Maione and Maria Maione** and the Fund,
- the Fund acquire a warrant from  
  
on the terms contained within the copy of the annexed Instalment Warrant Deed which has been made between **Domenic Maione and Maria Maione** and the Fund,
- **Domenic Maione and Maria Maione**  
be asked to acquire the legal interest in 18 CROYDON RD, KESWICK ('the Investment') by executing the copy of that draft contract, a copy of which is annexed hereto and that the Fund acquire the beneficial interest in the Investment.

**MEETING  
CLOSED:**

There being no further business the meeting was then terminated.



**Chairman**

1. **DEFINITIONS**

In this Agreement:

**"Investment"** means any asset in which the Fund will hold a beneficial interest and which will be held by a Trustee for the Fund pursuant to that Deed, a copy of which is attached to this agreement.

**"Principal Sum"** means that amount referred at clause 2, below.

**"Trustee"** means that person described as the "Security Trustee" in the copy of the Deed which is attached to this Agreement.

2. **LOAN**

The Lender shall lend to the Borrower, subject to the terms of this Agreement, the amount of \$\_\_\_\_\_.

The Lender agrees that the Borrower shall pay that sum to the Trustee to be applied in the acquisition of the Investment.

3. **DEFAULT**

(a) In the event that the Borrower fails to make a payment of principal and interest, as required by this Agreement, the entirety of all of the principal and interest payable by the Borrower to the Lender shall then become due and payable to the Lender;

(b) If the Borrower does not forthwith pay all the principal and interest due to the Lender, as provided for by clause 3(a) above, the Borrower may seize and sell the Investment or any property acquired by the Borrower as a replacement to the Investment. The Lender may deduct from the amount realised by the Lender from that sale of the Investment or the replacement to the Investment the amount of that principal and interest due to the Lender and shall pay the balance to the Borrower. The Lender shall have no additional rights against the Borrower to require the Borrower to pay more to the Lender than the amount so realised on sale of the Investment or the replacement to the Investment.

4. **PRINCIPAL**

The Borrower shall pay the Principal Sum so lent to it by the Lender, whether in one lump sum or by instalments, as determined by the Lender.

**Minutes of Security Trustee Meeting  
Domenic Maione and Maria Maione  
Purpose of Meeting – Security Trustee Resolution**

**Attended By**        **Maione Co Pty Ltd ACN: 087 297 327**  
                              **as Trustee for**  
                              **D & M Maione Family Super Fund**

**HELD AT:**            **16 Shelton Drive, Athelstone SA 5076**

**DATE:**

**TIME:**

**PRESENT:**         **Domenic Maione**  
                              **Maria Maione**

**CHAIRMAN:**       **Domenic Maione** was appointed chairman of the meeting.

**RESOLUTIONS:**   The chairman reported that **Maione Co Pty Ltd ACN: 087 297 327** as Trustee of **D & M Maione Family Super Fund** ("the Fund") had provided the Security Trustee with an amount of \$ 70,000.00 and had requested that the Security Trustee:

- issue it with a warrant for that amount to be held according to the terms of an Instalment Warrant Deed, a copy of which is annexed hereto as the Instalment Warrant Deed;
- purchase \_\_\_\_\_  
("the Investment") the legal title to which will be held by the Security Trustee the beneficial title to which will be held by the Fund by executing a copy of that draft contract ("the Contract"), a copy of which is annexed hereto as the Loan Agreement.

**RESOLVED:**        (1) That the Security Trustee executes the Deed.  
                              (2) The Security Trustee executes the Contract.  
                              (3) If the Security Trustee acquires the Investment it is to be held according to the terms of the Deed.

**MEETING**            There being no further business the meeting was then  
**CLOSED:**           terminated.

  
\_\_\_\_\_  
**Chairman**



**Minutes of Trustee Meeting  
D & M Maione Family Super Fund  
Purpose of Meeting – Fund Resolution**

**Attended By**        **Maione Co Pty Ltd ACN: 087 297 327  
as Trustee for  
D & M Maione Family Super Fund**

**HELD AT:**            **PBD Partners Pty Ltd 15 Gorge Road, Paradise SA 5075**

**DATE:**

**TIME:**

**PRESENT:**        **Domenic Maione  
Maria Maione**

**CHAIRMAN:**       **Domenic Maione** was appointed chairman of the meeting.

**RESOLUTIONS:**   It was resolved that:

- the Fund borrow the sum of \$\_\_\_\_\_ from

\_\_\_\_\_ on the terms contained within the copy of the annexed Loan Agreement between **Domenic Maione and Maria Maione** and the Fund,

- the Fund acquire a warrant from

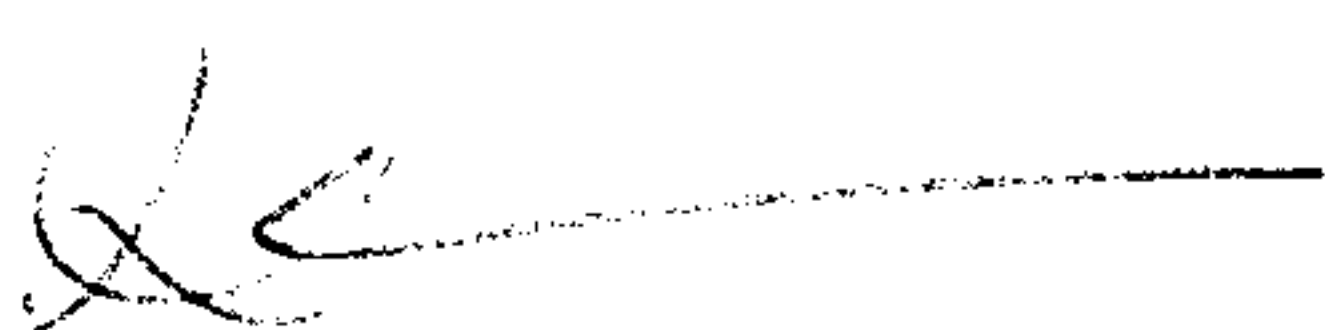
\_\_\_\_\_ on the terms contained within the copy of the annexed Instalment Warrant Deed which has been made between **Domenic Maione and Maria Maione** and the Fund,

- **Domenic Maione and Maria Maione**

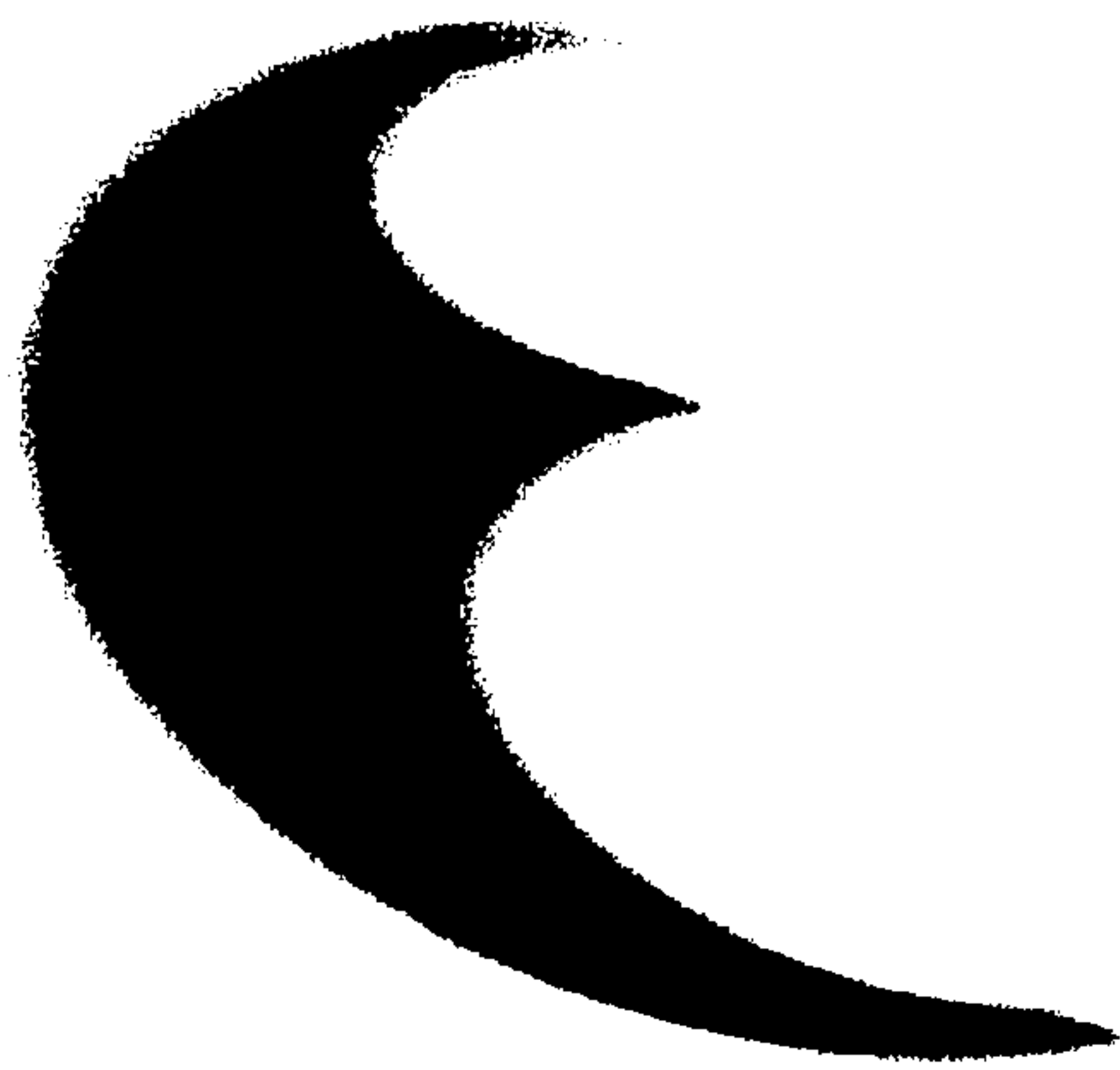
be asked to acquire the legal interest in

\_\_\_\_\_ (‘the Investment’) by executing the copy of that draft contract, a copy of which is annexed hereto and that the Fund acquire the beneficial interest in the Investment.

**MEETING  
CLOSED:**            There being no further business the meeting was then terminated.

  
\_\_\_\_\_  
**Chairman**





# **Instalment Warrant Deed**

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Instalment Warrant Deed prepared by:  
Robert Richards  
Robert Richards & Associates  
Revenue and Corporate Law  
Suite 3, Level 12, 53 Martin Place  
Sydney, New South Wales

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## **Instalment Warrant Deed**

**THIS DEED IS MADE:** \_\_\_\_\_(date)

**Between: Maione Co Pty Ltd ACN: 087 297 327**

as Trustee for

**D & M Maione Family Super Fund**  
("the Fund"),

**And: Domenic Maione and Maria Maione**  
("the Security Trustee").

### **WHEREAS**

- A. The Fund is a self managed Superannuation Fund;
- B. The Fund wishes to acquire a beneficial interest in the Initial Investment;
- C. The Security Trustee will hold the legal title to the Initial Investment and hold the Initial Investment on trust for the Fund;
- D. The Fund will pay to the Security Trustee capital and moneys borrowed from the Lender, as may be required by the Security Trustee, for the purposes of giving effect to this Deed;
- E. The Security Trustee will issue to the Fund a security known as a Warrant as evidence of the Fund's rights under this Deed;
- F. The Fund may require the Security Trustee from time to time to acquire further or further investments, as replacements to the Initial Investment or as a Further Investment or as additions to the Initial Investment or a Further Investment. Any such Further Investment shall be held by the Security Trustee according to the terms of this Deed.

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**NOW IT IS HEREBY AGREED THAT:**

**Acquisition of the Investment**

1. Subject to clause 2 below the Security Trustee will endeavour to acquire the Initial Investment for such amount and on such terms as required by the Fund and declares it will hold the Initial Investment as Bare Trustee and Nominee for the Fund according to the terms of this Deed.
2. The Security Trustee must not acquire an Initial Investment if the terms of any borrowing in respect of the acquisition of that investment do not limit the rights of a lender, if any, to the rights relating to the Initial Investment or any replacement of the Initial Investment.
3. The Fund agrees to pay to the Security Trustee all moneys required by it to acquire the Initial Investment, to pay any stamp duties payable by it in respect of that acquisition, to pay all costs and to pay any stamp duty incurred by it to register its legal title to the Initial Investment.
4. If the Security Trustee is unable to acquire the Initial Investment the Security Trustee will refund to the Fund all amounts received by it from the Fund in respect of the Initial Investment less any costs incurred by it in respect of the proposed acquisition of the Initial Investment which are not refundable to it.
5. If all amounts paid to the Security Trustee by the Fund in respect of the acquisition of the Initial Investment are in excess of the total amount required by it to acquire the Initial Investment, pay any stamp duties payable by it in respect of that acquisition and to register its legal title to the Initial Investment, the Security Trustee will refund to the Fund that excess.

**Beneficial Interest**

6. The Security Trustee acknowledges that the Fund is absolutely entitled to the beneficial interest in the Initial Investment.
7. If required by the Fund the Security Trustee will mortgage the Initial Investment on such terms as the Fund requires and provide a charge over any amounts including interest which relates to the Initial Investment. The Security Trustee must not provide any such mortgage if the provision of that mortgage would breach a prohibition contained within the *Superannuation Industry (Supervision) Act 1993* or any regulation to that Act.

**Issue of a Warrant**

8. On acquisition by the Security Trustee of the Initial Investment the Security Trustee will issue to the Fund a security which is a Warrant which will be held by the Fund as evidence of those rights conferred upon it by reason of this Deed.



### **Transfer of Investment**

9. If the Fund after acquiring the beneficial interest in the Initial Investment makes one or more payments to the Lender, or as otherwise required by section 67(4A) of the *Superannuation Industry (Supervision) Act 1993*, the Security Trustee shall if directed by the Fund transfer the Initial Investment to the Fund and on such transfer the Warrant shall be forthwith cancelled.

### **Sale of Investment**

10. If requested to by the Fund the Security Trustee shall sell all or part of the Initial Investment on such terms as directed by the Fund. The Security Trustee shall on receipt of the sale proceeds, less any costs incurred by it on the sale of the Initial Investment or part of the Initial Investment, forthwith pay those proceeds to the Fund and on such payment the Warrant is forthwith cancelled in all or in part.

### **Management of the Investment**

11. The Fund shall manage the Initial Investment and may retain all income from the management of the Initial Investment and may enter into leases on such terms as it decides in the name of the Security Trustee. The Fund shall pay all of the expenses and will indemnify the Security Trustee for any expenses incurred by it which relate to the Initial Investment.

### **Duties of the Security Trustee**

12. The Sole duty of the Security Trustee shall be to hold the legal title to the Initial Investment and to transfer it to the Fund or to a purchaser of the Initial Investment as required by this Deed.

### **Mortgage of the Initial Investment**

13. If required by the Fund the Security Trustee shall grant a mortgage or charge over the Initial Investment but shall not otherwise mortgage or charge the Initial Investment.

### **Stamp Duties**

14. The Fund shall reimburse the Security Trustee for all stamp duties, goods and services tax, and any similar tax imposed upon the Security Trustee as a consequence of the acquisition, holding or disposal of the Initial Investment by it.

### **Investment Investigation**

15. The Fund warrants that it has made and relies on its own investigations as the suitability of the Initial Investment as an investment of the Fund.



### **Indemnity to the Security Trustee, the Security Trustee and others**

16. Neither the Security Trustee nor any person or entity, an advisor to, or an employee of the Security Trustee shall by reason of the execution of this Deed or the acquisition by the Security Trustee of the Initial Investment be liable for any loss or damage suffered by the Fund by reason of it executing this Deed or acquiring a beneficial interest in the Initial Investment unless that loss or damage has been caused by the fraud, gross negligence, or wilful misconduct of that person.

### **Transfer of Legal Title**

17. If directed to by the Fund the Security Trustee shall transfer the legal title in the Initial Investment to such other Trustee as the Fund requires, provided that that other Trustee enters into a Deed mutatis mutandis to this Deed.

### **Further Investments**

18. The Fund may request the Security Trustee to acquire a Further Investment on its behalf. If so, all of the clauses of this Deed apply as if the Further Investment were the Initial Investment and a separate warrant shall be issued by the Security Trustee in respect of that Further Investment.

### **Governing Law**

19. This Deed is to be interpreted according to the laws of that State or Territory of the Commonwealth of Australia in which the Trustee of the Fund resides or in such other State or Territory as the Trustee of the Fund at any time nominates by way of written notice delivered to the Security Trustee.

### **Definitions**

20. In this Deed:

**"Further Investment"** means any Investment in which the Fund will hold or holds a beneficial interest and which was acquired by the Security Trustee at the direction of the Fund to be held according to the provisions of this Deed as identified to the Security Trustee subsequent to execution of this Deed.

**"Initial Investment"** means that Investment in which the Fund will hold or holds a beneficial interest and which was acquired by the Security Trustee at the direction of the Fund to be held according to the provisions of this Deed as identified to the Security Trustee on execution of this Deed.

**"Manage"** means if the Investment is real estate the leasing of the Investment, the maintenance of the Investment, and attending to the payment of all costs associated with the holding and leasing of the Investment.

**"Warrant"** means that security which is issued by the Security Trustee pursuant to the terms of this Deed.

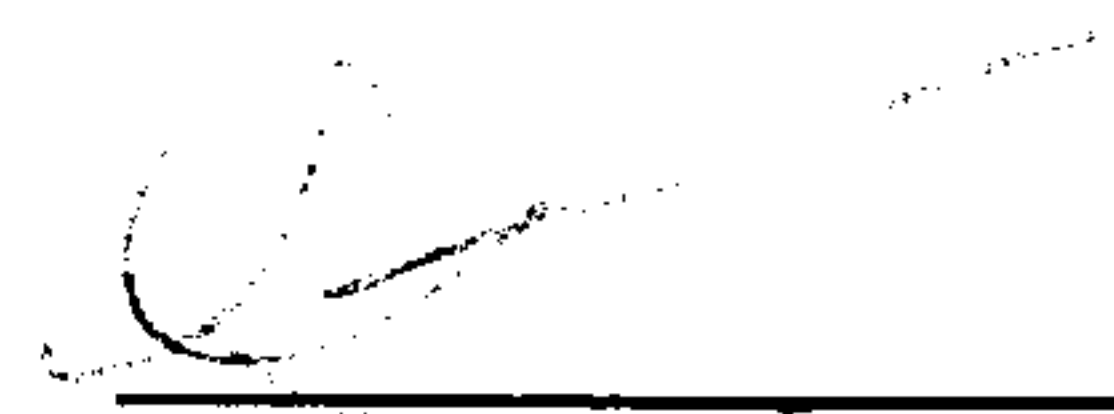
**EXECUTED AS A DEED**

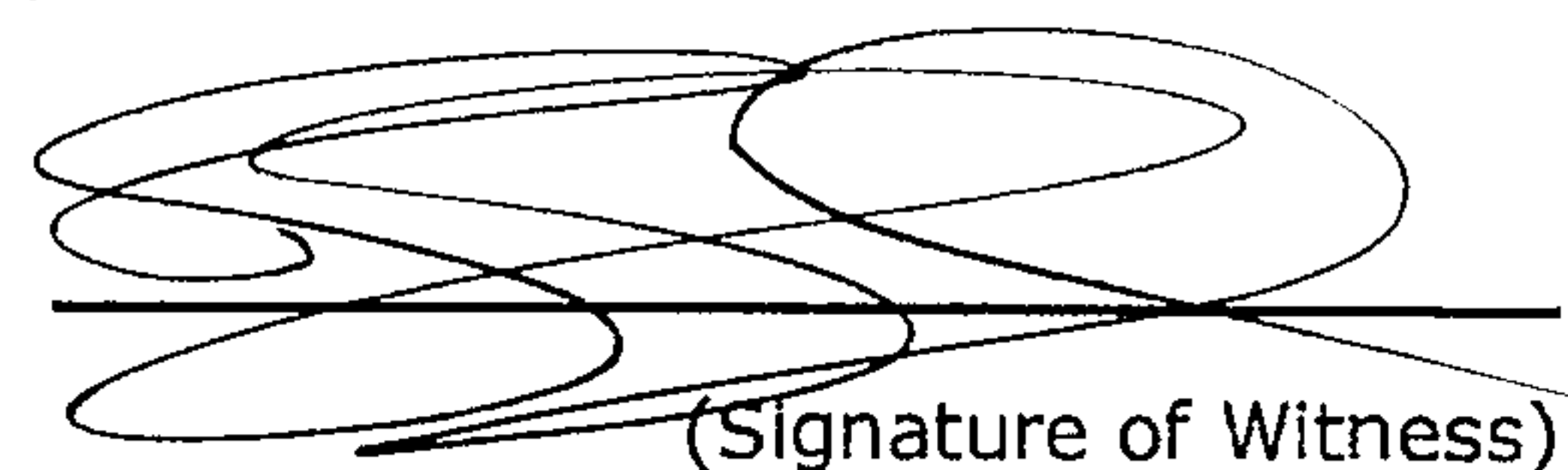
**By**

**Maione Co Pty Ltd ACN: 087 297 327  
as Trustee for the Fund.**

in presence of

KATRINA FLEMING

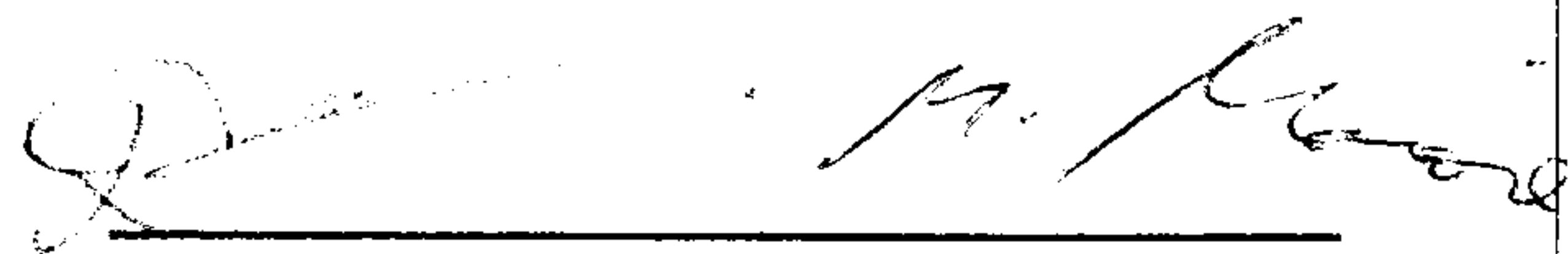
  
\_\_\_\_\_  
M. Maione (Signature)

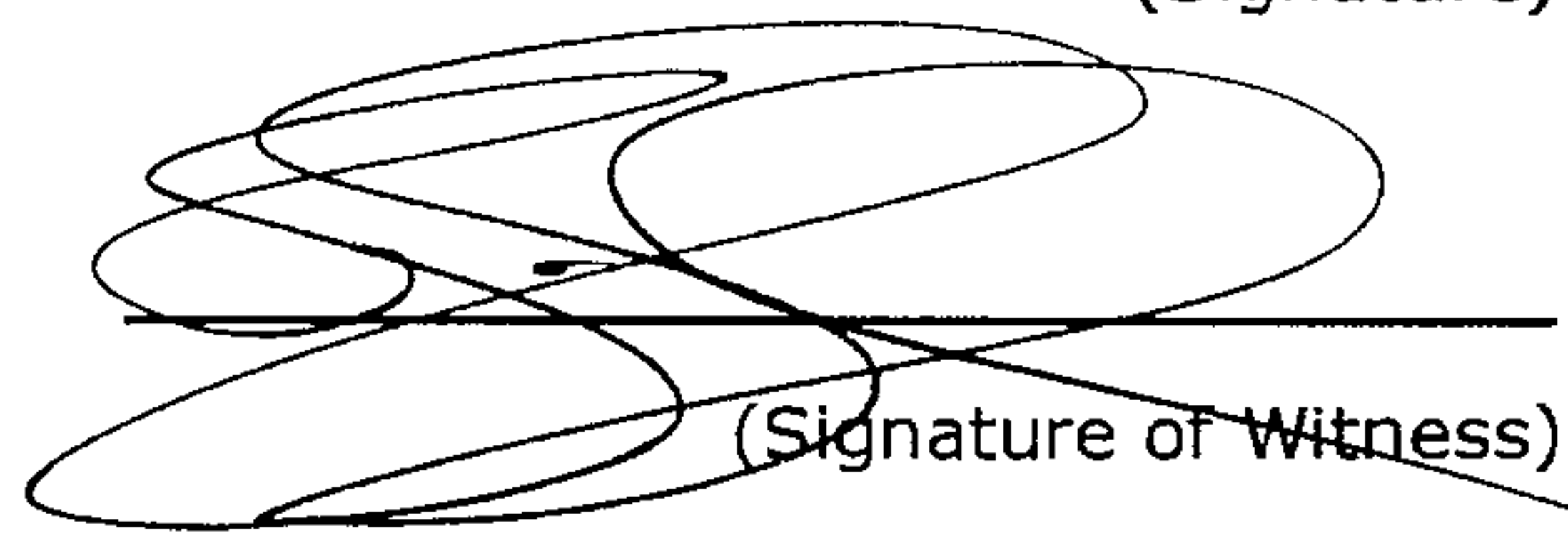
  
\_\_\_\_\_  
(Signature of Witness)

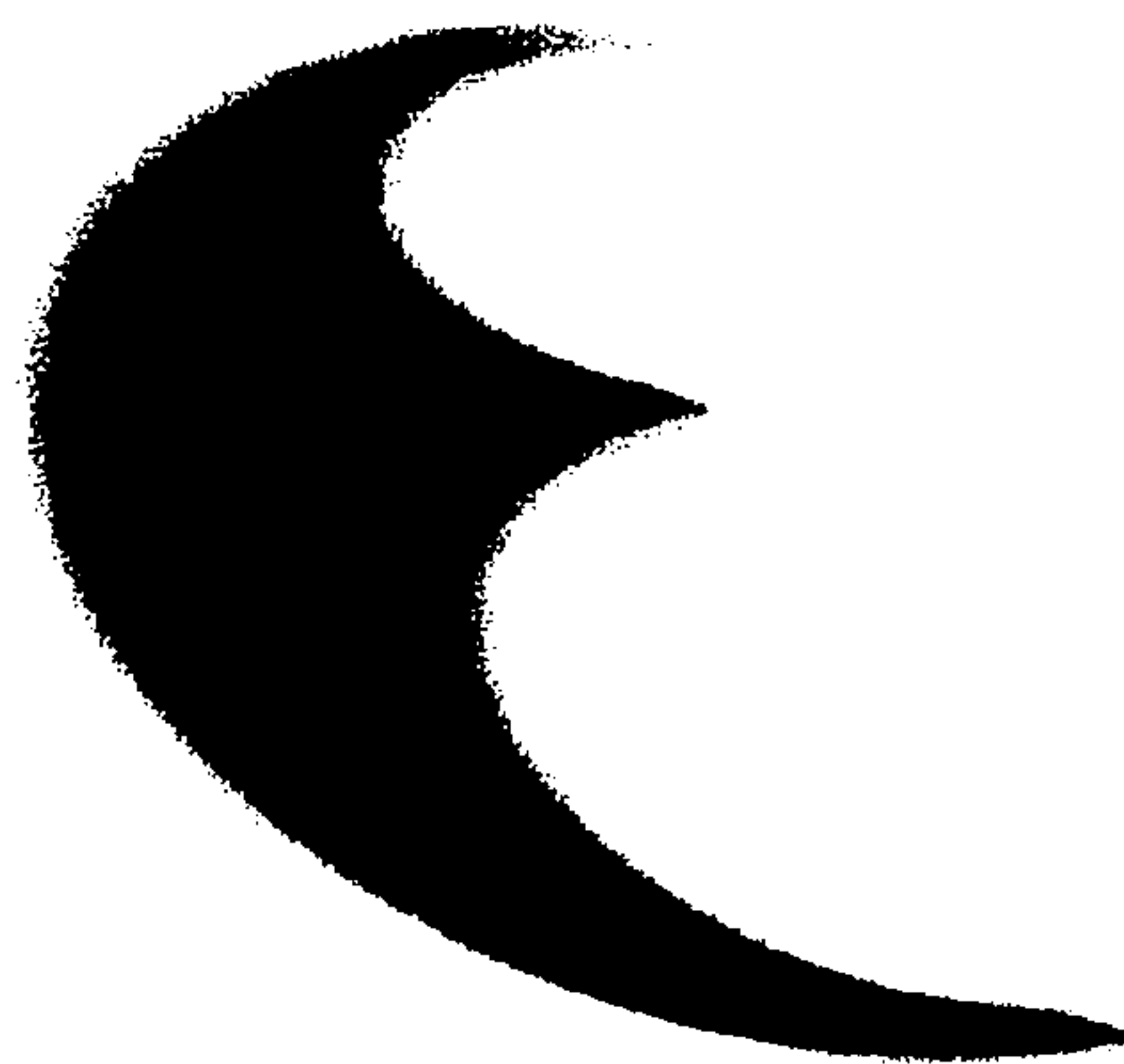
**Domenic Maione and Maria Maione  
as Trustee for the Instalment Warrant  
Deed.**

in presence of

KATRINA FLEMING

  
\_\_\_\_\_  
(Signature)

  
\_\_\_\_\_  
(Signature of Witness)



## **Instalment Warrant Deed**

---

Instalment Warrant Deed prepared by:  
Robert Richards  
Robert Richards & Associates  
Revenue and Corporate Law  
Suite 3, Level 12, 53 Martin Place  
Sydney, New South Wales

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## **Instalment Warrant Deed**

**THIS DEED IS MADE:** 8/9/2008 (date)

**Between:** **Maione Co Pty Ltd ACN: 087 297 327**

as Trustee for

**D & M Maione Family Super Fund**  
("the Fund"),

**And:** **Domenic Maione and Maria Maione**  
("the Security Trustee").

### **WHEREAS**

- A. The Fund is a self managed Superannuation Fund;
- B. The Fund wishes to acquire a beneficial interest in the Initial Investment;
- C. The Security Trustee will hold the legal title to the Initial Investment and hold the Initial Investment on trust for the Fund;
- D. The Fund will pay to the Security Trustee capital and moneys borrowed from the Lender, as may be required by the Security Trustee, for the purposes of giving effect to this Deed;
- E. The Security Trustee will issue to the Fund a security known as a Warrant as evidence of the Fund's rights under this Deed;
- F. The Fund may require the Security Trustee from time to time to acquire further or further investments, as replacements to the Initial Investment or as a Further Investment or as additions to the Initial Investment or a Further Investment. Any such Further Investment shall be held by the Security Trustee according to the terms of this Deed.



**NOW IT IS HEREBY AGREED THAT:**

**Acquisition of the Investment**

1. Subject to clause 2 below the Security Trustee will endeavour to acquire the Initial Investment for such amount and on such terms as required by the Fund and declares it will hold the Initial Investment as Bare Trustee and Nominee for the Fund according to the terms of this Deed.
2. The Security Trustee must not acquire an Initial Investment if the terms of any borrowing in respect of the acquisition of that investment do not limit the rights of a lender, if any, to the rights relating to the Initial Investment or any replacement of the Initial Investment.
3. The Fund agrees to pay to the Security Trustee all moneys required by it to acquire the Initial Investment, to pay any stamp duties payable by it in respect of that acquisition, to pay all costs and to pay any stamp duty incurred by it to register its legal title to the Initial Investment.
4. If the Security Trustee is unable to acquire the Initial Investment the Security Trustee will refund to the Fund all amounts received by it from the Fund in respect of the Initial Investment less any costs incurred by it in respect of the proposed acquisition of the Initial Investment which are not refundable to it.
5. If all amounts paid to the Security Trustee by the Fund in respect of the acquisition of the Initial Investment are in excess of the total amount required by it to acquire the Initial Investment, pay any stamp duties payable by it in respect of that acquisition and to register its legal title to the Initial Investment, the Security Trustee will refund to the Fund that excess.

**Beneficial Interest**

6. The Security Trustee acknowledges that the Fund is absolutely entitled to the beneficial interest in the Initial Investment.
7. If required by the Fund the Security Trustee will mortgage the Initial Investment on such terms as the Fund requires and provide a charge over any amounts including interest which relates to the Initial Investment. The Security Trustee must not provide any such mortgage if the provision of that mortgage would breach a prohibition contained within the *Superannuation Industry (Supervision) Act 1993* or any regulation to that Act.

**Issue of a Warrant**

8. On acquisition by the Security Trustee of the Initial Investment the Security Trustee will issue to the Fund a security which is a Warrant which will be held by the Fund as evidence of those rights conferred upon it by reason of this Deed.

**Transfer of Investment**

9. If the Fund after acquiring the beneficial interest in the Initial Investment makes one or more payments to the Lender, or as otherwise required by section 67(4A) of the *Superannuation Industry (Supervision) Act 1993*, the Security Trustee shall if directed by the Fund transfer the Initial Investment to the Fund and on such transfer the Warrant shall be forthwith cancelled.

**Sale of Investment**

10. If requested to by the Fund the Security Trustee shall sell all or part of the Initial Investment on such terms as directed by the Fund. The Security Trustee shall on receipt of the sale proceeds, less any costs incurred by it on the sale of the Initial Investment or part of the Initial Investment, forthwith pay those proceeds to the Fund and on such payment the Warrant is forthwith cancelled in all or in part.

**Management of the Investment**

11. The Fund shall manage the Initial Investment and may retain all income from the management of the Initial Investment and may enter into leases on such terms as it decides in the name of the Security Trustee. The Fund shall pay all of the expenses and will indemnify the Security Trustee for any expenses incurred by it which relate to the Initial Investment.

**Duties of the Security Trustee**

12. The Sole duty of the Security Trustee shall be to hold the legal title to the Initial Investment and to transfer it to the Fund or to a purchaser of the Initial Investment as required by this Deed.

**Mortgage of the Initial Investment**

13. If required by the Fund the Security Trustee shall grant a mortgage or charge over the Initial Investment but shall not otherwise mortgage or charge the Initial Investment.

**Stamp Duties**

14. The Fund shall reimburse the Security Trustee for all stamp duties, goods and services tax, and any similar tax imposed upon the Security Trustee as a consequence of the acquisition, holding or disposal of the Initial Investment by it.

**Investment Investigation**

15. The Fund warrants that it has made and relies on its own investigations as the suitability of the Initial Investment as an investment of the Fund.



### **Indemnity to the Security Trustee, the Security Trustee and others**

16. Neither the Security Trustee nor any person or entity, an advisor to, or an employee of the Security Trustee shall by reason of the execution of this Deed or the acquisition by the Security Trustee of the Initial Investment be liable for any loss or damage suffered by the Fund by reason of it executing this Deed or acquiring a beneficial interest in the Initial Investment unless that loss or damage has been caused by the fraud, gross negligence, or wilful misconduct of that person.

### **Transfer of Legal Title**

17. If directed to by the Fund the Security Trustee shall transfer the legal title in the Initial Investment to such other Trustee as the Fund requires, provided that that other Trustee enters into a Deed mutatis mutandis to this Deed.

### **Further Investments**

18. The Fund may request the Security Trustee to acquire a Further Investment on its behalf. If so, all of the clauses of this Deed apply as if the Further Investment were the Initial Investment and a separate warrant shall be issued by the Security Trustee in respect of that Further Investment.

### **Governing Law**

19. This Deed is to be interpreted according to the laws of that State or Territory of the Commonwealth of Australia in which the Trustee of the Fund resides or in such other State or Territory as the Trustee of the Fund at any time nominates by way of written notice delivered to the Security Trustee.

### **Definitions**

20. In this Deed:

**"Further Investment"** means any Investment in which the Fund will hold or holds a beneficial interest and which was acquired by the Security Trustee at the direction of the Fund to be held according to the provisions of this Deed as identified to the Security Trustee subsequent to execution of this Deed.

**"Initial Investment"** means that Investment in which the Fund will hold or holds a beneficial interest and which was acquired by the Security Trustee at the direction of the Fund to be held according to the provisions of this Deed as identified to the Security Trustee on execution of this Deed.

**"Manage"** means if the Investment is real estate the leasing of the Investment, the maintenance of the Investment, and attending to the payment of all costs associated with the holding and leasing of the Investment.

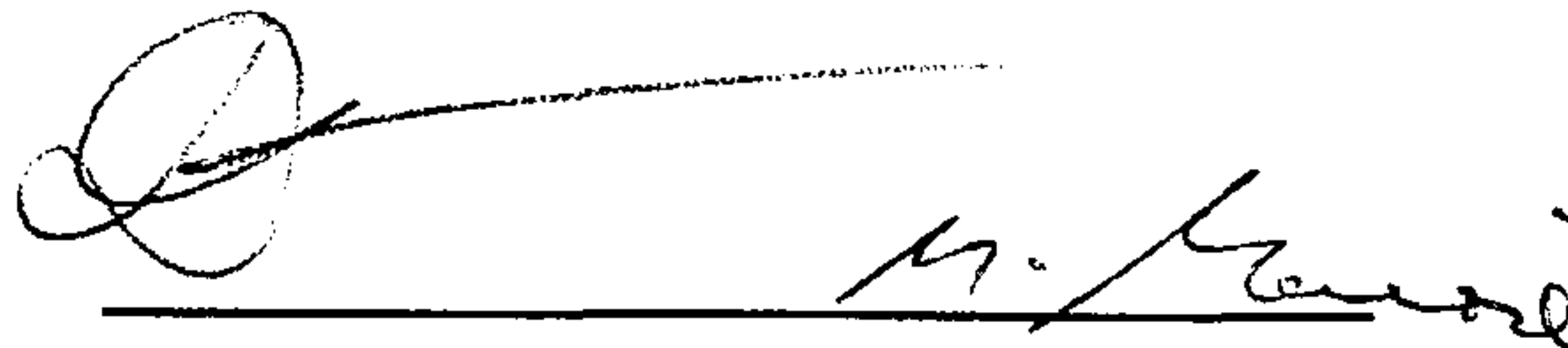
**"Warrant"** means that security which is issued by the Security Trustee pursuant to the terms of this Deed.



**EXECUTED AS A DEED**


**By**

**Maione Co Pty Ltd ACN: 087 297 327  
as Trustee for the Fund.**

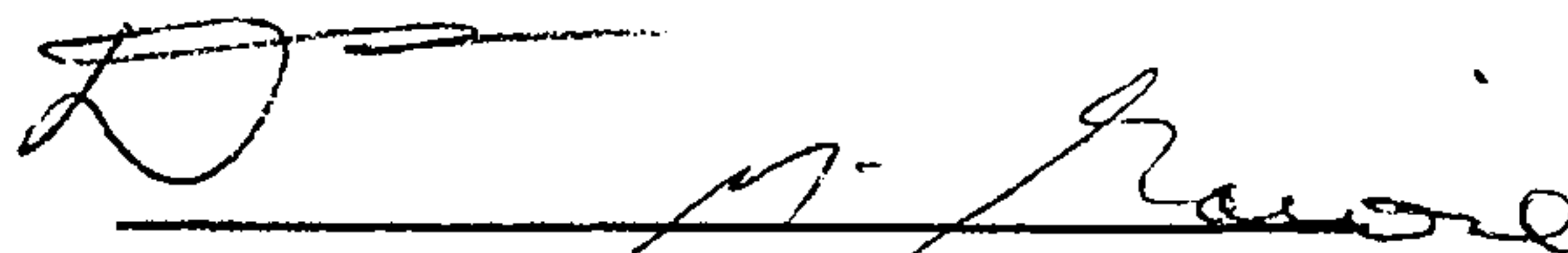
  
(Signature)

in presence of

KATRINA FLEMING

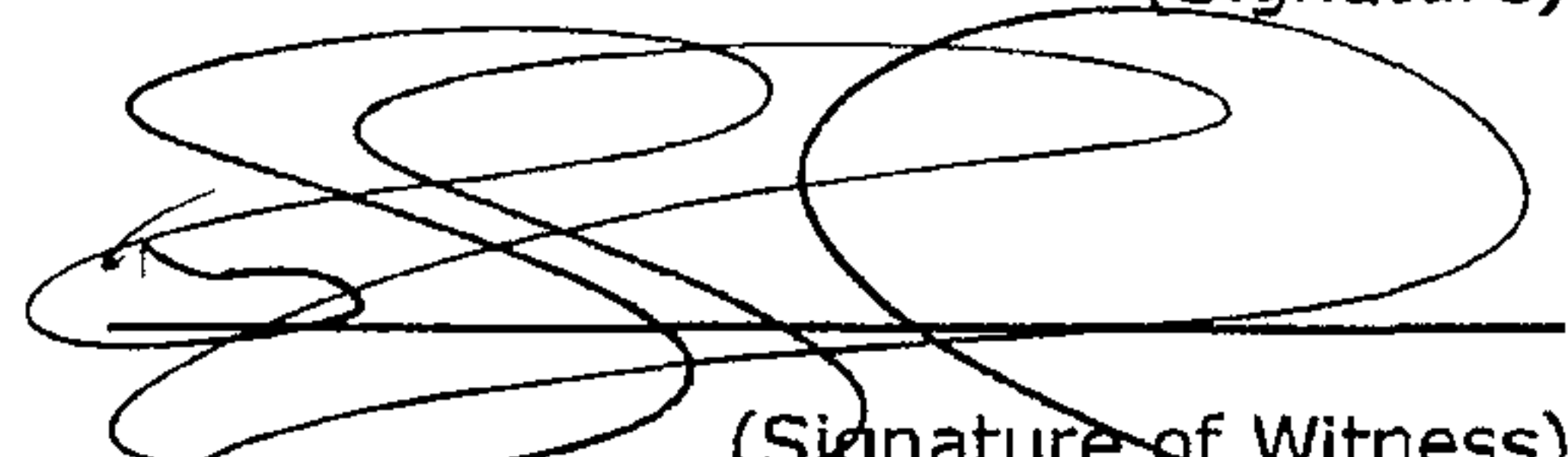
  
(Signature of Witness)

**Domenic Maione and Maria Maione  
as Trustee for the Instalment Warrant  
Deed.**

  
(Signature)

in presence of

KATRINA FLEMING

  
(Signature of Witness)

## Loan Agreement

**This agreement  
is made:**

29 September 2008 (date)

**Between:**

Domenic & Maria Maione ATF Maione Family Trust

**of:**

16 Shelton Drive, Athelstone SA 5076

("the Lender"),

**And:**

**Maione Co Pty Ltd ACN: 087 297 327**

**of:**

**PBD Partners Pty Ltd 15 Gorge Road, Paradise SA 5075**

("the borrower").

### WHEREAS:

- A. The Borrower is the Trustee of the [the Fund];
- B. The Fund wishes to acquire the beneficial interest in the Investment;
- C. The Investment will be acquired on trust for the Borrower by a Trustee for the Borrower.
- D. The Lender has agreed to lend monies to the Borrower to allow the Borrower to acquire the beneficial interest in the Investment.
- E. The Lender has agreed that the rights of the Lender in the event of default on the borrowing by the Borrower are limited to rights relating to the Investment or a replacement to the Investment.

1. **DEFINITIONS**

In this Agreement:

**"Investment"** means any asset in which the Fund will hold a beneficial interest and which will be held by a Trustee for the Fund pursuant to that Deed, a copy of which is attached to this agreement.

**"Principal Sum"** means that amount referred at clause 2, below.

**"Trustee"** means that person described as the "Security Trustee" in the copy of the Deed which is attached to this Agreement.

2. **LOAN**

The Lender shall lend to the Borrower, subject to the terms of this Agreement, the amount of \$ 780 000.

The Lender agrees that the Borrower shall pay that sum to the Trustee to be applied in the acquisition of the Investment.

3. **DEFAULT**

(a) In the event that the Borrower fails to make a payment of principal and interest, as required by this Agreement, the entirety of all of the principal and interest payable by the Borrower to the Lender shall then become due and payable to the Lender;

(b) If the Borrower does not forthwith pay all the principal and interest due to the Lender, as provided for by clause 3(a) above, the Borrower may seize and sell the Investment or any property acquired by the Borrower as a replacement to the Investment. The Lender may deduct from the amount realised by the Lender from that sale of the Investment or the replacement to the Investment the amount of that principal and interest due to the Lender and shall pay the balance to the Borrower. The Lender shall have no additional rights against the Borrower to require the Borrower to pay more to the Lender than the amount so realised on sale of the Investment or the replacement to the Investment.

4. **PRINCIPAL**

The Borrower shall pay the Principal Sum so lent to it by the Lender, whether in one lump sum or by instalments, as determined by the Lender.



5. **INTEREST**

The Borrower shall pay to the Lender interest.

*[Interest can be based on a specified daily rate, alternatively, on a daily basis calculated at the advertised variable rate for residential investment of the one of Australia's leading Bank's Variable Home Loan interest rate for that day plus a margin of 0.2% per annum on the daily balance of the Principal Sum then outstanding or at such other rate as may from time to time be agreed by the Borrower and the Lender.]*

6. **OTHER CHARGES**

The Borrower shall pay to the Lender such other amounts as may have been incurred by the Lender in:

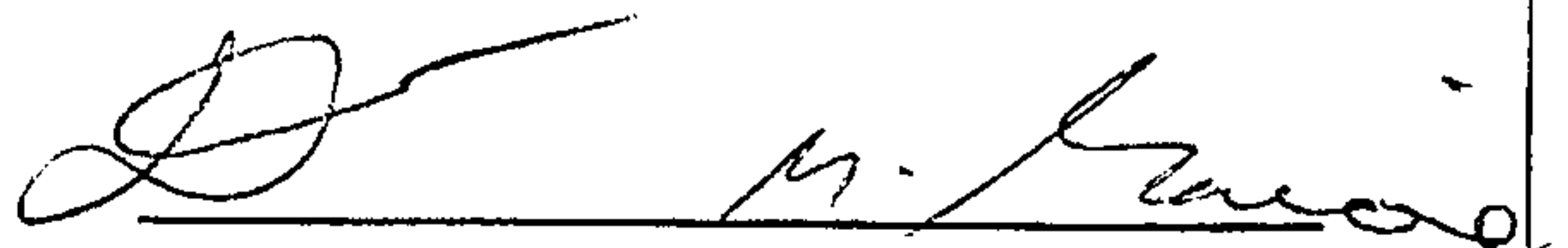
- borrowing the amount to on-lend to the Borrower,
- any fees which might be payable by the Lender for early repayment of any amount it borrowed to on-lend to the Borrower,
- any fee incurred by the Lender in repaying any amount it had borrowed to on-lend to the Borrower.

**SIGNED AS AN AGREEMENT**

By


Domenic & Maria Maione ATF

Maione Family Trust  
as Lender.

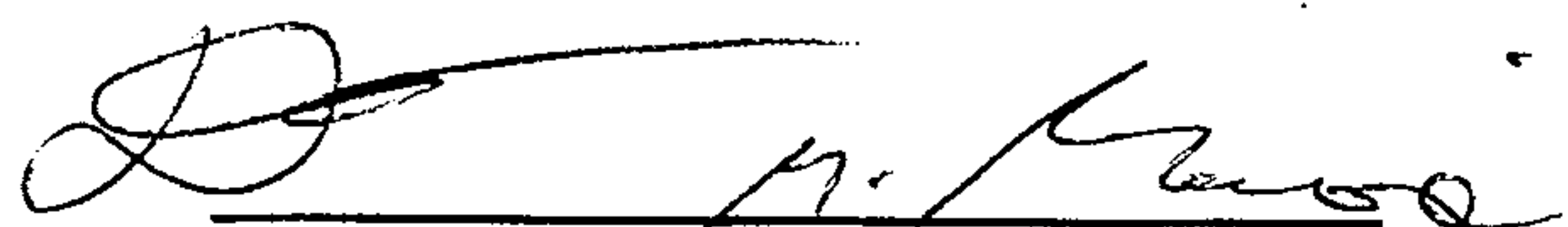
  
(Signature)

in presence of

KATRINA FLEMING


  
(Signature of Witness)

**Maione Co Pty Ltd ACN: 087 297 327**  
as Borrower.

  
(Signature)

in presence of

KATRINA FLEMING

  
(Signature of Witness)

**Minutes of Trustee Meeting  
D & M Maione Family Super Fund  
Purpose of Meeting – Fund Resolution**

**Attended By**        **Maione Co Pty Ltd ACN: 087 297 327**  
                              **as Trustee for**  
                              **D & M Maione Family Super Fund**

**HELD AT:**            **PBD Partners Pty Ltd 15 Gorge Road, Paradise SA 5075**

**DATE:**                *8/9/2008*

**TIME:**                *3.30 pm*

**PRESENT:**           **Domenic Maione**  
                              **Maria Maione**

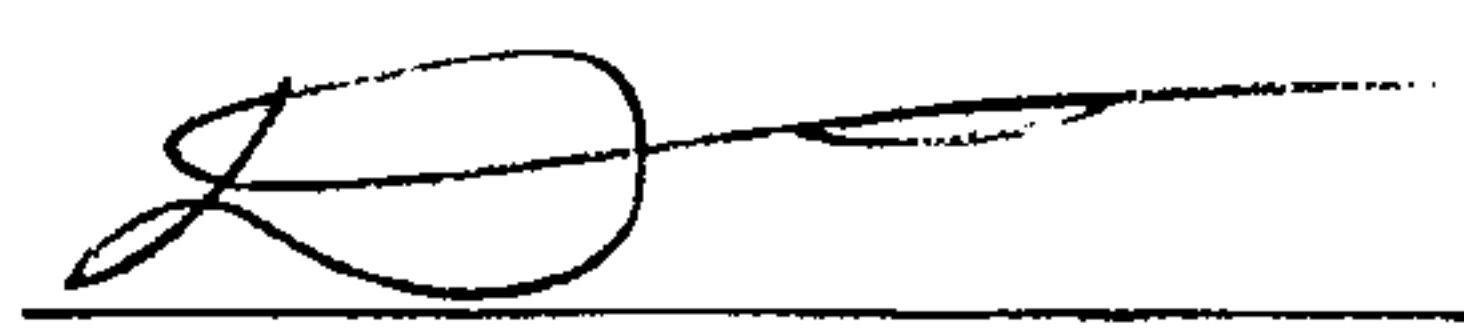
**CHAIRMAN:**        **Domenic Maione** was appointed chairman of the meeting.

**RESOLUTIONS:**   It was resolved that:

- the Fund borrow the sum of \$ 780,000 from  
Domenic & Maria Maione ATF Maione Family Trust  
on the terms contained within the copy of the annexed Loan Agreement between **Domenic Maione and Maria Maione** and the Fund,
- the Fund acquire a warrant from  
Domenic & Maria Maione  
on the terms contained within the copy of the annexed Instalment Warrant Deed which has been made between **Domenic Maione and Maria Maione** and the Fund,
- **Domenic Maione and Maria Maione**  
be asked to acquire the legal interest in  
18 Greydon Road Keswick SA  
('the Investment') by executing the copy of that draft contract, a copy of which is annexed hereto and that the Fund acquire the beneficial interest in the Investment.

**MEETING  
CLOSED:**

There being no further business the meeting was then terminated.

  
\_\_\_\_\_  
**Chairman**

**Minutes of Security Trustee Meeting  
Domenic Maione and Maria Maione  
Purpose of Meeting – Security Trustee Resolution**

**Attended By**        **Maione Co Pty Ltd ACN: 087 297 327**  
                              **as Trustee for**  
                              **D & M Maione Family Super Fund**

**HELD AT:**            **16 Shelton Drive, Athelstone SA 5076**

**DATE:**                *29 / 9 / 2008*

**TIME:**                *3:00 pm*

**PRESENT:**           **Domenic Maione**  
                              **Maria Maione**

**CHAIRMAN:**        **Domenic Maione** was appointed chairman of the meeting.

**RESOLUTIONS:**    The chairman reported that **Maione Co Pty Ltd ACN: 087 297 327** as Trustee of **D & M Maione Family Super Fund** ("the Fund") had provided the Security Trustee with an amount of \$ *850 000* and had requested that the Security Trustee:

- Issue it with a warrant for that amount to be held according to the terms of an Instalment Warrant Deed, a copy of which is annexed hereto as the Instalment Warrant Deed;
- purchase *18 Croydon Road Keswick SA*

("the Investment") the legal title to which will be held by the Security Trustee the beneficial title to which will be held by the Fund by executing a copy of that draft contract ("the Contract"), a copy of which is annexed hereto as the Loan Agreement.

**RESOLVED:**        (1) That the Security Trustee executes the Deed.  
                              (2) The Security Trustee executes the Contract.  
                              (3) If the Security Trustee acquires the Investment it is to be held according to the terms of the Deed.

**MEETING  
CLOSED:**            There being no further business the meeting was then terminated.

  
\_\_\_\_\_  
**Chairman**

## Warrant Certificate

**Domenic Maione and Maria Maione**  
("Name of Security Trustee")

**Of 16 Shelton Drive, Athelstone SA 5076**  
(Address of Security Trustee, if an Individual)

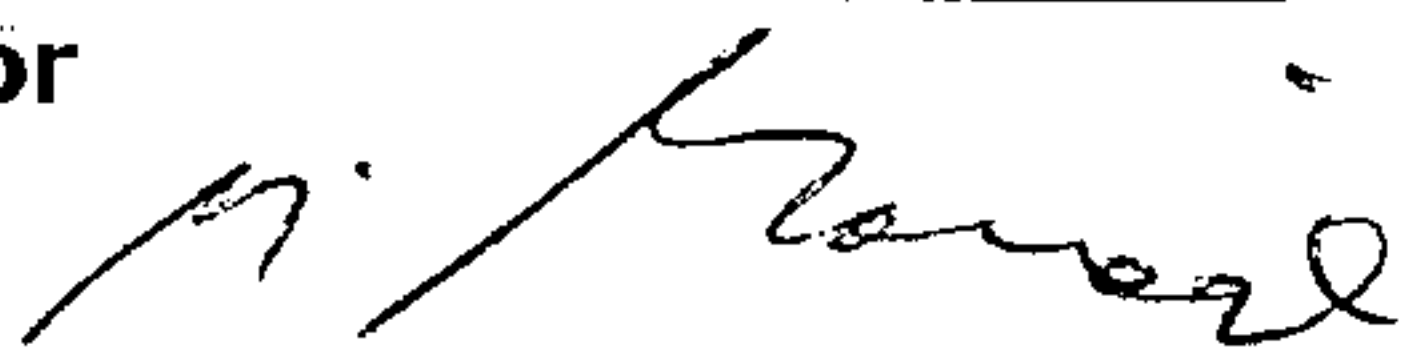
hereby acknowledges having received from

**D & M Maione Family Super Fund**  
("the Fund")

the amount of \$ 850,000 and pursuant to the Deed between the Fund and the Security Trustee, dated 8/9/2008, issues to the Fund this Warrant to be held by the Fund according to the terms of that Deed.



Director



29/9/2008

Date



## **Your Instalment Warrant Guide**

### **Superannuation Funds can now Borrow**

Until September 2007 the *Superannuation Industry (Supervision) Act 1993* ("the SIS Act") prevented Superannuation Funds from borrowing, except for some temporary purposes. However, in September 2007, legislation was passed by the Senate to allow borrowing by Superannuation Funds; these new rules are contained within section 67(4A) of the SIS Act which is included in this Kit. The relevant subsection is headed "Exceptions – instalment warrants" and is not limited to traditional warrants but authorises any borrowings made by a Superannuation Fund provided that:

- the borrowed money is applied for the purposes of acquiring an asset other than one which the Fund is prohibited from acquiring;
- the asset is held on trust so that the Fund acquires the beneficial interest in the asset;
- the Fund has a right to acquire legal ownership of the asset; and
- the rights of the lender against the Superannuation Fund for default on the borrowing, or on the sum of the borrowing and charges related to the borrowing, are limited to rights relating to the asset.

Effectively this means that any borrowing arrangement that is allowed under section 67(4A) of the SIS Act must be done so on a limited recourse basis. Consequently the existing assets of the Fund may not be used as security regardless of the performance of the new investment.

### **How the legislation affects you**

The new legislation means that you can structure borrowing through your Superannuation Fund so as to allow the Fund to acquire any asset that is permitted under the SIS Act.

If properly structured through an Instalment Warrant, a Fund can borrow to acquire an asset. Examples of where a Fund might seek to borrow are:

- to allow the Fund to acquire an investment property;
- to allow the Fund to acquire a share portfolio;
- to acquire units in a Unit Trust (for example a small group of persons might want to set up their own Unit Trust to acquire a substantial investment property).

### **Prohibited Assets**

The reference to assets which the Fund is prohibited from acquiring is a reference to section 66 of the SIS Act, which prohibits the Trustee or an investment manager of a regulated Superannuation Fund from intentionally acquiring an asset from a Member or from an associate of a Member, unless that asset is an 'excepted asset'; i.e. business property and listed securities. Acquisitions must also be made at the present market value.

### **Beneficial Ownership**

The Fund is not allowed to be the legal owner of the investment, however it must be the beneficial owner of the asset. For that reason an entity must hold the asset on trust for the Fund, such as a separate Trustee Company (i.e. not the Corporate Trustee of the Fund).

Furthermore the trust must not be an "active trust" as there may be adverse capital gains tax consequences if the Fund calls for transfer of the legal title. The entity holding the asset will hold it as a Bare Nominee as a result, the asset must be managed by the Fund, for example if the asset is real estate the Fund must collect rent and attend to repairs.

### **Funding**

The essence of the legislation is not directed to warrants but rather to allow Funds to make limited recourse borrowings.

There is no requirement as to whom the lender might be but the most obvious arrangement is for a bank to lend directly to a Fund; some banks have been slow to recognise this new legislation. An alternative is for a Member to borrow from a bank and lend those borrowed monies to the Fund (or for the Member to lend to the Fund their own capital, which may also be used as an asset protection device).

As security, the Fund can only provide the asset itself and income generated from the asset. In some circumstances the Member may also be required to provide the lender with additional security as collateral over the borrowing.

### **Trustees of the Instalment Warrant**

The Security Trustee should not be the Fund Trustee. It would be preferable if a Corporate Trustee Company was established, due to the legal protections and limited liability structure this provides. However, the Members can be Instalment Warrant Trustees providing they are not the Trustees of the Fund.

### **Capital Gains Tax**

The Trustee must be a 'Bare Trustee' in order to avoid capital gains tax and stamp duties on transfer of an asset from a Trustee. If the assets comprise of shares, the Trustee consequently does not have any positive duties. A manager must be appointed to manage the asset if it comprises of real estate.

### **Negative Gearing Advantages**

It is quite likely that any rent received by the Fund (when the underlying asset is real estate) will be insufficient to meet interest expenses incurred by the Fund. Any shortfall may be met by tax deductible contributions made to the Fund.

By making tax deductible contributions, the Member will effectively receive a negative gearing advantage. This advantage sought by Members from borrowing could place the investment in a tax effective structure.



## **Requirements & Considerations**

- A Self Managed Superannuation Fund (Fund).
- The Fund needs to possess the power to acquire an investment warrant (including borrowing provisions).
- The investment strategy of the Fund needs to accommodate the acquisition of a warrant; an amendment to the Fund's Investment Strategy is included in this package.
- A Security Trustee, which will acquire the asset and hold the legal title of the asset on trust for the Fund.

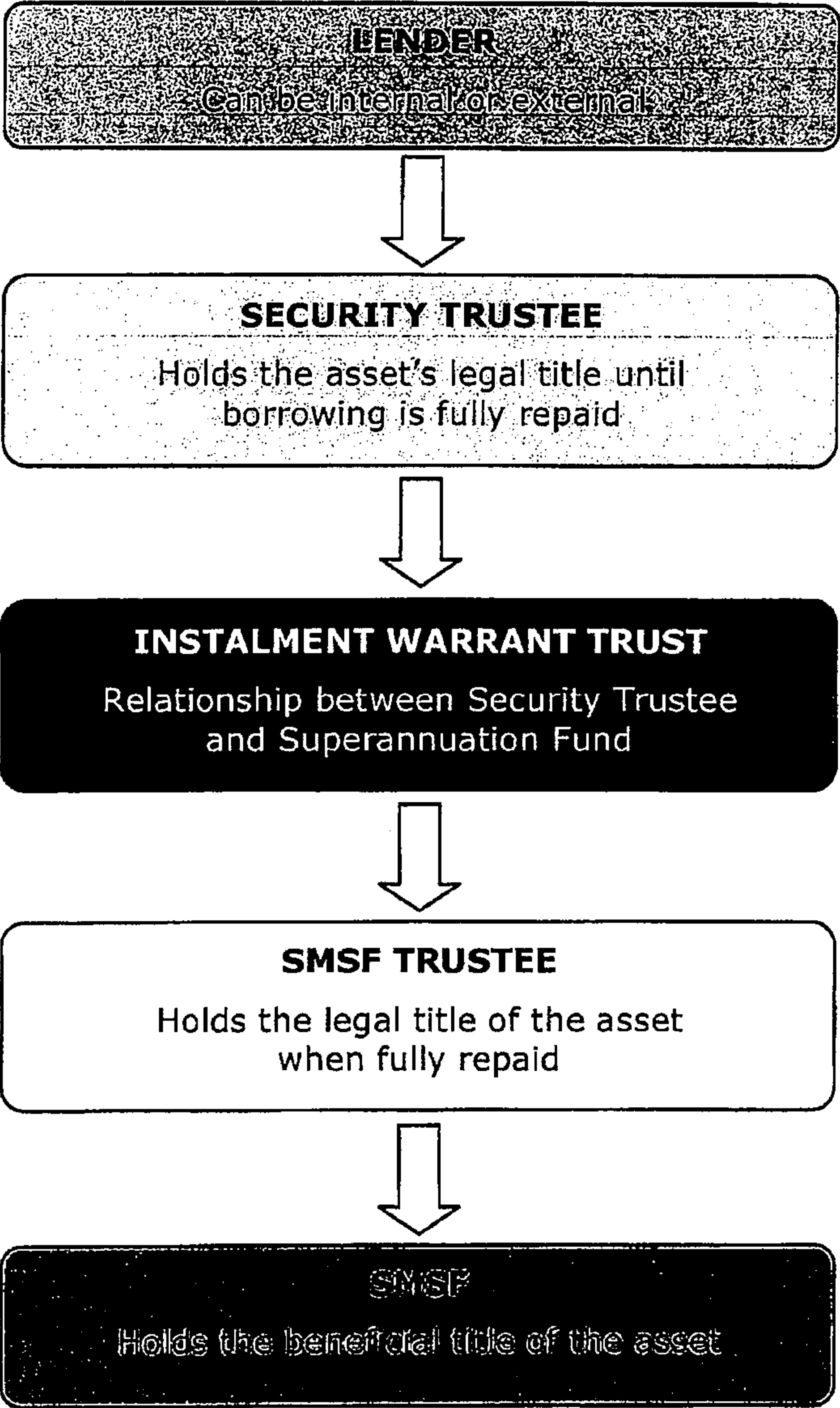
The Security Trustee cannot be the Trustee of the Fund. The Security Trustee may be an Individual or Individuals; however a Corporate entity is preferable given the legal protection it provides.

- A Contract in which the Security Trustee enters to acquire the asset.  
The Security Trustee must be a "Bare Nominee" for the purposes of Capital Gains Tax, as discussed in this guide.
- The Fund is responsible for managing the asset; for example, if the asset is real estate then the Fund must collect the rent and manage all repairs.
- Capital raised by the Fund, to allow the Security Trustee to pay the vendor for the asset being acquired.

In order for the Security Trustee to take effect, the Fund must utilise the Funds borrowed to acquire the asset; Funds may be borrowed from a financial institution or an Individual. This package contains a loan agreement applicable for an Individual Security Trustee of finance. A financial institution may, however, require the Security Trustee to provide a mortgage on any acquisition of property.

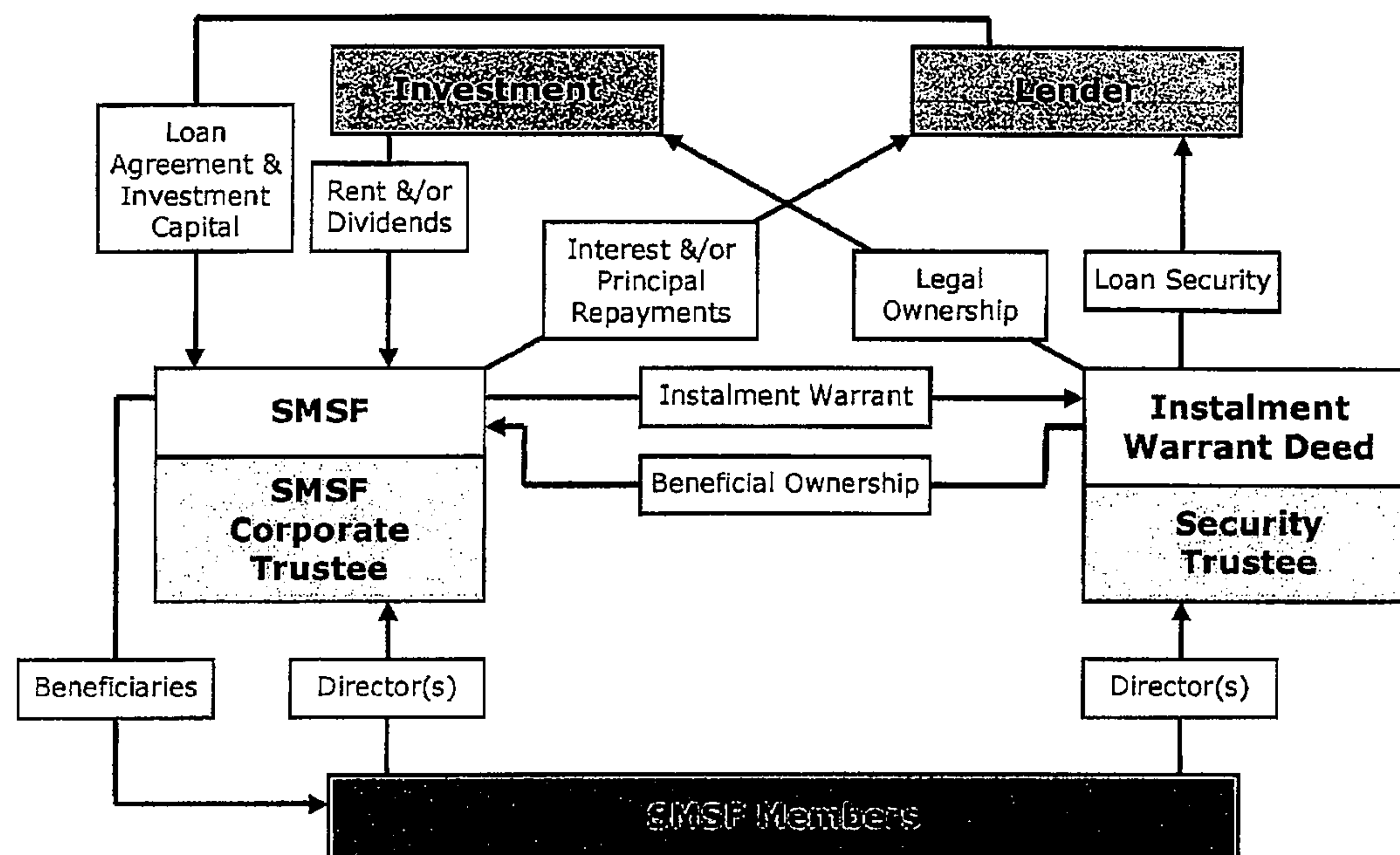
- An Instalment Warrant Deed executed by the Security Trustee and the Trustee of the Fund; a Warrant Certificate and an Instalment Warrant Deed is included in this package.
- An investment, which is to be acquired by the Security Trustee as a Bare Nominee for the Fund.

**Simplified Instalment Warrant Structure**





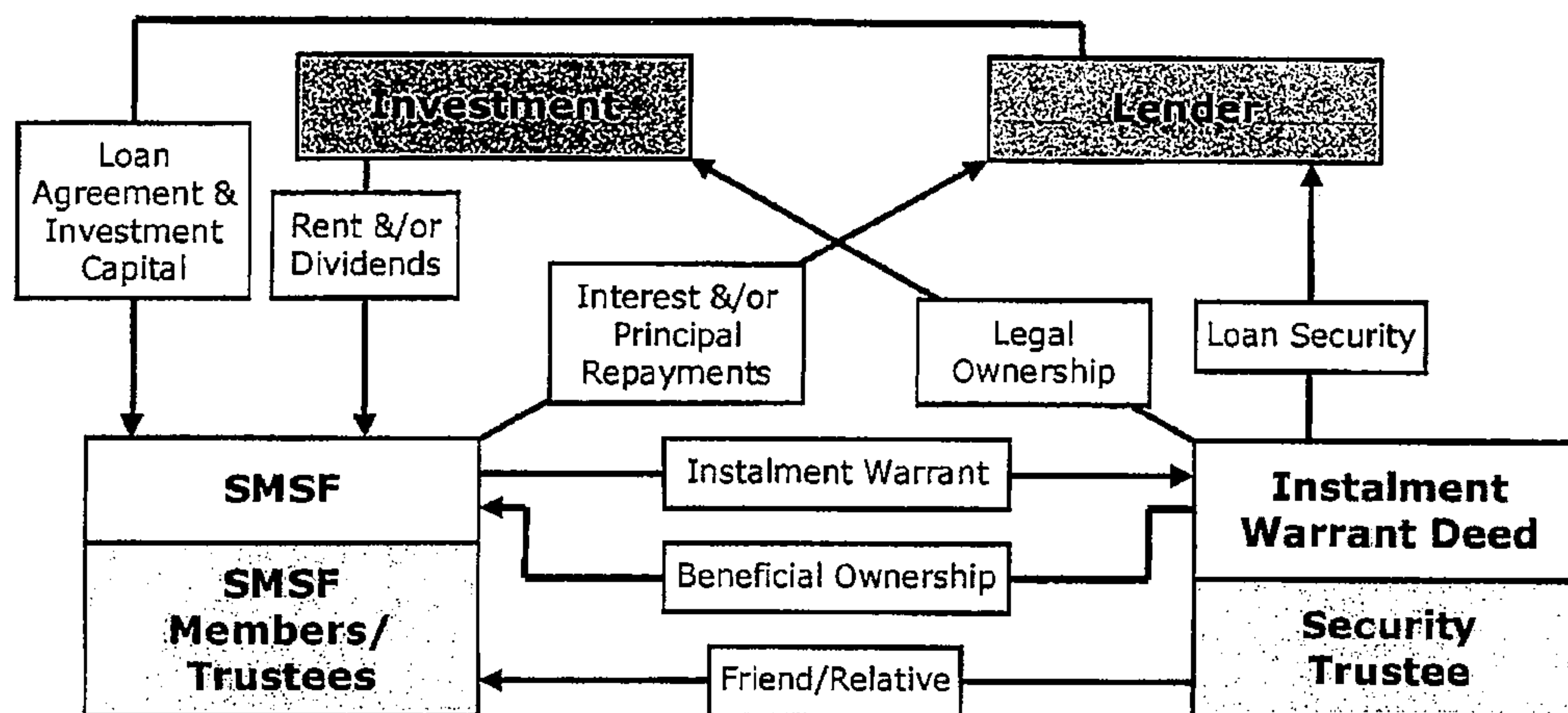
## A Typical Instalment Warrant Setup, with Corporate Trustee(s)



### Please Note

- Red arrows represent the legal processes that occur for the Instalment Warrant to be implemented correctly.
- Black arrows represent the relationship between the two trust structures, the Trustees, and the SMSF Members.
- The SMSF & Instalment Warrant Deed cannot have the same Trustee, however, they can have the same Directors of a Corporate Trustee.
- The Member(s) of an SMSF can also perform the function of the Lender, and it is up to the Lender & SMSF Member(s) to determine what loan security is needed, and what the frequency & structure of the repayments will be. If a Financial Institution is the Lender, and requires additional security over the amount borrowed, then specific professional advice should be obtained.

## A Typical Instalment Warrant Setup, with Individual Trustees

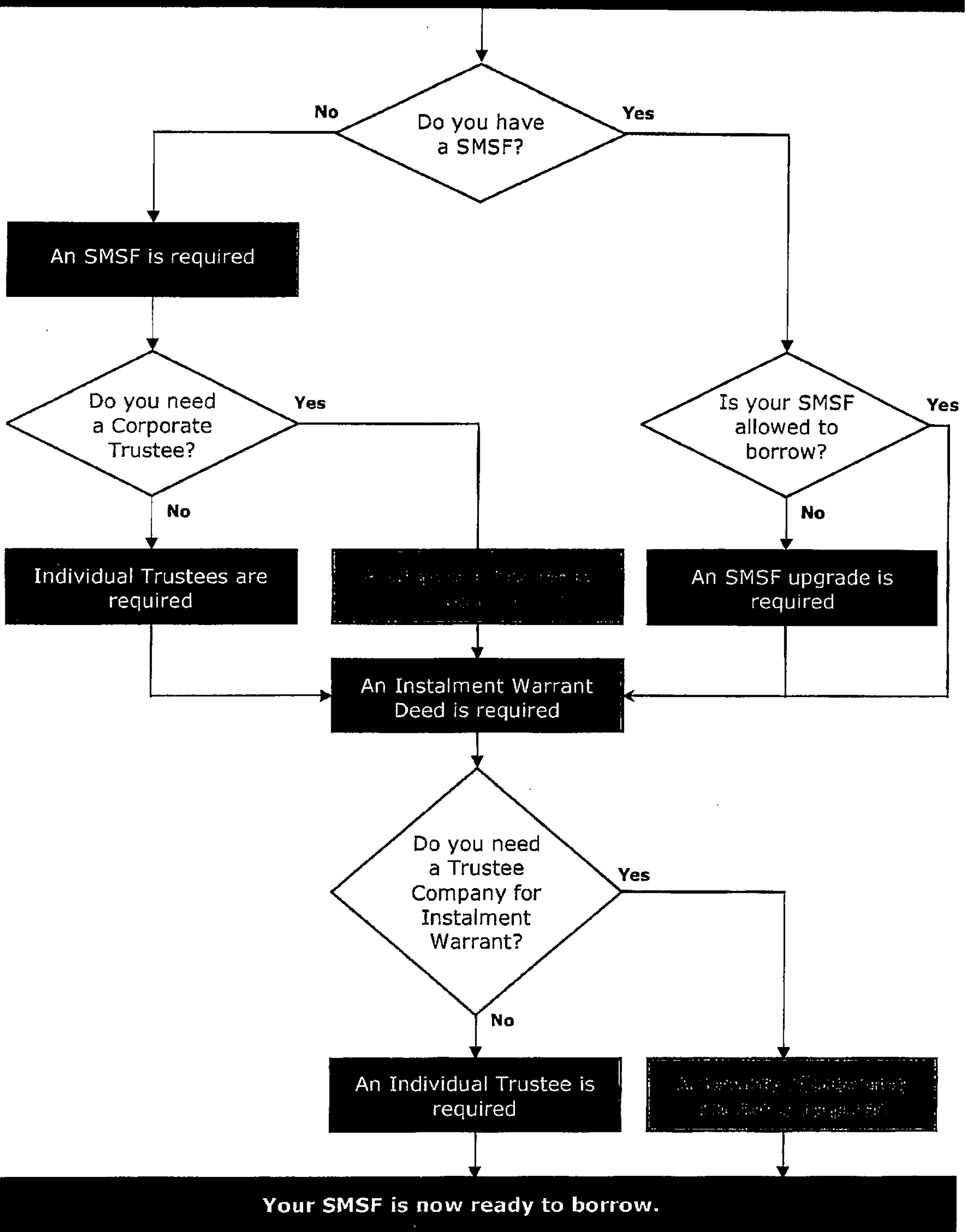


### Please Note

- Red arrows represent the legal processes that occur for the Instalment Warrant to be implemented correctly.
- Black arrows represent the relationship between the two trust structures, the Trustees, and the SMSF Member(s).
- The SMSF & Instalment Warrant Deed cannot have the same Trustee, however, they can have the same Directors of a Corporate Trustee.
- The Member(s) of an SMSF can also perform the function of the Lender, and it is up to the Lender & SMSF Member(s) to determine what loan security is needed, and what the frequency & structure of the repayments will be. If a Financial Institution is the Lender, and requires additional security over the amount borrowed, then specific professional advice should be obtained.

## Instalment Warrant Flowchart

Would you like your Superannuation Fund to borrow to acquire assets?





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## **Disclaimer**

Espreon Corporate Services Pty Ltd in providing the kit is not making any recommendation as to whether the acquisition of an instalment warrant is or is not a suitable investment for any particular Superannuation Fund. Rather Trustees of Superannuation Funds should obtain independent financial advice as to whether the acquisition by the Fund of any such instalment warrant (and underlying investment) is an appropriate investment for that Fund.

## **Suggested Investment Strategy Amendment**

### **Real Property**

The Fund will borrow to acquire the beneficial interest in real estate, provided the lenders rights on any default of the borrowing or the sum of the borrowing and charges related to the borrowing are limited to rights relating to that real estate or any replacement to the real estate.

## **Suggested Investment Strategy Amendment**

### **Listed Securities**

The Fund will borrow to acquire the beneficial interest in listed Company shares provided the lender's rights on any default of the borrowing or the sum of the borrowing and charges related to the borrowing are limited to rights relating to those listed shares or any replacement to the listed shares.



## Checklist

The checklist below is provided for guidance and assistance to set-up the Instalment Warrant package for your SMSF to borrow.

TASK	CHECKED	DATE
<p>Ensure that your SMSF Deed is allowed to borrow through a limited recourse loan.</p> <p><i>(If you purchased an Espreon SMSF with this Instalment Warrant package, then your Fund will allow this.)</i></p>		
<p>Ensure that the Fund's investment strategy allows for, or has been amended to allow for, the SMSF to borrow through an Instalment Warrant.</p> <p><i>(If the Investment is Real Estate or Listed Shares, then this package includes suggested amendments to the Fund's investment strategy.)</i></p>		
<p>Identify an investment and ensure that it:</p> <ul style="list-style-type: none"> <li>• can be acquired under SIS legislation,</li> <li>• is suitable for the Fund, considering the trust Deed and investment strategy;</li> <li>• is suitable for the Members of the Fund; and</li> <li>• is appropriately managed.</li> </ul>		
<p>Determine the total amount of monies required to acquire the asset/investment, along with the amount to be borrowed.</p> <p>Select a suitable financier from which the monies will be borrowed to acquire the asset/investment.</p>		
<p>Hold a meeting of Trustees of the Fund to agree to the borrowing.</p> <p><i>(This Instalment Warrant package includes the relevant minutes for this meeting; the Fund Resolution).</i></p>		
<p>Hold a meeting of the security Trustee to agree to execute the Instalment Warrant Deed.</p> <p><i>(This Instalment Warrant package includes the relevant minutes for this meeting; the Security Trustee Resolution).</i></p>		
<p>Ensure that the attached Warrant Certificate, Instalment Warrant Deed and management agreement (if applicable) are completed.</p>		
<p>All documents are to be executed.</p>		

**DISCLAIMER:** In providing these documents, Espreon Corporate Services Pty Ltd is not providing legal, accounting or financial advice and advise the Trustee of the Self Managed Superannuation Fund to seek professional advice as to whether this product is suitable for their needs.

## **Instalment Warrant Exert Superannuation Industry (Supervision) Act 1993**

### **Section 67 – Borrowing**

#### *Prohibition*

- (1) Subject to this section, a Trustee of a regulated Superannuation Fund (RSF) must not:
- (a) borrow money; or
  - (b) maintain an existing borrowing of money.

#### *Exception—instalment warrants*

- (4A) Subsection (1) does not prohibit a Trustee (the **RSF Trustee**) of a regulated Superannuation Fund from borrowing money, or maintaining a borrowing of money, under an arrangement under which:
- (a) the money is or has been applied for the acquisition of an asset (the **original asset**) other than one the RSF Trustee is prohibited by this Act or any other law from acquiring; and
  - (b) the original asset, or another asset (the **replacement**) that:
    - (i) is an asset replacing the original asset or any other asset that met the conditions in this subparagraph and subparagraph (ii); and
    - (ii) is not an asset the RSF Trustee is prohibited by this Act or any other law from acquiring;is held on trust so that the RSF Trustee acquires a beneficial interest in the original asset or the replacement; and
  - (c) the RSF Trustee has a right to acquire legal ownership of the original asset or the replacement by making one or more payments after acquiring the beneficial interest; and
  - (d) the rights of the lender against the RSF Trustee for default on the borrowing, or on the sum of the borrowing and charges related to the borrowing, are limited to rights relating to the original asset or the replacement; and
  - (e) if, under the arrangement, the RSF Trustee has a right relating to the original asset or the replacement (other than a right described in paragraph (c))—the rights of the lender against the RSF Trustee for the RSF Trustee's exercise of the RSF Trustee's right are limited to rights relating to the original asset or replacement.