



25 June 2019

Joseph Hoang  
ProPlus Super  
PO Box 1839  
BROADBEACH QLD 4218

Dear Joseph,

**LEGAL OVERSIGHT OF THE DOCUMENTATION ESTABLISHING THE LIMITED RECOURSE BORROWING ARRANGEMENT TO BE ENTERED INTO BY THE LIMITLESS NZT-48 SUPER FUND**

Topdocs Legal Pty Ltd, an incorporated legal practice, has been engaged to conduct limited legal review of the documentation to effect the limited recourse borrowing arrangement to be entered into by the Limitless NZT-48 Super Fund (**Fund**).

**Documents Reviewed by Topdocs Legal Pty Ltd**

We have reviewed the following documents:

- Trust Deed of the Fund dated 9 August 2017, but unexecuted
- Constitution of Duy Mia Pty Ltd (ACN 620 986 165)
- Constitution of Duy Mia Property Pty Ltd (ACN 631 518 075)
- Bare Trust Deed
- Loan Agreement
- Resolutions of Duy Mia Pty Ltd (ACN 620 986 165) ATF Limitless NZT-48 Super Fund (**Borrower**)
- Resolutions of Duy Mia Property Pty Ltd (ACN 631 518 075) (**Bare Trustee**)
- Resolutions of Maria Ngo (**Lender**)
- Notice of Instruction

We refer to these documents as '**Reviewed Documents**'.

**Documents Provided by You**

We have relied upon instructions contained in your application form and variations to the application form as instructed to us (**Application Form**).

We have also received the following source documents:

- Contract of Sale, unexecuted

With exception of the Application Form, we refer to these documents as '**Source Documents**'.

In this Advice, we refer to the bare trust established by the Bare Trust Deed, under which the Bare Trustee will hold the property to be acquired (**Property**) on trust for the Borrower, as the **Bare Trust**.

#### **Our Advice: Limitations**

The scope of our advice is limited to considering only the following:

1. Will the loan on the terms and conditions of the Loan Agreement meet the requirements of section 67A of the *Superannuation Industry (Supervision) Act 1993 (SIS Act)*?
2. Does the Bare Trust Deed meet the requirements of section 67A of the SIS Act?
3. Does the exception to the in-house asset rules conferred by section 71(8) of the SIS Act apply to the Bare Trust?
4. Have the Prepared Documents been prepared in accordance with your instructions?

#### **Our Advice: Scope**

Therefore, subject to the matters discussed below under 'Disclaimers', we confirm our view that:

1. A loan on the terms and conditions of the Loan Agreement will, in our view, meet the requirements of section 67A of the SIS Act (and therefore not constitute a prohibited borrowing for the purposes of the SIS Act), provided the Property to be acquired by the Borrower is a *single acquirable asset* for the purposes of section 67A of the SIS Act and is not an asset that the Borrower is otherwise prohibited from acquiring by the SIS Act or any other law.
2. The Bare Trust Deed will meet the requirements of section 67A of the SIS Act as regards the manner in which the Property to be acquired with the proceeds of borrowing by the trustee/s of the Fund is to be held, provided the Property is a *single acquirable asset* for the purposes of Section 67A of the SIS Act and is not an asset that the Borrower is otherwise prohibited from acquiring by the SIS Act or any other law.
3. The exception to the in-house asset rules conferred by section 71(8) of the SIS Act will apply to the Bare Trust (and therefore the interest of the trustee/s of the Fund in the Bare Trust will not constitute an "in-house asset" of the Fund for the purposes of the SIS Act) provided that the Property would not constitute an "in-house asset" of the Fund (if it were an asset of the Fund acquired directly).
4. The Prepared Documents have been completed in line with your instructions as contained in the Application Form.

Accordingly, we have signed off on the matters above as you have requested.

#### **Disclaimers**

We confirm that our advice has not been sought regarding the general application of the SIS Act in-house asset rules.

We further confirm that we are neither licensed nor qualified to provide financial advice. This letter of advice should not, therefore, be relied upon regarding the suitability or otherwise of the proposed investment and the Fund's borrowings.

Our advice is limited to the three matters detailed above and is based upon our review of the Reviewed Documents and the Application Form. While we have sighted the Source Documents to confirm the statements contained in the Application Form, we make no warranties as to the correctness of the Source Documents provided.

Please note that our advice relates to the Reviewed Documents in the format supplied to you, and will not apply to those documents to the extent that they are varied.

In preparing this advice, we have relied upon the accuracy of the instructions contained in the Application Form, and certain assumptions (**Assumptions**) as stated in this letter. We have not conducted any searches or enquiries to verify the accuracy of these instructions or Assumptions. Should the instructions be inaccurate or misleading, or should our Assumptions based upon the instructions be incorrect, then the accuracy our advice may be compromised. Please note that we do not take any responsibility for errors or omissions that may be contained in our advice as a consequence of any inaccurate or misleading statements contained in the instructions, or for any inaccuracies in our Assumptions.

We have reviewed the Reviewed Documents based upon the Assumptions. The Trustee of the Fund should carefully review the Reviewed Documents to ensure that these assumptions of fact are accurate. If they are not, please contact us immediately.

The Reviewed Documents also contain statements as to matters of law upon which our advice has not been sought. The Trustee of the Fund should consider whether they require independent legal advice on these matters, as they are not within the scope of our advice.

We have not been requested to confirm the compliance by the Trustee of the Fund with other obligations under the SIS Act or other law. Accordingly we have not provided any advice on these matters.

Based upon the nature of the proposed transactions, we have assumed that the funds to be borrowed by the Fund will be applied directly to the acquisition of the Property, and will not be used to develop the Property.

We have not been instructed to give advice in relation to the commerciality of the terms of the loan between the Fund and the Lender. Nor have we been instructed to give advice in relation to conveyancing matters associated with the acquisition of the property, or with any leasing of the Property. Accordingly, our advice does not cover these matters.

We confirm that the Trust Deed of the Fund confers the necessary power on the Trustee of the Fund to enter into the borrowing arrangement as provided in the enclosed documentation.

We confirm that the constitution of the corporate Fund Trustee contains provisions for conflicts of interest of the Directors of the Company to be able to participate as a party to the borrowing arrangement as provided in the enclosed documentation.

We confirm that the constitution of the corporate Bare Trustee contains provisions for conflicts of interest of the Directors of the Company to be able to participate as a party to the borrowing arrangement as provided in the enclosed documentation.

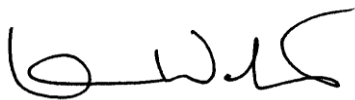
We have not been instructed to advise if the borrowing arrangement is consistent with the Fund's investment strategy, nor have we been instructed to give advice as to the interests of the Lender or the Bare Trustee regarding the borrowing arrangement to be entered into by the Fund.

Accordingly, we recommend that these parties either arrange for independent legal advice to determine their interests, or satisfy themselves that they do not require such advice.

Our advice is subject to the legislation as at the date of this letter concerning limited recourse borrowing by superannuation funds and the Australian Taxation Office's (ATO) current guidance on limited recourse borrowing. While the ATO is yet to provide guidance on certain aspects of this legislation, it may in due course issue further guidance or make further statements regarding the legislation that could impact upon our advice.

Please note that our advice will not be updated should future guidance or statements issue from the ATO unless you specifically instruct us to do so.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'I. Waters', written in a cursive style.

**IAN WATERS**  
**Special Counsel**  
**Topdocs Legal Pty Ltd**