

THE SECONDARY TRUST

LEGISLATION

LIMITED RECOURSE BORROWING ARRANGEMENTS
Superannuation Industry (Supervision) Act 1993

Trentons CA
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Sunshine VIC 3020

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LEGISLATION

Limited Recourse Borrowing Arrangements

Superannuation Industry (Supervision) Act 1993

SECTION 67 BORROWING

Prohibition

- (1) Subject to this section and section 67A, a trustee of a regulated superannuation fund must not:

- (a) borrow money; or
- (b) maintain an existing borrowing of money.

Note: Section 67A contains an exception for certain limited recourse borrowing arrangements.

Exception—temporary borrowing to pay beneficiary

- (2) Subsection (1) does not prohibit a trustee of a regulated superannuation fund from borrowing money if:

- (a) the purpose of the borrowing is to enable the trustee to make a payment to a beneficiary which the trustee is required to make by law or by the governing rules and which, apart from the borrowing, the trustee would not be able to make; and
- (b) the period of the borrowing does not exceed 90 days; and
- (c) if the borrowing were to take place, the total amount borrowed by the trustee would not exceed 10% of the value of the assets of the fund.

- (2A) Subsection (1) does not prohibit a trustee of a regulated superannuation fund from borrowing money if:

- (a) the purpose of the borrowing is to enable the trustee to make a payment of surcharge or advance instalment which the trustee is required to make under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* and which, apart from the borrowing, the trustee would not be able to make; and
- (b) the period of the borrowing does not exceed 90 days; and
- (c) if the borrowing were to take place, the total amount borrowed by the trustee would not exceed 10% of the value of the assets of the fund.

Exception—temporary borrowing to cover settlement of securities transactions

- (3) Subsection (1) does not prohibit a trustee of a regulated superannuation fund from borrowing money if:

- (a) the purpose of the borrowing is to enable the trustee to cover settlement of a transaction for the acquisition of any of the following:
 - (i) bonds, debentures, stock, bills of exchange or other securities;
 - (ii) shares in a company;
 - (iii) units in a unit trust;
 - (iv) futures contracts;
 - (v) forward contracts;
 - (vi) interest rates swap contracts;
 - (vii) currency swap contracts;
 - (viii) forward exchange rate contracts;
 - (ix) forward interest rate contracts;
 - (x) a right or option in respect of such a security, share, unit, contract or policy;
 - (xi) any similar financial instrument;
 - (xii) foreign currency; and
- (b) both:
 - (i) at the time the relevant investment decision was made, it was likely that the borrowing would not be needed; and

- (ii) the borrowing is not taken, under a determination made, by legislative instrument, by the Regulator, to be exempt from this paragraph; and
- (c) the period of the borrowing does not exceed 7 days; and
- (d) if the borrowing were to take place, the total amount borrowed by the trustee would not exceed 10% of the value of the assets of the fund.

Exception—private sector funds

- (5) Subsection (1) does not prohibit a trustee of a private sector fund from maintaining an existing borrowing of money if:
 - (a) the trustee had, at a time before 12 June 1986, borrowed the money in circumstances that did not comply with the standard set out in paragraph 16(1)(b) of the Occupational Superannuation Standards Regulations; and
 - (b) the maintenance occurs before whichever is the earliest of the following:
 - (i) the day on which the trustee made such arrangements as were necessary to comply with that standard;
 - (ii) the day on which the trustee makes such arrangements as are necessary to comply with subsection (1);
 - (iii) 1 July 1995.

Exception—public sector funds

- (6) Subsection (1) does not prohibit the trustee of a public sector fund from maintaining an existing borrowing of money if:
 - (a) the trustee had, at a time before 2 July 1990, borrowed the money in circumstances that did not comply with the standard set out in paragraph 16(1)(b) of the Occupational Superannuation Standards Regulations; and
 - (b) the maintenance occurs before whichever is the earliest of the following:
 - (i) the day on which the trustee made such arrangements as were necessary to comply with that standard;
 - (ii) the day on which the trustee makes such arrangements as are necessary to comply with subsection (1);
 - (iii) 1 July 2000.

Civil penalty provision

- (7) Subsection (1) is a civil penalty provision as defined by section 193, and Part 21 therefore provides for civil and criminal consequences of contravening, or of being involved in a contravention of, that subsection.

SECTION 67A LIMITED RECOURSE BORROWING ARRANGEMENTS

Exception

- (1) Subsection 67(1) does not prohibit a trustee of a regulated superannuation fund (the **RSF trustee**) 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 a single acquirable asset, including:
 - (i) expenses incurred in connection with the borrowing or acquisition, or in maintaining or repairing the acquirable asset (but not expenses incurred in improving the acquirable asset); and

Example: Conveyancing fees, stamp duty, brokerage or loan establishment costs.

 - (ii) money applied to refinance a borrowing (including any accrued interest on a borrowing) to which this subsection applied (including because of section 67B) in relation to the single acquirable asset (and no other acquirable asset); and
- (b) the acquirable asset is held on trust so that the RSF trustee acquires a beneficial interest in the acquirable asset; and
- (c) the RSF trustee has a right to acquire legal ownership of the acquirable asset by

- (d) making one or more payments after acquiring the beneficial interest; and the rights of the lender or any other person against the RSF trustee for, in connection with, or as a result of, (whether directly or indirectly) default on:
 - (i) the borrowing; or
 - (ii) the sum of the borrowing and charges related to the borrowing;
 are limited to rights relating to the acquirable asset; and
 Example: Any right of a person to be indemnified by the RSF trustee because of a personal guarantee given by that person in favour of the lender is limited to rights relating to the acquirable asset.
- (e) if, under the arrangement, the RSF trustee has a right relating to the acquirable asset (other than a right described in paragraph (c))—the rights of the lender or any other person against the RSF trustee for, in connection with, or as a result of, (whether directly or indirectly) the RSF trustee's exercise of the RSF trustee's right are limited to rights relating to the acquirable asset; and
- (f) the acquirable asset is not subject to any charge (including a mortgage, lien or other encumbrance) except as provided for in paragraph (d) or (e).

Meaning of acquirable asset

- (2) An asset is an **acquirable asset** if:
 - (a) the asset is not money (whether Australian currency or currency of another country); and
 - (b) neither this Act nor any other law prohibits the RSF trustee from acquiring the asset.
- (3) This section and section 67B apply to a collection of assets in the same way as they apply to a single asset, if:
 - (a) the assets in the collection have the same market value as each other; and
 - (b) the assets in the collection are identical to each other.
 Example: A collection of shares of the same class in a single company.
- (4) For the purposes of this section and section 67B, the regulations may provide that, in prescribed circumstances, an acquirable asset ceases to be that particular acquirable asset.

RSF trustee

- (5) Paragraphs (1)(d) and (e) do not apply to a right of:
 - (a) a member of the regulated superannuation fund; or
 - (b) another trustee of the regulated superannuation fund;
 to damages against the RSF trustee for a breach by the RSF trustee of any of the RSF trustee's duties as trustee.
- (6) A reference in paragraph (1)(d) or (e) (but not in subsection (5)) to a right of any person against the RSF trustee includes a reference to a right of a person who is the RSF trustee, if the person holds the right in another capacity.

SECTION 67B LIMITED RECOURSE BORROWING ARRANGEMENTS—REPLACEMENT ASSETS

- (1) Subsection (2) applies to:
 - (a) a reference in paragraph 67A(1)(b), (c), (d), (e) or (f) to an acquirable asset (the **original asset**); or
 - (b) a reference in subsection 71(8) to an acquirable asset (the **original asset**) mentioned in paragraph 67A(1)(b);
 (including a reference resulting from a previous application of subsection (2) of this section).
- (2) Treat the reference as being a reference to another single acquirable asset (the **replacement asset**) if:

- (a) the replacement asset replaces the original asset; and
 - (b) subsection (3), (4), (5), (6), (7) or (8) applies.
- (3) This subsection applies if:
- (a) the original asset consists of:
 - (i) a share in a company, or a collection of shares in a company; or
 - (ii) a unit in a unit trust, or a collection of units in a unit trust; and
 - (b) the replacement asset consists of:
 - (i) a share in that company, or a collection of shares in that company; or
 - (ii) a unit in that unit trust, or a collection of units in that unit trust; and
 - (c) at the time the replacement occurs, the original asset and the replacement asset have the same market value.
- (4) This subsection applies if:
- (a) the original asset consists of an instalment receipt that confers a beneficial interest in:
 - (i) a share in a company; or
 - (ii) a collection of shares in a company; and
 - (b) the replacement asset consists of that share or collection.
- (5) This subsection applies if:
- (a) the original asset consists of:
 - (i) a share in a company, or a collection of shares in a company; or
 - (ii) a unit in a unit trust, or a collection of units in a unit trust; and
 - (b) the replacement asset consists of:
 - (i) a share in another company, or a collection of shares in another company; or
 - (ii) a unit in another unit trust, or a collection of units in another unit trust; and
 - (c) the replacement occurs as a result of a takeover, merger, demerger or restructure of the company or unit trust mentioned in paragraph (a).
- (6) This subsection applies if:
- (a) the original asset consists of a share in a company, or a collection of shares in a company; and
 - (b) the replacement asset consists of a stapled security, or a collection of stapled securities; and
 - (c) each of those stapled securities consists of a single share, or a single collection of shares of the same class, stapled together with a single unit, or a single collection of units of the same class, in a unit trust; and
 - (d) the replacement occurs under a scheme of arrangement of the company.
- (7) This subsection applies if:
- (a) the original asset consists of a unit in a unit trust, or a collection of units in a unit trust; and
 - (b) the replacement asset consists of a unit in that unit trust, or a collection of units in that unit trust; and
 - (c) the replacement occurs as a result of an exercise of a discretion granted under the trust deed of that unit trust to the trustee of that unit trust.
- (8) This subsection applies in the circumstances (if any) prescribed by the regulations for the purposes of this subsection.

**MINUTES OF MEETING OF DIRECTOR(S) OF FUND TRUSTEE
LOCKET PTY LTD
(ACN 135661684)
MY FUTURE SMSF**

CHANGING INVESTMENT

Limited Recourse Borrowing Arrangement (Non-Related Party)

PRESENT: HIEN QUANG NGUYEN (Chair)
SHEUNG PING CHAN

HELD AT: 27 COOGEE DRIVE, TAYLORS HILL VIC 3037

CHAIR AND QUORUM: The Chair noted that a quorum was present.

NOTICE OF MEETING: The notice of meeting was, with the permission of the meeting, taken as read.

CHANGING INVESTMENT STRATEGY: The members advised they wished to change the investment strategy of the Fund so that most of their funds would be held in the following Asset:
Residential Property
Address: 17 MENZIES DRIVE
BURNSIDE HEIGHTS, VIC 3023
Land Title Identifier: 10795/956

The following resolution was put to the meeting and was passed unanimously:

RESOLVED: That the investment strategy be changed to allow the Fund to acquire the above described Asset.

LIMITED RECOURSE BORROWING ARRANGEMENT: The chair informed the meeting that the Fund could acquire the above described Asset under a Limited Recourse Borrowing Arrangement issued by **WESTPAC**

on the following conditions:

- (1) value of asset: \$
- (2) amount under borrowing arrangement: \$
- (3) premium: \$
- (4) interest rate:
- (5) payment [eg, monthly]:
- (6) duration:
- (7) security over asset [eg, mortgage, charge]:

The chair also informed the meeting that the proposed borrowing arrangement would be a Limited Recourse Borrowing Arrangement; that the premium was \$; that

THE SECONDARY PTY LTD (ACN 616770453) would be requested to be the Asset Trustee; that the premium would be paid by the Fund; that on payment of the premium the asset would be transferred to the Asset Trustee; that the Asset Trustee would be required to grant a mortgage [charge] over the asset in order to secure the liability under the Limited Recourse Borrowing Arrangement; and that the asset would be held on trust by the Asset

Trustee until the liability under the Limited Recourse Borrowing Arrangement had been paid in full.

The meeting noted that the borrowing facility would be a Limited Recourse Borrowing Arrangement; that the premium would be paid by the Fund; that the premium was \$; that the asset would be transferred to the Asset Trustee; that the borrowing facility would be a Limited Recourse Borrowing Arrangement; and that the purchase complies with the Fund's new investment strategy and sections 67A and 67B of the Act.

The following resolutions were put to the meeting and were passed unanimously:

RESOLVED: That the existing Fund's Asset:

be sold and the proceeds of sale be applied to acquire the proposed Asset using a Limited Recourse Borrowing Arrangement.

FURTHER RESOLVED: To request the Fund's accountant to set up the required documents and entities (if not already in existence) for the Limited Recourse Borrowing Arrangement required and approach the banks for a Limited Recourse Borrowing Arrangement.

The chair tabled the following documents: the unexecuted Limited Recourse Borrowing Arrangement and other documentation received from the Lender; the Declaration of Trust Deed; the transfer of Title transferring the asset to the Asset Trustee; and the instrument of mortgage [charge] granting a mortgage [charge] to the Lender over the asset.

The following resolution was put to the meeting and was passed unanimously:

RESOLVED: To execute the Limited Recourse Borrowing Arrangement received from the Lender and the Declaration of Trust.

PAYMENT OF ACCOUNTANTS

The chair tabled a tax invoice from the accountants for services in connection with the Limited Recourse Borrowing Arrangement.

The following resolution was put to the meeting and was passed unanimously:

RESOLVED: To pay the tax invoice, the sum of \$, to the accountants.

CLOSURE:

There being no further business, the meeting was closed.

DATED

11 / 1 / 2017

SIGNED as a correct record:

.....
Chair

**MINUTES OF MEETING OF DIRECTOR(S) OF ASSET TRUSTEE
THE SECONDARY PTY LTD
(ACN 616770453)
MY FUTURE SMSF
CHANGING INVESTMENT
Limited Recourse Borrowing Arrangement (Non-Related Party)**

PRESENT: **HIEN QUANG NGUYEN (Chair)**
SHEUNG PING CHAN

HELD AT: 27 COOGEE DRIVE, TAYLORS HILL VIC 3037

CHAIR AND QUORUM: The Chair noted that a quorum was present.

NOTICE OF MEETING: The notice of meeting was, with the permission of the meeting, taken as read.

TRUSTEE(S): The Chair tabled written consents signed by the Asset Trustee(s).

LIMITED RECOURSE BORROWING ARRANGEMENT: The chair informed the meeting that the Trustee(s) of the Fund **LOCKET PTY LTD (ACN 135661684)**, intended to acquire:

Residential Property

Address: 17 MENZIES DRIVE

BURNSIDE HEIGHTS, VIC 3023

Land Title Identifier: 10795/956

through a Limited Recourse Borrowing Arrangement with the Lender – **WESTPAC**

The chair also informed the meeting that the Trustee(s) of the Fund had requested the Asset Trustee to hold the asset being acquired on trust for the Trustee(s) of the Fund and to grant a mortgage [charge] over the asset to the Lender issuing the Limited Recourse Borrowing Arrangement.

The chair tabled the following documents: the Declaration of Trust Deed; the transfer of Title transferring the asset to the Asset Trustee; and the instrument of mortgage [charge] granting a mortgage [charge] over the asset to the Lender issuing the Limited Recourse Borrowing Arrangement.

The following resolution was put to the meeting and was passed unanimously:

RESOLVED: To execute the following documents: the transfer transferring the asset; the Declaration of Trust Deed; and the instrument of mortgage [charge] granting a mortgage [charge] over the asset to the Lender issuing the Limited Recourse Borrowing Arrangement.

CLOSURE: There being no further business, the meeting was closed.

DATED

11 / 1 / 2017

SIGNED as a correct record:

.....

Chair

**MINUTES OF MEETING OF DIRECTOR(S) OF FUND TRUSTEE
LOCKET PTY LTD
(ACN 135661684)
MY FUTURE SMSF**

**DIRECTION BY FUND TRUSTEE(S) TO ASSET TRUSTEE(S)
Limited Recourse Borrowing Arrangement (Non Related Party)**

PRESENT:

**HIEN QUANG NGUYEN (Chair)
SHEUNG PING CHAN**

HELD AT:

27 COOGEE DRIVE, TAYLORS HILL VIC 3037

CHAIR AND QUORUM:

The Chair noted that a quorum was present.

NOTICE OF MEETING:

The notice of meeting was, with the permission of the meeting, taken as read.

**LIMITED RECOURSE
BORROWING
ARRANGEMENT:**

The chair tabled a letter from the Lender issuing the Limited Recourse Borrowing Arrangement - **WESTPAC**

confirming that the amount owing under the Limited Recourse Borrowing Arrangement had been paid in full.

The chair also tabled an unexecuted transfer transferring the asset to the Trustee of the Fund.

The following resolutions were put to the meeting and were passed unanimously:

RESOLVED: To inform the Asset Trustee that the amount owing under the Limited Recourse Borrowing Arrangement had been paid in full; to request the Lender issuing the Limited Recourse Borrowing Arrangement to grant a discharge of mortgage [charge] to the Asset Trustee, **THE SECONDARY PTY LTD (ACN 616770453)**; to direct the Asset Trustee to transfer the asset to the Trustee of the Fund; to execute the transfer transferring the asset from the Asset Trustee to the Trustee of the Fund; and to deliver the transfer to the Asset Trustee for it to execute.

FURTHER RESOLVED: To pay the costs and disbursements (including duty, where applicable) associated with lodging the discharge of mortgage [charge] and lodging and registering the transfer.


CLOSURE:

There being no further business, the meeting was closed.

DATE:

11 / 1 / 2017

SIGNED as a correct record:

.....

Chair

**MINUTES OF MEETING OF DIRECTOR(S) OF ASSET TRUSTEE
THE SECONDARY PTY LTD
(ACN 616770453)
MY FUTURE SMSF**

**DIRECTION BY FUND TRUSTEE(S) TO ASSET TRUSTEE(S)
Limited Recourse Borrowing Arrangement (Non Related Party)**

PRESENT: HIEN QUANG NGUYEN (Chair)
SHEUNG PING CHAN

HELD AT: 27 COOGEE DRIVE, TAYLORS HILL VIC 3037

CHAIR AND QUORUM: The Chair noted that a quorum was present.

NOTICE OF MEETING: The notice of meeting was, with the permission of the meeting, taken as read.

**LIMITED RECOURSE
BORROWING ARRANGEMENT:** The chair tabled a letter from the Lender issuing the Limited Recourse Borrowing Arrangement - **WESTPAC** confirming that the amount owing under the Limited Recourse Borrowing Arrangement had been paid in full by the Trustee of the Fund, **LOCKET PTY LTD (ACN 135661684)**.

The chair also tabled a discharge of mortgage [charge] executed by the Lender.

The chair also tabled a letter from the Trustee of the Fund directing it to transfer the asset to the Trustee of the Fund.

Finally, the chair tabled a transfer transferring the asset to the Trustee of the Fund.

The following resolutions were put to the meeting and were passed unanimously:


RESOLVED: To comply with the direction of the Trustee of the Fund to transfer the asset to the Trustee of the Fund.

FURTHER RESOLVED: To execute the transfer transferring the asset to the Trustee of the Fund.

CLOSURE: There being no further business, the meeting was closed.

DATE: 11 / 1 / 2017

SIGNED as a correct record:

.....

Chair

SMSF Compliance Letter MY FUTURE SMSF

Date: / /

From the Fund Trustee(s):

LOCKET PTY LTD (ACN 135661684)

To whom it may concern,

Loan to the trustee(s) of MY FUTURE SMSF

(‘Fund’)

Proposed Loan Amount: \$_____ (‘loan money’)

Lender: Westpac (‘lender’)

Complying Self-Managed Super Fund (SMSF)

The Trustee of the Fund is writing to confirm that the Fund complies with superannuation law, and is registered with the Australian Taxation Office (ATO) as a regulated and complying SMSF. Please find **enclosed** as follows showing *complying fund status*:

1. Latest letter prepared by the Fund’s SMSF Auditor;
2. Copy of search results from the ATO’s external register of Self-Managed Super Funds: *Super Fund Lookup* (www.superfundlookup.gov.au)

Proposed Limited Recourse Borrowing Arrangement (‘LRBA’)

The Trustee of the Fund is also writing to confirm that the Fund’s trust deed, specifically clause 286 together with the Trustee’s Powers shown in the First Schedule, authorises the Trustee to enter into an LRBA and execute the Loan Agreement, Bare Trust/Property Trust, and Mortgage. The Trustee confirms that the proposed LRBA will comply in all respects with superannuation law, including:

1. The requirements of section 67A of the *Superannuation Industry (Supervision) Act 1993*:
 - a. LRBA to be used to purchase a single acquirable asset; and
 - b. A complying structure for the LRBA is
2. The restrictions on acquiring assets from related parties of the Fund;
3. Complying with the ‘sole purpose test’;
4. Not breaching the ‘in-house asset rules’;
5. The requirements that the LRBA constitutes a prudent investment made in accordance with the Fund’s investment strategy; and
6. The requirements of section 109 of the *Superannuation Industry (Supervision) Act 1993*;
7. Transactions are at arm’s length or on arm’s length terms.

A copy of the Fund’s Investment Strategy is also **enclosed**.

Any questions in relation to the above should be directed to the Fund’s Trustee.

Yours sincerely,


Signed for and on behalf of the Trustee(s)


Printed Name

