

## INFORMATION MEMORANDUM ON SMSF BORROWING

A self managed superannuation fund ("**SMSF**") is permitted to borrow funds to acquire an asset provided that the borrowing is structured as a limited recourse borrowing arrangement ("**LRB arrangement**").

This Memorandum briefly explains the superannuation and taxation law applicable to LRB arrangements entered into on or after 7 July 2010. Different rules may apply to arrangements entered into prior to that date. This Memorandum also only explores the NSW stamp duty and NSW land tax consequences of a LRB arrangement. Where the asset the subject of the LRB arrangement is situated in another state or territory then it is necessary to consider the stamp duty and land tax law of that particular state or territory.

The information provided in this Memorandum is general in nature and does not address your particular circumstances. You should seek specific advice on your particular situation. Vale Legal accepts no responsibility for any loss or damage arising as the result of reliance on this information.

### HOW DOES A LRB ARRANGEMENT WORK?

Apart from very limited exceptions, a SMSF is only permitted to borrow under a LRB arrangement. Broadly, for a borrowing to constitute a LRB arrangement all of the following conditions must be met:

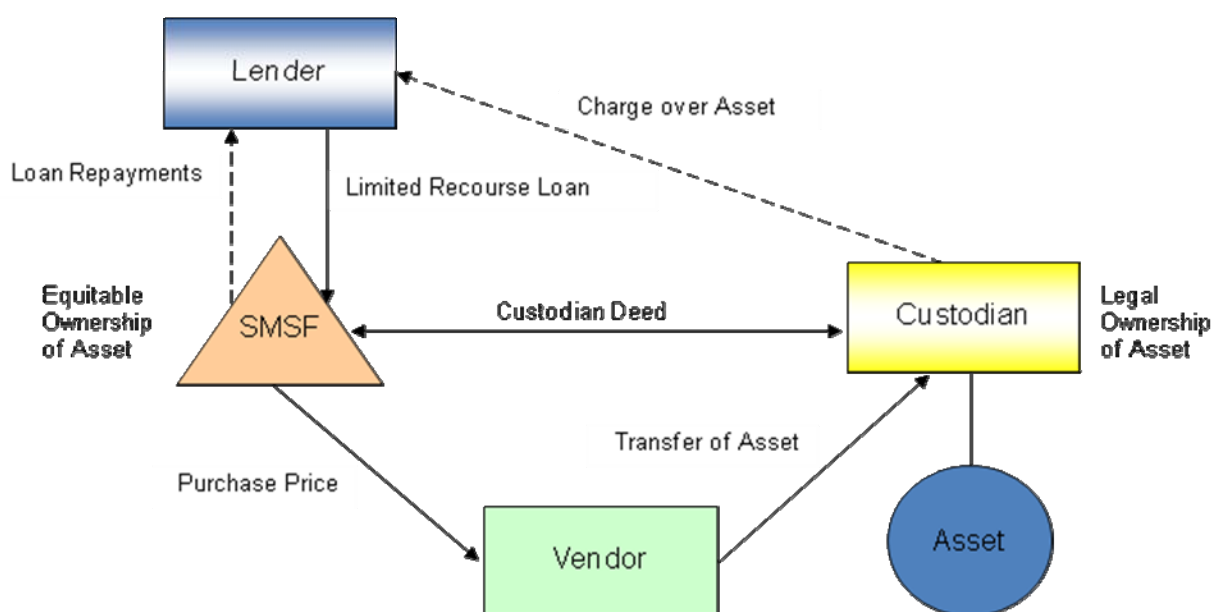
1. the borrowed monies must be applied towards the acquisition of a single acquirable asset;
2. the asset must be an asset which the SMSF is permitted to acquire under the prevailing law;
3. the acquired asset must be held on trust for the benefit of the SMSF;
4. the SMSF must have a right to acquire the legal ownership of the asset by making one or more payments; and
5. the rights of the lender or any other party involved in the arrangement (e.g. a guarantor) are limited to the rights relating to the acquired asset (i.e. the loan is limited recourse<sup>1</sup>).

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<sup>1</sup> Limited recourse means that if the market value of the asset is less than the outstanding loan amount the lender or any other party involved in the arrangement (guarantor) may not recover the deficit from the SMSF.

It is important that a SMSF's borrowing meet all of the above conditions. Failure to do so may cause the SMSF to cease to be a complying superannuation fund and when this occurs significant adverse tax consequences are triggered. These consequences include loss of the tax concessions available to complying superannuation funds (e.g. the 15% tax rate) and a 45% tax on the market value of the assets of the fund that do not represent non-concessional contributions.

A LRB arrangement can be diagrammatically represented as follows:



Under a LRB arrangement a SMSF borrows funds from a Lender on a limited recourse basis so as to acquire the asset under an arrangement whereby the legal title to the asset is held on trust by a Custodian for the benefit of the SMSF during the term of the loan.

Typically the Lender will take a charge over the legal title to the asset during the term of the loan to secure its loan. This may take the form of a registered mortgage where the asset constitutes land.

Annexure A to this Memorandum outlines the typical steps involved in implementing a LRB arrangement.

The documents needed to implement a LRB arrangement are:

1. a Limited Recourse Loan Agreement or Deed which outlines the terms of the loan; and
2. a Custodian Deed which outlines the basis on which the Custodian will hold the asset during the term of the loan and provides the SMSF with a right to acquire the legal ownership of asset once it has paid off the loan.

Vale Legal can provide these documents as a package.

Where the SMSF borrows from a bank or a third party financier, then typically these entities will use their own loan documents but usually will require you to provide your own Custodian Deed for their approval. It is important, however, to ensure that any documentation provided by these lenders is compliant such that the SMSF's borrowing is made under a LRB arrangement. We can review these financing documents to confirm this upon request.

## **WHAT ASSETS MAY THE SMSF ACQUIRE?**

The type of asset that a SMSF may acquire under a LRB arrangement is regulated by:

1. specific rules contained in the limited recourse borrowing provisions in sections 67A and 67B of the *Superannuation Industry (Supervision Act) 1993* ("**SIS Act**"); and
2. general superannuation investment rules.

These rules apply independently of each other. Accordingly a SMSF's proposed acquisition must satisfy all of these rules or otherwise it risks losing its complying superannuation fund status.

### **Specific rules governing assets that can be acquired under a LRB arrangement**

Generally a SMSF is only permitted to acquire a single "acquirable asset" under a LRB arrangement.

The concept of an "acquirable asset" does not include money (whether Australian currency or foreign currency). The exclusion of money from the concept prevents a SMSF from entering into a margin loan as part of a LRB arrangement.

A narrow exception to the rule that only a single acquirable asset may be acquired relates to collections of assets. A SMSF may acquire a collection of assets provided that the assets in the collection have the same market value as each other and the assets in the collection are identical to each other. This exception allows a SMSF to acquire more than one asset of the same kind (e.g. 10,000 ordinary BHP shares). This exception does not, however, extend to different kinds of the same particular asset. For instance, a SMSF cannot use this exception to acquire ordinary and preference shares in BHP under one LRB arrangement.

The single acquirable asset rule means that a SMSF is prohibited from acquiring a basket of different types of assets under one LRB arrangement. For instance, if the SMSF wishes to acquire a portfolio of shares comprising BHP, NAB and Telstra, the SMSF would need to enter into 3 separate LRB arrangements for each type of share.

Other common examples where the single acquirable asset rule creates practical issues include where a SMSF wishes to acquire an investment apartment but legally the property has 2 titles (one for the apartment and one for the car space attached to the apartment), and where the SMSF acquires an apartment and furnishings are included in the purchase. In both situations the SMSF would need to either buy the 2 different kinds of assets in 2 separate LRB arrangements or alternatively buy one of the assets outright and then only purchase one of the assets under a LRB arrangement.

Changes to the asset acquired by a SMSF under a LRB arrangement over time may require that the arrangement be wound up. This is where the asset changes and the new asset does not fall within the concept of a “replacement asset”.

A “replacement asset” is an extremely narrow concept and currently only covers situations where there is a replacement of shares or units held under a LRB arrangement as a consequence of a takeover, merger, demerger or restructure of the company or unit trust in which the original shares or units were held.

An example of how a change to an asset would require that the SMSF wind up the LRB arrangement is where the original assets comprise share options and those are options are then exercised. The resulting shares do not fall within the concept of a replacement asset and as a consequence the LRB arrangement must be wound up (typically this involves the sale of the resulting shares to provide funds for the SMSF to repay the loan).

Another example of how an asset change can be forced a wind up of the LRB arrangement is where an investment property of the SMSF’s burns down. The SMSF is not permitted to re-build the property with insurance proceeds and is required to wind up the LRB arrangement relating to the property.

The narrow concept of a replacement asset means that a SMSF may not directly use a LRB arrangement to develop property. For instance, the SMSF cannot buy land and then subdivide into a number of separate land holdings. This narrow conception of a replacement asset also means that a SMSF cannot purchase a property off-the-plan since what occurs is that their contractual rights change into an interest in real estate.

The narrow concept of a replacement asset also prevents a SMSF from progressively selling down shares held in a LRB arrangement. For instance, a SMSF who beneficially owns 10,000 CBA shares under a LRB arrangement cannot sell 50% of those shares and keep the remaining 50% in the LRB arrangement. If the SMSF wishes to sell the CBA shares then it is required to sell the whole of the CBA shares held under the arrangement.

Given the significant cash flow issues which may arise for a SMSF when it is required to wind up a LRB arrangement (since it would have to repay the outstanding loan balance), care should be taken in selecting the particular asset to be acquired under the LRB arrangement and also in instigating sufficient insurance to cover this contingency.

### **General superannuation investment rules**

Superannuation law contains a myriad of investment rules which all complying superannuation funds must adhere to. These rules include the requirement that the investment be in line with the SMSF’s investment strategy and be for superannuation purposes (that is, the investment must be to fund members’ retirement benefits and other benefits which the superannuation law permits to be paid such as incapacity benefits).

Every trustee of a SMSF is required to formulate and give effect to an investment strategy in respect of fund investments. Such an investment strategy must have regard to all the circumstances of the SMSF including in particular:

- (a) the risk involved in making, holding, realising and the likely return from the fund’s investments having regard to its objectives and expected cash flow requirements;

- (b) composition of the fund's investments as a whole including the extent to which they are diverse or involve exposure of the fund to risks from inadequate diversification;
- (c) the liquidity of the fund's investments having regard to its expected cash flow requirements; and
- (d) the ability of the fund to discharge its existing and prospective liabilities.

Prior to entering into a LRB arrangement trustees of a SMSF should review their investment strategy to see whether entering into the LRB arrangement is consistent with the investment strategy or whether the strategy needs to be amended. For example, if members of the SMSF are nearing retirement age and there is a likelihood that pensions will be paid in the near future requiring the cash resources of the fund then entering into a LRB may not be in accordance with the SMSF's investment strategy and should not be undertaken.

We recommend that prior to entry into a LRB that a SMSF obtain information concerning anticipated income and capital returns, expected cash flow, and the various costs such as interest expenses and borrowing expenses. This would allow the SMSF to assess whether the LRB arrangement complies with its investment strategy.

Superannuation law contains a number of investment rules governing related party transactions. Broadly, a SMSF cannot acquire an asset from a related party, nor can it enter into a lease with, lend to or invest more than 5% of its assets in a related party. There are exceptions to these related party rules, the most significant being business real property exception which allows a SMSF to acquire an asset from a related party where it constitutes business real property. If a SMSF is contemplating either acquiring an asset which is the subject of the LRB arrangement from a related party or leasing it to a related party, the SMSF should seek advice as to whether this is permitted under superannuation law.

### **What else can the borrowing be used for?**

Besides using the borrowed monies to acquire the asset, a SMSF is also permitted to use funds borrowed under a LRB arrangement to pay expenses incurred in connection with the acquisition and borrowing. This includes conveyancing fees, stamp duty, brokerage and loan establishment fees.

Borrowed funds may also be used to maintain and repair the asset the subject of the LRB arrangement. A distinction needs to be made between repairing the asset and improving the asset. A SMSF may not use borrowed funds to improve the asset. The distinction between an improvement and a repair can sometimes be difficult to determine. For instance, the replacement of a roof with a better functioning roof may be considered an improvement as opposed to a repair.

## ESTABLISHMENT OF THE LRB ARRANGEMENT

### Who can be the Lender?

A SMSF may borrow from any person under a LRB arrangement. This includes related and unrelated parties of the SMSF.

Where a SMSF borrows from a related party then the loan must be on an arm's length basis (including having a commercial interest rate relative to the security provided) and should be documented in a written agreement. Vale Legal can provide a Limited Recourse Loan Deed for this purpose.

Due to the difficulties that a SMSF may face in obtaining funding from external parties, it may sometimes be easier for a related party to borrow funds from an external lender and to on-lend the funds to the SMSF:



Consideration of the relative interest rates of both loans is required from both the superannuation and tax law perspective. A related party is not permitted to use the asset which is the subject of the LRB arrangement as security for their borrowing. The related party would have to borrow using other security, say the family home.

### Who can be the Custodian?

It is a key requirement of a LRB arrangement that the asset the subject of the arrangement be held on trust for the SMSF until such time as the loan is repaid. The Custodian performs the duty of holding the asset on trust for the SMSF. The Custodian is sometimes referred to as the "trustee" or the "security trustee" and the trust in respect of which they hold the asset for the benefit of the SMSF is sometimes referred to as the "custodian trust" or "security trust".

The Custodian can be any person or entity provided it is not identical to the trustee of the superannuation fund.

It is generally recommended that the Custodian be a special purpose company that has been newly incorporated for the purpose of being the Custodian. Such a company would have nominal assets (say \$2) and should never trade whilst it is a party to the LRB arrangement. The reason for this recommendation is that it provides a level of asset protection. For instance, if the SMSF acquires real estate under a LRB arrangement and that real estate is leased to the general public then having a \$2 company as custodian would provide some protection against public liability claims that may arise in respect of the leasing.

Under the LRB arrangement the property is purchased in the name of the Custodian. In NSW the purchaser on the contract should be described as either "XYZ Custodian Pty Ltd" or "XYZ Custodian Pty Ltd as trustee". The Custodian only has the legal interest in the property. The

equitable ownership of the property resides with the SMSF. However, the Custodian may mortgage and/or charge the property in order to secure repayment of the loan to the Lender by the SMSF.

**Can a LRB arrangement involve a guarantee?**

Often external lenders require that a related party of the SMSF (such as a member of the SMSF) guarantee the SMSF's borrowing. The Commissioner of Taxation ("**Commissioner**") accepts that a LRB arrangement may involve a guarantee. However, the usual rights of a guarantor need to be varied and care needs to be had to ensure that the rights of the guarantor under the arrangement are limited recourse to the property.

**Can the SMSF refinance?**

A SMSF can refinance a LRB arrangement without jeopardising the complying nature of the arrangement provided certain conditions are met.

## **TAXATION CONSEQUENCES ON ENTRY INTO THE LRB ARRANGEMENT**

### **Stamp duty on entry into the Custodian Deed**

The stamp duty regimes in every state are different and specific advice should be sought prior to entering into these arrangements.

#### **New South Wales**

Where the asset which is the subject of the LRB arrangement constitutes “dutiable property” over which NSW stamp duty may apply (e.g. land or unlisted shares or units), then entry into the Custodian Deed raises NSW stamp duty issues. This is because the Custodian Deed involves a declaration of trust over the property the subject of the LRB arrangement.

Duty of \$500 is payable on the declaration of trust by the custodian pursuant to section 62B of the Duties Act 1997 (NSW) where:

- (a) the declaration of trust names the self managed superannuation fund;
- (b) ad valorem duty has been paid on the acquisition of the property or the exemption for transferring commercial property from a member to the fund pursuant to section 62A of the Duties Act 1997 (NSW); and
- (c) the Chief Commissioner is satisfied that the consideration for the acquisition was or will be provided by the fund.

If these conditions cannot be satisfied then ad valorem duty may be payable resulting in double duty.

Normal stamp duty consequences arise in respect of an asset purchase under the LRB arrangement, and as noted above a SMSF may use borrowed funds to pay this duty.

Listed shares or listed units do not fall within the concept of “dutiable property” for NSW stamp duty purposes. Consequently no stamp duty is payable on either the acquisition of these assets or the entry into a Custodian Deed covering the acquisition of these assets.

#### **GST**

If the asset will be used to make taxable supplies during the term of the LRB arrangement (e.g. if the asset is commercial premises which will be leased during the term of the LRB arrangement), then provided the SMSF is GST registered at the time of the asset acquisition the SMSF will be able to claim back any GST paid on the acquisition of the asset as input tax credits.

The Commissioner permits the SMSF to claim these input tax credits even though the tax invoice is issued by the vendor of the property to the Custodian and contains only the Custodian’s details (GSTR 2008/3 at paragraph 79).



## TAXATION DURING THE TERM OF THE LRB ARRANGEMENT

### Income Tax

The income tax consequences for a SMSF during the term of a LRB arrangement are currently in a state of flux. The main issue in this respect is whether or not the custodian trust comprising the Custodian as trustee of the asset for the SMSF should be recognised for tax purposes or whether one should look through this trust and tax the SMSF directly on income derived on the asset during the term of the LRB arrangement.

Currently, whether or not this custodian trust is recognised for tax purposes depends on the particular asset which is the subject of the LRB arrangement. If the asset comprises publicly listed shares or units then the Commissioner has an administrative practice of looking through the custodian trust and taxing the SMSF directly on the dividends and unit trust distributions received on such investments (PS LA 2000/2). The custodian trust in such a situation is not required to lodge a separate income tax return because of this look through approach.

For other kinds of assets (e.g. land) the Commissioner's administrative practice in PS LA 2000/2 does not apply. Instead the Custodian in its capacity as trustee for the SMSF is regarded as a separate taxpayer from the SMSF and is required to lodge separate trust income tax returns. In essence normal trust taxation rules will apply where there is separate tax recognition of the custodian trust. As a consequence whilst the Custodian is required to lodge a separate trust tax return, the actual tax liability for income derived on the asset during the term of the LRB arrangement will fall on the SMSF which is the sole beneficiary of the custodian trust.

The separate tax recognition of the custodian trust can produce significant differences in tax treatment as compared to the tax treatment that applies where the Commissioner adopts a look through approach and taxes the SMSF directly. For instance, where there is separate recognition of the custodian trust any tax losses made by the Custodian are trapped in the custodian trust and cannot be passed down to the SMSF. The way that certain tax provisions apply may also be affected by the separate tax recognition. For instance, building depreciation is claimed at the custodian trust level as opposed to SMSF level, however, in contrast plant depreciation is claimed at the SMSF level.

The Government has announced that it will amend the law to apply the look through approach to LRB arrangements over:

- (a) a single exchange traded security in a company, trust or stapled entity;
- (b) direct and indirect interests in listed securities, and unlisted securities in widely held entities and bundles of these assets.

Under this approach the SMSF would be taxed all income earned under the LRB arrangement and be entitled to claim all deductions related to the asset which is the subject of the LRB arrangement (see Assistant Treasurer's Press Release No. 8, 17 January 2011). It is not clear why the Government has chosen to confine this look through treatment to just these kinds of assets. Legislation to enact this announcement has not yet been released and it is unclear when this will occur and whether there will be any change to these proposed amendments.

**GST**

The Commissioner looks through a LRB arrangement for GST purposes and treats the SMSF as dealing with the property the subject of the LRB. For instance, if the property is commercial premises which is leased during the term of the LRB arrangement then even though the lease agreement is entered into by the Custodian (since it holds the legal title to the property) the Commissioner will for GST purposes treat the SMSF as the entity which is making the taxable lease supplies (GSTR 2008/3). The SMSF in such a situation may be required to register for and remit GST if its annual turnover is \$75,000 or more. The SMSF as the supplier would be required to issue a tax invoice for its supply.

The Commissioner allows the Custodian's details to be placed on the tax invoice in lieu of the SMSF's (GSTR 2008/3 at paragraph 79). However, given that a supplier must provide its ABN and the Custodian may have difficulties in obtaining an ABN because it may not be considered to be carrying on an enterprise, it would be expected that the SMSF's ABN would be included on the tax invoice issued in respect of the SMSF's taxable supply.

The lease of residential property for the purposes of residential accommodation is not subject to GST.

**Land Tax**

If the asset the subject of the LRB arrangement is NSW land then it will be subject to annual NSW land tax. Both the Custodian and the SMSF are required to register for land tax. Since the Custodian is the legal owner of the land it will be treated as the primary taxpayer and the SMSF as the beneficial owner of the land will be treated as the secondary taxpayer.

Both the Custodian and the SMSF are liable to pay land tax in respect of the land held in the LRB arrangement, however, the SMSF is able to deduct the amount of land tax already paid by the Custodian against its land tax liability. This effectively means that the primary liability for land tax falls on the Custodian.

## WHAT HAPPENS AT THE END OF THE ARRANGEMENT?

A LRB arrangement may be ended either by:

- (a) the SMSF paying off the loan and then collapsing the custodian trust by having the legal title to the asset transferred into its name; or
- (b) the Custodian selling the asset and then using the sale proceeds to pay out the loan (this would occur where the SMSF is in default of its loan obligations).

Different tax consequences arise depending on how a LRB arrangement is ended. This Memorandum only briefly reviews the first scenario when the SMSF pays off the loan.

### In-house asset rules

The Commissioner considers that once the SMSF repays the loan, the in-house asset exemption in section 71(8) of the SIS Act ceases to apply. The consequence of the Commissioner's position is that generally once the loan is repaid the legal title to the asset should be transferred to the SMSF's name (i.e. the custodian trust should be collapsed) before the end of the income year when the loan is repaid. This is because otherwise the SMSF's beneficial interest under the custodian trust would be treated as an in-house asset.

A SMSF is only permitted to hold 5% of its assets by market value as in-house assets. Where this 5% threshold is breached the SMSF is required to dispose of its excess in-house assets to get under this threshold.

Where the asset which is the subject of the LRB arrangement is land, then there is an issue as to whether the ungeared trust exception to the in-house asset rules in Regulation 13.22C of the *Superannuation Industry (Supervision) Regulations 1994* may apply to allow the custodian trust to continue – that is, the legal title to the asset does not have to be transferred to the SMSF. The Commissioner's reasoning in SMSFD 2008/1 (which is debatable) suggests against this exception applying.

### Capital Gains Tax

It is our view that there are reasonable arguments that no capital gains tax liability is triggered for the Custodian on the transfer of the asset by the Custodian to the SMSF. However, the capital gains tax consequences of this transfer are not completely certain at law.

The uncertainty surrounding the capital gains tax consequences is one reason why the Government proposes to legislate for a look through approach for LRB arrangements over certain assets (see above discussion). Depending on the SMSF's circumstances at the time when the loan is repaid it may be possible to implement procedures to minimise the tax on any capital gain (if any) that may arise from such a transfer.

### Stamp Duty

Provided that the SMSF paid the whole purchase price for the asset which is the subject of the LRB arrangement and has borne all the costs related to the ownership of the asset (e.g. funded the cost of repairs) then only \$50 nominal stamp duty is payable on the transfer by the Custodian to the SMSF.

**GST**

No GST is payable on the transfer of the asset from the Custodian to the SMSF. This is because the transfer is not made in the course or furtherance of any enterprise carried on by the Custodian (GSTR 2008/3 at paragraph 64).

**Land Tax**

Where the asset transferred back to the SMSF is NSW land then the SMSF will be solely liable for NSW land tax in respect of the land. That is, the SMSF will no longer be a secondary taxpayer for land tax.

## **ANNEXURE A**

### **STEPS TO SETTING UP A LRB ARRANGEMENT**

The SMSF should obtain legal advice about entering into a LRB Arrangement. The following steps are indicative only and may vary depending on particular circumstances principal the nature of the assets being acquired and the State in which the assets are located.

#### **Step 1 – Review SMSF Rules and SMSF Investment Strategy**

Before entering into the LRB arrangement the trustee of the SMSF must review the trust deed or rules governing the SMSF to ensure that the SMSF is permitted to enter into such a transaction.

Similarly the trustee of the SMSF needs to consider whether the proposed LRB arrangement is consistent with the SMSF's investment strategy. In particular the SMSF needs to review the expected income and returns that will be made from the acquired asset and how the costs of a LRB arrangement will be met by the SMSF. The SMSF would also need to consider the profile of its members and the likelihood that pensions and benefits may need to be paid out in the future and the cash flow consequences of such pensions and benefits. Ideally these considerations concerning the proposed asset purchase should be compiled in a report that is kept in the SMSF's records for safe keeping. Such a report would assist the SMSF in proving that the asset acquisition meets the sole purpose test.

Where the SMSF's trust deed or investment strategy does not permit the SMSF to enter into a LRB arrangement then the deed and investment strategy would need to be amended before the SMSF enters into the LRB arrangement.

#### **Step 2 – Selecting the asset**

The trustee of the SMSF needs to check that its acquisition of the asset under the LRB arrangement and the intended use of the asset comply with superannuation law. This includes satisfying the single acquirable asset requirement in s67A of the SIS Act and also the rules governing transactions between related parties (these rules are discussed in the body of the Memorandum under the title "What Assets may the SMSF Acquire?"). The SMSF may wish to obtain legal advice in this respect.

#### **Step 3 – Organise financing**

The SMSF then arranges for finance from a lender – this can be either an external lender or a related party.

Where an external lender is used then that lender may wish to use its own LRB arrangement documents (covering the non-recourse loan agreement and the custodian deed that establishes the custodian trust). The external lender may also require its own entity to be the Custodian under the arrangement. Where the external lender uses their own documents then the SMSF needs to confirm that the documentation is sufficient so to cause the borrowing to be a complying LRB arrangement. The SMSF may seek legal advice on this matter.

#### **Step 4 – Incorporate Custodian company**

If the lender supplies no Custodian then a new company should be incorporated for the purpose of acting as a Custodian in the LRB arrangement. The members of the SMSF can be the directors and shareholders of the Custodian. The Custodian should not undertake any other activity besides acting as a custodian under the LRB arrangement.

#### **Step 5 – Executing the Loan Deed**

The SMSF then enters into the Loan Deed with the Lender. The Loan Deed outlines the terms of the limited recourse borrowing. Where the Lender requires a guarantee for the loan then the guarantor may also be a party to this Deed.

#### **Step 6 - Entering into the purchase contract & settlement (for real property)**

The Custodian enters into the purchase contract to acquire the asset – that is, it is the Custodian who is named in the purchase contract as the purchaser. This is because it is a requirement of a LRB arrangement that the Custodian hold the legal title to the asset until the loan is repaid.

To prevent adverse stamp duty consequences inadvertently arising, the name of the Custodian should be placed on the purchase contract as either “XYZ Custodian Pty Ltd” or “XYZ Custodian Pty Ltd as trustee”.

Importantly both the deposit and the balance of the purchase price should be paid by the SMSF and there should be a clear documentary trail to evidence this.

#### **Step 7 – Executing the Custodian Deed**

The SMSF enters into the Custodian Deed with the Custodian. The Custodian Deed outlines how the Custodian will hold the asset during the term of the LRB arrangement and the SMSF’s right to acquire the asset once it has paid off the loan.

***The time when the SMSF enters into the Custodian Deed varies from jurisdiction to jurisdiction depending the stamp duty laws applicable to the property concerned.***

***Generally, in New South Wales, Victoria, Western Australia, Tasmania and the Australian Capital Territory the SMSF should enter into the Custodian Deed after entering into the contract to purchase the property.***

***Generally, in Queensland, South Australia and the Northern Territory the SMSF should enter into the Custodian Deed before entering into the contract to purchase the property. In this situation you would carry out Step 7 before Step 6.***

**Vale Legal**

**1 July 2014**