

13 September 2010



Reference: **LRB00233**

Reckon Docs
Reckon Docs Pty Ltd
35 Saunders Street
Pyrmont NSW 2009

Dear Reckon,

Limited Recourse Borrowing Arrangement for Smith Superannuation Fund

Please find the following **enclosed**:

- **Limited recourse borrowing arrangement guide**
 - Guide to your SMSF limited recourse borrowing arrangement;
 - Sections 67(1) & 67(A) of the *Superannuation Industry Supervision (SIS) Act 1993*;
 - Limited recourse borrowing arrangement structures;
 - Investment strategy amendment for real estate or listed securities; and
 - Checklist of tasks to be completed.

- **Documents for execution**
 - Deed of loan, if the members are providing the finance. (please seek financial advice – neither Reckon Docs nor Hunt & Hunt provide this advice);
 - Minutes of Meeting of Bare Trustee – Transfer of Initial Funds for the Investment and Bare Trust Deed;
 - Minutes of Meeting of Bare Trustee – Financing and Security of the Investment;
 - Minutes of Meeting of Trustee of the Fund – Acquisition of the Investment & Bare Trust Deed;
 - Minutes of Meeting of Trustee of the Fund – Loan for Acquisition of the Investment; and
 - 3 copies of the bare trust deed (1 copy for electronic-DIY print orders).

Neither Reckon Docs nor Hunt & Hunt has provided any advice in respect to the **enclosed** documents or in respect of any other matter. Please note that corporation, taxation and superannuation laws are continually changing. These documents have been prepared on the basis of current rules and your instructions. Expert advice should be obtained if there is any doubt as significant penalties can be imposed for any breach. Accordingly, except to the extent required by law, both Reckon Docs and Hunt & Hunt disclaim liability however arising that does not relate to the mere provision of the enclosed documents.

Thank you for your business. Should you wish to discuss any matter regarding this order or have a general enquiry, please contact help desk on 1300 139 001.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Russell Scott'.

Russell Scott
General Manager
Reckon Docs

Sample only

Important information

All necessary documents in the package have been completed as far as possible.

Please note the following is **important information** relating to this structure.

Purchasing the property (name on the contract) – the property being purchased by a super fund with the assistance of finance under a limited recourse borrowing arrangement must be purchased in the name of the Bare Trustee (pursuant to a Bare Trust Deed which specifically identifies the property to be purchased and should be in place before the contract to purchase the property is entered into). The Bare Trustee's name should appear on the contract for purchase of the property as it will be the legal owner of the property until the last repayment is made when the property can be transferred from the Bare Trustee to the Fund Trustee;

Financing – the fund will be required to provide some money towards the purchase, particularly as commercial lenders will only lend about 65% of the purchase price. It is therefore important that approved finance be organised before a contract for purchased is entered into.

Bare Trustee – as this entity will be a bare trustee it will not perform any duties other than hold the legal title to the asset. Furthermore, this entity is **NOT** required to:

- **Bank account** – it is not necessary for the Bare Trustee to setup a bank account. It is best if the source of all monies required for the purchase of the property is to have come directly from the Vendor and/or the Fund; and
- **Tax returns** – the commission has granted an exemption to lodge tax returns for the trustees of certain defined trusts including 'Transparent Trusts' and 'Secured Purchase Trusts'. This means that no returns need to be lodged on behalf of the Bare Trustee;

Super fund – the Fund will maintain the property including collecting all rent, attending to maintenance and any other duties required. The Bare Trustee is not to perform any duties other than hold the legal title to the asset. If the Bare Trustee performs any of the above duties, the limited recourse borrowing arrangement will not be satisfied.

Stamping of the Deed - upon execution of the Bare Trust Deed, this document will require stamping and lodgement at the Office of State Revenue; stamp duty varies in each state of Australia. Refer to Table 1.1 summarising duties payable across all states. Please be sure to include the following so that the Office of State Revenue acknowledges that this is a limited recourse borrowing arrangement:

- **Lender** – the Fund must be able to show loan documents or a letter from the lender setting out the loan arrangements with the super fund and the borrowed amount; and
- **Fund** – for that part of the purchase price that is not borrowed, it must be shown to have come from the Fund including evidence in the form of a bank transaction, bank statement or copies of cheques;

Table 1.1

State	Act	Duty payable [^]
ACT	Duties Act 1999 s.56	\$20
NSW	Duties Act 1997 s.55	\$50
NT	Stamp Duty Act s.98:Schedule 1(7)	\$5
QLD	refer to Practice Direction-Duties Act-61.2	\$Nil
SA	Stamp Duties Act 1923	
TAS	Duties Act 2001 s.39	\$20
VIC	Duties Act 2000 s.34	\$Nil
WA	Duties Act 2008 s.117 and Schedule 2, Division 3	\$20

[^] The table is merely a guide and duty payable is subject to change. To confirm any amounts, please contact the state revenues office in your respective state.

Transfer of property after all monies repaid – stamp duty will be exempt or concessional (dependant on the State of the transaction) on the transfer of the asset from the Bare Trustee to the Fund Trustee after all monies have been repaid so long as the Office of State Revenue acknowledges that this is a limited recourse borrowing arrangement as outlined above.

Documents for execution

An index of pages requiring further completion and execution are summarised as follows:

Documents in order of package	Details to populate
Deed of Loan	
Purpose – this document is a loan agreement with details of the Lender, Borrower, Bare Trustee and the loan details.	<p>Complete this document if the lender/ financier will be the member or a related party.</p> <p>Seek financial advice to complete this document. Neither Reckon Docs nor Hunt & Hunt provide advice in relation to the completion of this document.</p>
Bare Trustee Minutes – Transfer of Initial Funds for the Investment and Bare Trust Deed	
Purpose – this minute documents the meeting that took place with relation to the transfer of monies for the deposit and stamp duty (if applicable) and execution of the Bare Trust Deed.	<ul style="list-style-type: none">• Amount – this includes any monies to pay a deposit, stamp duty, etc; and• Investment details – name/ description of Investment (e.g. property, asset, shares, etc.)
Bare Trustee Minutes – Financing and Security of the Investment	
Purpose – this minute documents the meeting that took place with relation to the engaging of a lender for the borrowing from the Bare Trustee’s perspective.	<ul style="list-style-type: none">• Date of Bare Trust Deed – date of execution of the Bare Trust Deed;• Lender details – name of lender;• Investment details – name/ description of Investment (e.g. property, asset, shares, etc.); and• Any other loan documents required by the lender (if applicable).

Documents for execution cont.

An index of pages requiring further completion and execution are summarised as follows:

Documents in order of package	Details to populate
Fund Trustee Minute – Acquisition of the Investment and Bare Trust Deed	
Purpose – this minute documents the meeting that took place with relation to the limited recourse borrowing arrangement.	<ul style="list-style-type: none">• Investment details – name/ description of Investment (e.g. property, asset, shares, etc.);• Sum of – this should include the full amount required for the purchase of the property including deposit, stamp duty, fees, borrowed monies and remaining amount required from the fund for the purchase of the property;• Lender details – name of lender; and• Borrowed sum – the amount borrowed from the lender.
Fund Trustee Minute – Loan for Acquisition of the Investment	
Purpose – this minute documents the meeting that took place with relation to the engaging of a lender for the borrowing from the fund's perspective.	<ul style="list-style-type: none">• Lender details – name of lender;• Investment details – name/ description of Investment (e.g. property, asset, shares, etc.); and• If applicable, any other loan documents required by the lender.
Bare Trust Deed	
	<ul style="list-style-type: none">• Date of deed; and• Investment details – name/ description of Investment (e.g. property, asset, shares, etc.).

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Limited Recourse Borrowing Arrangement Guide

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Document Version: **RD-1.02**

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Reckon Docs Pty Ltd in providing this kit is not making any recommendations as to whether the acquisition of an investment under a limited recourse borrowing arrangement 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 an investment under a limited recourse borrowing arrangement is an appropriate investment for that Fund.

Limited Recourse Borrowing Arrangement 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; and those rules apply to instalment warrant structures put in place before 7 July 2010. New rules introduced on 7 July 2010 are contained within section 67A of the SIS Act which is included in this guide. The relevant section is headed 'Exceptions – Limited recourse borrowing arrangements' and authorises any borrowings made by a Superannuation Fund provided that:

- the borrowed money is applied for the purposes of acquiring a single asset or collection of assets including:
 - expenses in connection with the borrowing or acquisition, or in maintaining or repairing it (but not improvement expenses); or
 - money applied to refinance a borrowing;
- the Fund Trustee is not prohibited from acquiring the asset;
- the asset is held on trust so that the Fund Trustee acquires the beneficial interest in the asset;
- the Fund Trustee has a right to acquire legal ownership of the asset;
- the rights of the lender or any other person 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; and
- the asset is not subject to any other charge except under the limited recourse borrowing arrangement.

Effectively this means that any borrowing arrangement that is allowed under section 67(A) 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 a limited recourse borrowing arrangement, 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; or
- 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).

Replacement of Assets

Section 67B of the SIS Act which also took effect from 7 July 2010 sets out the circumstances in which an asset under a limited recourse borrowing arrangement can be replaced. For instance, a share in a company (or collection of shares) can be replaced by a share in another company if the replacement occurs because of a takeover, merger, demerger or restructure of the first company (ss 67B(5))

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 real property and listed securities. Acquisitions must also be made at the present market value.

Beneficial Ownership

The Fund Trustee is not allowed to be the legal owner of the asset however it must be the beneficial owner of the asset. For that reason an entity must hold the asset on trust for the Fund Trustee, such as a separate Trustee Company (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 when the Fund Trustee calls for transfer of the legal title. The entity holding the asset will hold it as a Bare Nominee so, as a result, the asset must be managed by the Fund Trustee. For example if the asset is real estate the Fund Trustee must collect rent and attend to repairs.

Funding

The essence of the legislation is to allow Funds to make limited recourse borrowings.

There is no requirement as to who 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 their own capital to the Fund.

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, external to the Fund, as collateral over the borrowing but any right of a person to be indemnified by the Fund because of a personal guarantee given by that person in favour of the lender is limited to rights relating to the asset only.

Trustees of the Limited Recourse Borrowing Arrangement

The Bare 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 but the Members can also be Bare 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 the Bare Trustee to the Fund Trustee. This means that the Bare Trustee must not provide any active services and need not even hold a bank account.

Negative Gearing

It is possible 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 or by other Fund assets. The ability of the Fund to cater for any such shortfall should be addressed in the Investment Strategy.

Requirements & Considerations

- A Self-Managed Superannuation Fund ('the Fund').
- The Fund Trustee needs to possess the power to borrow under certain limited recourse arrangements to acquire a permitted asset.
- The investment strategy of the Fund needs to accommodate the limited recourse borrowing arrangement. An amendment to the Fund's Investment Strategy is included in this package.
- A Bare Trustee, which will acquire the asset and hold the legal title of the asset on trust for the Fund.

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

- A Contract in which the Bare Trustee enters to acquire the asset.

The Bare 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 Bare Trustee to pay the vendor for the asset being acquired.

In order for the Bare Trust to take effect the Fund Trustee 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 where a Member of the Fund is providing the monies. A financial Institution may, however, require the Bare Trustee to provide a mortgage on any acquisition of property.

- A Bare Trust Deed executed by the Bare Trustee and the Trustee of the Fund is included in this package.
- An investment, which is to be acquired by the Bare Trustee as a Bare Nominee for the Fund.

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Limited Recourse Borrowing Arrangement Excerpt

Section 67 – Borrowing & Section 67A – Limited recourse borrowing arrangements

SUPERANNUATION INDUSTRY (SUPERVISION) ACT 1993 – SECT 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.

SUPERANNUATION INDUSTRY (SUPERVISION) ACT 1993 – SECT 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 maintain 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 making one or more payments after acquiring the beneficial interest; and
 - (d) 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 acquiring 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.

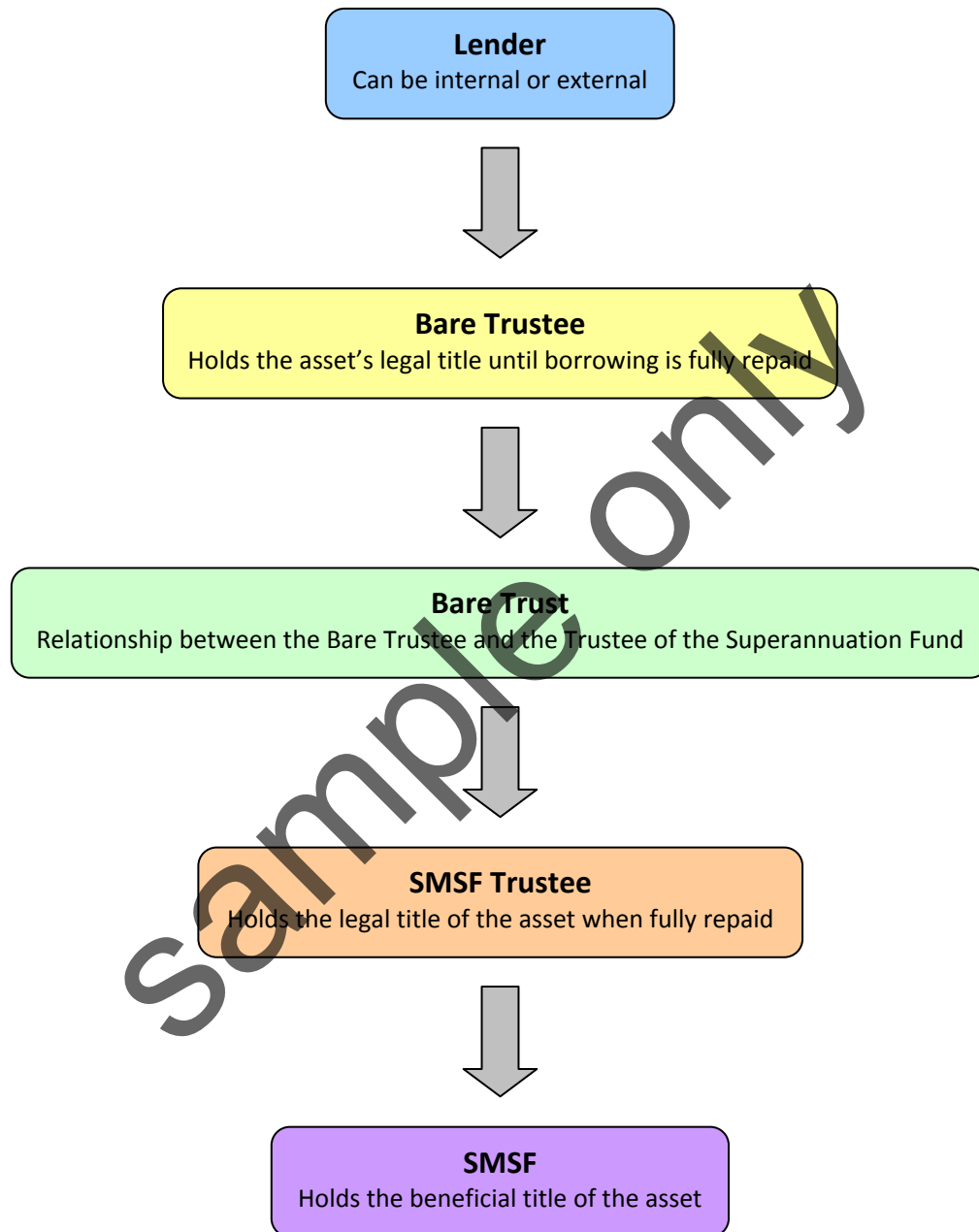
Example: A collection of shares of the same class in a single company.

- (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.

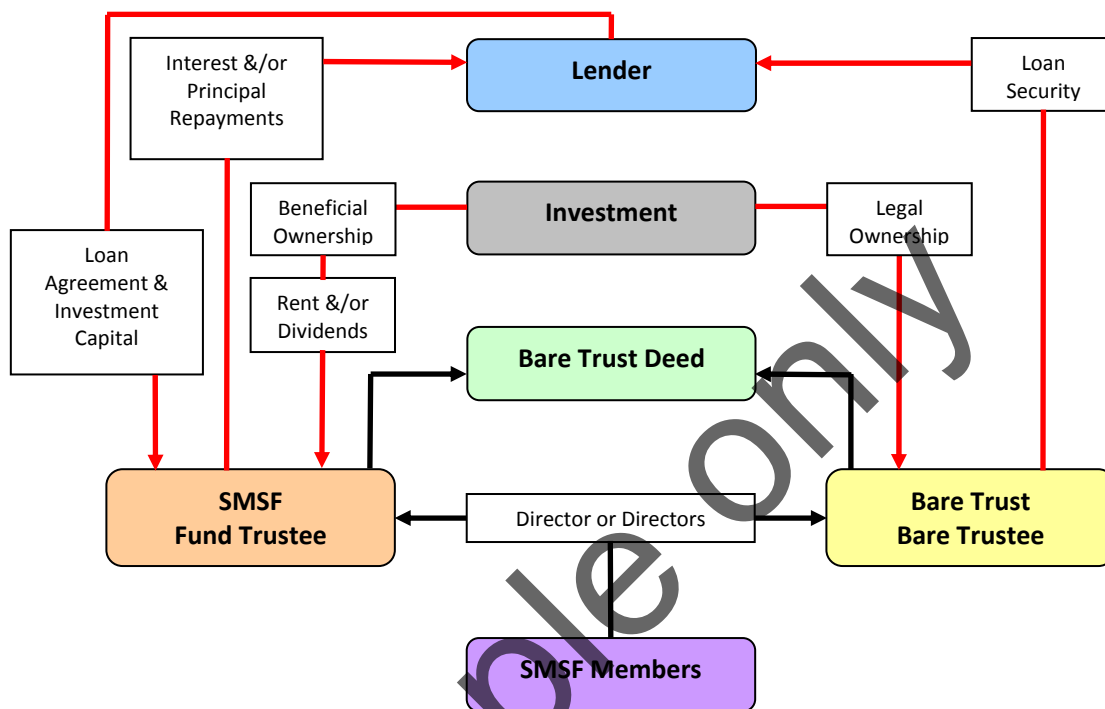
Simplified limited recourse borrowing arrangement structure



Sample only

Typical limited recourse borrowing arrangement set-up

Corporate trustees



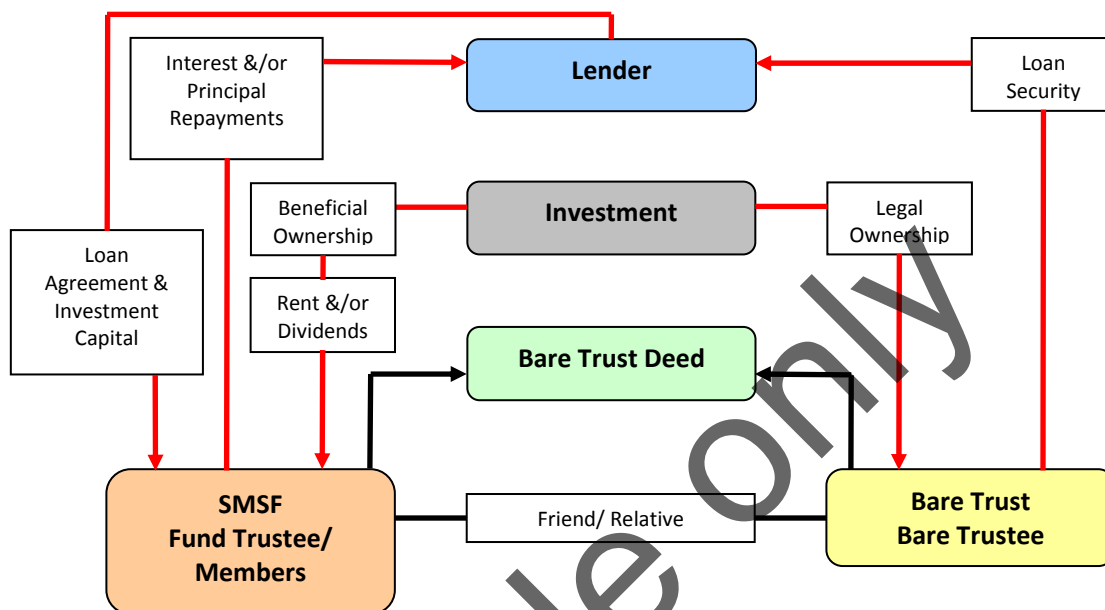
Please note:

- Red arrows represent the legal processes that occur for the limited recourse borrowing arrangement to be implemented correctly.
- Black arrows represent the relationship between the two trust structures, the Fund Trustee, the Bare Trustee and the SMSF Members.
- The SMSF & Bare Trust Deed cannot have the same trustee, however, they can have the same directors of different corporate trustees.
- The member or members of an SMSF can also perform the function of the Lender, and it is up to the Lender and SMSF Members to determine the loan security, and the frequency and structure of repayments. If a financial institution is the Lender and requires additional security over the amount borrowed then professional advice should be obtained.

Sample only

Typical limited recourse borrowing arrangement set-up

Individual trustees

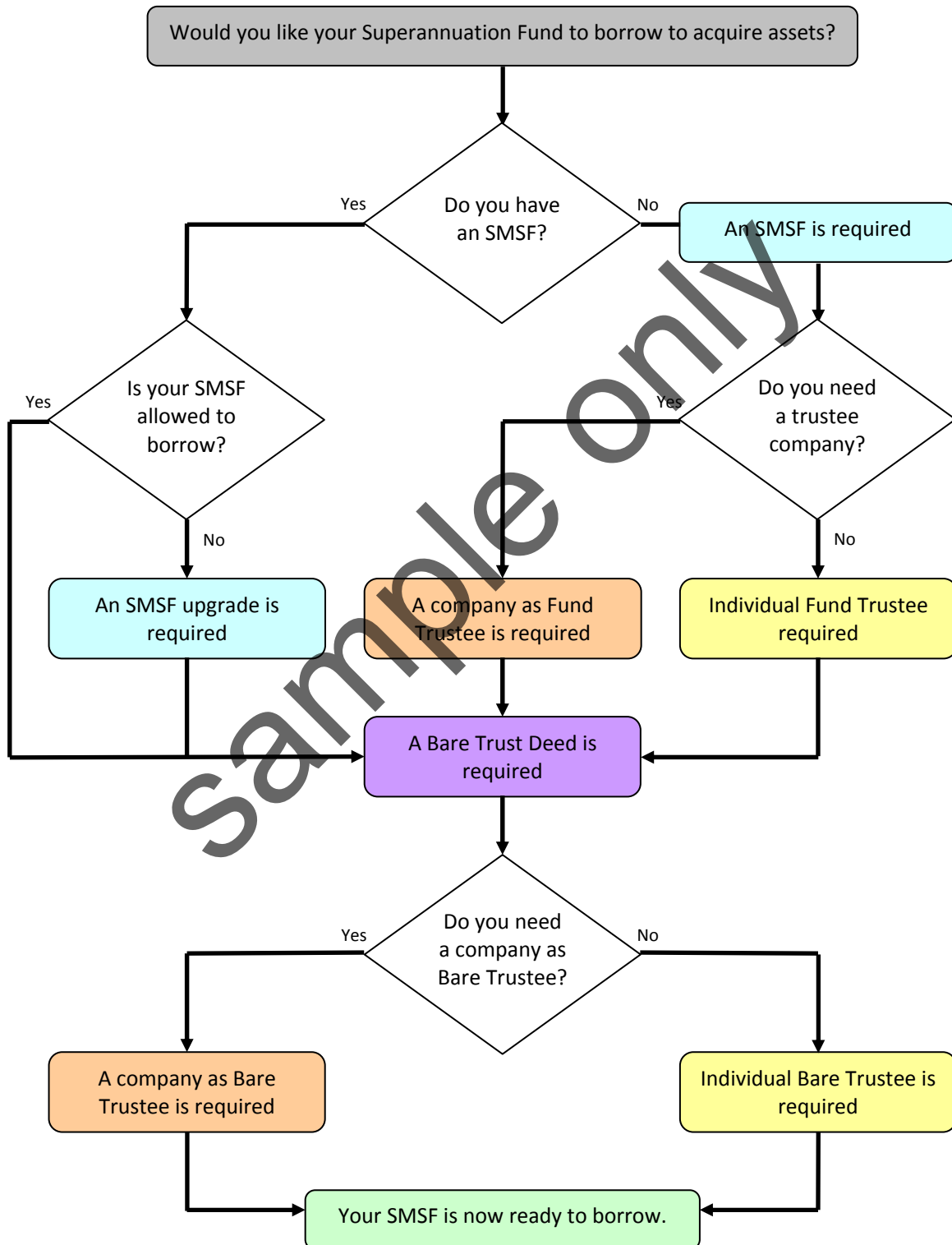


Please note:

- Red arrows represent the legal processes that occur for the limited recourse borrowing arrangement to be implemented correctly.
- Black arrows represent the relationship between the two trust structures, the Fund Trustee, the Bare Trustee, and the SMSF Members.
- The SMSF & Bare Trust Deed cannot have the same trustee, however, they can have the same directors of different corporate trustees.
- The member or members of an SMSF can also perform the function of the Lender, and it is up to the Lender and SMSF Members to determine the loan security, and the frequency and structure of repayments. If a financial institution is the Lender and requires additional security over the amount borrowed then professional advice should be obtained.

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Flowchart: limited recourse borrowing arrangement



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Suggested investment strategy amendment

Real property

The trustees have considered borrowing through a limited recourse borrowing arrangement to fund the acquisition of real estate. The following matters were considered:

- the risks involved in making, holding and realising the property under a limited recourse borrowing arrangement;
- the likely return from the property under a limited recourse borrowing arrangement;
- the diversity of investments generally;
- the liquidity and cash flow consequences of holding the property under a limited recourse borrowing arrangement;
- the time the members have until they retire;
- the fund's cash flow requirements; and
- the investment risk tolerance of the members.

The Fund Trustee will borrow to acquire the beneficial interest in real estate. 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.

Listed securities

The trustees have considered borrowing through a limited recourse borrowing arrangement to fund the acquisition of listed securities. The following matters were considered:

- the risks involved in making, holding and realising the listed securities under a limited recourse borrowing arrangement;
- the likely return from the listed securities under a limited recourse borrowing arrangement;
- the diversity of investments generally;
- the liquidity and cash flow consequences of holding the listed securities under a limited recourse borrowing arrangement;
- the time the members have until they retire;
- the fund's cash flow requirements; and
- the investment risk tolerance of the members.

The Fund Trustee will borrow to acquire the beneficial interest in listed company shares 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 those listed securities or any replacement to the listed securities.

The trustees acknowledge that the Fund will not enter into any dividend reinvestment plan as this would breach the legislation relating to limited recourse borrowing arrangements.

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Checklist: Limited recourse borrowing arrangements

The checklist below is provided for guidance and assistance to set-up the limited recourse borrowing arrangement 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>(if you purchased a Reckon Docs SMSF with this limited recourse borrowing arrangement package, then your Fund will allow this)</p>		
<p>Ensure that the Fund's investment strategy allows for or has been amended to allow for the SMSF to borrow through a limited recourse borrowing arrangement.</p> <p>(if the Investment is real estate or listed securities then this package includes suggested amendments to the Fund's investment strategy)</p>		
<p>Identify an investment and ensure that it:</p> <ul style="list-style-type: none"> • can be acquired under the SIS legislation; • is suitable for the Fund, considering the trust Deed and investment strategy; • is suitable for the Members of the Fund; and • is appropriately managed. 		
<p>Determine the total amount of monies required to acquire the Investment, along with the amount to be borrowed.</p> <p>Select a suitable financier from which the monies will be borrowed to acquire the Investment on a limited recourse basis.</p>		
<p>Hold a meeting of Trustees of the Fund to agree to the borrowing.</p> <p>(this limited recourse borrowing arrangement package includes the relevant minutes for this meeting – the Fund Resolution)</p>		
<p>Hold a meeting of the Bare Trustee to agree to execute the Bare Trust Deed.</p> <p>(this limited recourse borrowing arrangement package includes the relevant minutes for this meeting – Bare Trustee Resolution)</p>		
<p>Ensure that the attached Bare Trust Deed and management agreement (if applicable) are completed.</p>		
<p>All documents are to be executed.</p>		

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Deed of Loan

Prepared by:

hunt&hunt

Gateway
1 Macquarie Place
Sydney NSW 2000

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Deed of Loan

Date of this Deed: /...../.....

Parties

Between:

.....
Please print name of lender

of
Please print address of lender
(‘the Lender’)

And

ABC Smith Pty Ltd
ACN 123 456 789
of 35 Saunders Street Pyrmont NSW 2009
(‘the Borrower’)

And

XYZ Smith Pty Ltd
ACN 012 345 678
of 35 Saunders Street Pyrmont NSW 2009
(‘the Bare Trustee’)

Whereas:

- A. The Borrower is the trustee of the superannuation fund, described in section 1 of the Schedule (‘the Fund’) and enters into this deed only in its capacity as trustee of the Fund (‘the Fund Trustee’);
- B. The Fund Trustee wishes to acquire the beneficial interest in the asset, described in section 2 of the Schedule (‘the Investment’);
- C. The Investment will be acquired on trust for the Fund Trustee by the Bare Trustee, pursuant to the Bare Trust Deed attached to this deed (‘the Bare Trust Deed’) under a limited recourse borrowing arrangement;
- D. The Lender has agreed to lend the amount specified in section 3 of the Schedule (‘Principal Sum’) to the Borrower to allow the Fund Trustee to acquire the beneficial interest in the Investment; and
- E. The Lender has agreed that the rights of the Lender in the event of default on the borrowing by the Borrower are non-recourse in that they are limited to rights relating to the Investment or a replacement to the Investment.

Sample only

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Agreed terms as follows:

1. Loan

- 1.1. The Lender shall lend the Principal Sum to the Borrower, subject to the terms of this deed.
- 1.2. The Lender agrees that the Borrower shall pay the Principal Sum to the Bare Trustee to be applied in the acquisition of the Investment under the terms of the Bare Trust Deed.
- 1.3. The Borrower agrees to repay the Principal Sum and interest on it at the rates set out in section 4 of the Schedule ('Interest').

2. Repayment

- 2.1. The Borrower agrees to pay to the Lender Interest calculated daily on the Principal Sum by the instalments set out in section 5 of the Schedule ('Instalments') which must be paid on each payment date as set out in section 6 of the Schedule ('Payment Date') until the Maturity Date.
- 2.2. The Principal Sum or so much of it as then remains outstanding must be repaid by the Borrower to the Lender on the date referred to in section 7 of the Schedule ('Maturity Date').

3. Default

- 3.1. In the event that the Borrower fails to make a payment as required by this deed or the Borrower breaches any of its obligations under this deed, the whole of the balance of Principal Sum and Interest payable by the Borrower to the Lender and any other monies payable by the Borrower under the terms of this deed shall then become due and payable to the Lender and the Borrower will pay Interest on the amount outstanding until repayment in full.
- 3.2. If the Borrower does not forthwith pay the amount outstanding due to the Lender, as provided for by clause 3.1 above, the Lender may seize and sell the Investment or any property acquired by the Lender as a replacement to the Investment. The Lender may deduct from the amount realised by the Lender from that sale of the Investment or its replacement the amount of that Principal Sum and Interest due together with the costs including legal costs of enforcement and any other monies due by the Borrower under this deed 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 its replacement.

4. Other charges

- 4.1. The Borrower shall pay to the Lender such other amounts as may have been incurred by the Lender in:
 - (a) borrowing any amount to on-lend to the Borrower;
 - (b) any fees which might be payable by the Lender for early repayment of any amount it borrowed to on-lend to the Borrower;
 - (c) any fee incurred by the Lender in repaying any amount it had borrowed to on-lend to the Borrower.

5. Security

The Borrower and the Bare Trustee charge their right title and interest in the Investment or its replacement with the Borrower's obligations under this deed. The Bare Trustee will grant a mortgage over the Investment or its replacement, in favour of the Lender in such form as required by the Lender, to secure the Borrower's and Bare Trustee's obligations under this deed. The Borrower and Bare Trustee jointly and severally irrevocably appoint the Lender to be the true and lawful Attorney of the Bare Trustee and the Borrower to ensure all documents required to be executed and all things required by the Bare Trustee under this clause 5 are done.

Sample only

{This section is intentionally left blank}

Schedule

- 1. Fund** Smith Superannuation Fund
- 2. Investment**
.....
Please print description of investment
- 3. Principal Sum** \$
Please print amount lent
- 4. Interest** % p.a. (per cent per annum)
Please print interest rate applicable if the Borrower were to be in default
- reduced to % p.a. (per cent per annum)
Please print interest rate applicable if the Borrower paid all amounts due
- when any amount due under the terms of this Deed is received by the Lender paid within three (3) days of the due date for such payment.
- NOTE:** It is important that the rates are commercial lending rates and that financial advice is obtained on the appropriate rates to apply to this loan taking into account that it is a non recourse secured loan. The calculation of the rate needs to be based on reasonably objective and supportable data such as the rates charged by financial institutions for similar borrowings.
- Monies lent by a member or related party to the Fund at less than commercial rates may be characterised as a contribution to the Fund.
- Monies lent by a member or related party at greater than commercial rates may result in a breach of the sole purpose test and/or breach of the Fund prohibition to the giving of financial assistance to members or related parties using the Fund's resources.
- For Real Property – The Lender should hold the certificate of title. To further protect their interest, the Lender should obtain a mortgage signed by the Bare Trustee which may be registered on title or protected by the lodgement of a caveat on title. If assistance is required, please contact Hunt & Hunt Lawyers for details of hourly rates and fee estimates for this process.
- 5. Instalments** \$
Please print the monthly instalments based on the default rate
- Reducing to \$
Please print the monthly instalments based on the second rate above
- if paid within three (3) days of the Payment Date on which the instalment is due.
- NOTE:** Financial advice should be sought to assist in the calculation of these amounts.
- 6. Payment Date** On the first (1st) day of each month following the date of this Deed.
- 7. Maturity Date**
Please print the date on which full repayment of the Principal Sum is required

Sample only

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Execution

EXECUTED as a Deed.

SIGNED, SEALED and DELIVERED by the Lender:

Please print name of Lender

Signature

in the presence of:

Please print name of witness

Signature of witness

EXECUTED by
ABC Smith Pty Ltd
ACN 123 456 789

in accordance with section 127 of the
Corporation Act 2001 by its Directors or
Director and/ or Secretary:

Please print name of Director/ Sole Director*

Signature

Please print name of Director/ Secretary*
* Delete as appropriate

Signature

EXECUTED by
XYZ Smith Pty Ltd
ACN 012 345 678

in accordance with section 127 of the
Corporations Act 2001 by its Directors or
Director and/ or Secretary:

Please print name of Director/ Sole Director*

Signature

Please print name of Director/ Secretary
* Delete as appropriate

Signature

Sample only

Sample only

Minutes of Meeting of Bare Trustee

Transfer of Initial Funds for the Investment and Bare Trust Deed

XYZ Smith Pty Ltd
ACN 123 456 789

Attended by the Directors of XYZ Smith Pty Ltd ACN 012 345 678.

Held at: 35 Saunders Street Pyrmont NSW 2009

Date:/...../.....

Time:

Present: Jack Smith
Jane Smith

Chairperson:
was appointed Chairperson of the meeting.

Quorum: The Chairperson noted that a quorum was present at the meeting to pass the proposed resolution.

Purchase: The Chairperson reported that the Fund Trustee ('the Fund Trustee') as described in the Bare Trust Deed as trustee for Smith Superannuation Fund ('the Fund') had provided the Bare Trustee with an initial amount for deposit and stamp duty of:

\$
Please print the initial amount

and had requested that the Bare Trustee:

1. hold that amount according to the terms of the Bare Trust Deed tabled at the meeting; and
2. purchase:

.....
Please print details of the Investment

the legal title to which will be held by the Bare Trustee and the beneficial title to which will be held by the Fund Trustee in accordance with the Bare Trust Deed, by executing a copy of that contract ('the Contract') tabled at the meeting.

Resolutions:

It was resolved that:

1. the Bare Trustee execute the Bare Trust Deed;
2. the Bare Trustee execute the Contract;
3. if the Bare Trustee acquires the Investment, it is to be held according to the terms of the Bare Trust Deed; and
4. the amount of:

\$

to be held according to the terms of the Bare Trust Deed.

Meeting closed:

There being no further business the meeting was declared closed.

Confirmed as a true and correct record.

.....
Chairperson

Sample only

Minutes of Meeting of Bare Trustee

Financing and Security of the Investment

XYZ Smith Pty Ltd
ACN 123 456 789

Attended by the Directors of XYZ Smith Pty Ltd ACN 012 345 678.

Held at: 35 Saunders Street Pyrmont NSW 2009

Date: / /

Time:

Present: Jack Smith
Jane Smith

Chairperson:
was appointed Chairperson of the meeting.

Quorum: The Chairperson noted that a quorum was present at the meeting to pass the proposed resolution.

Loan Agreement: Resolved that the Bare Trustee under Bare Trust Deed between itself and ABC Smith Pty Ltd ACN 123 456 789 ('the Fund Trustee') dated:

..... / /
Please print date

enter into finance security arrangement on a limited recourse basis with:

.....
Please print name of Lender

for the acquisition by the Bare Trustee on behalf of the Fund Trustee of:

.....
Please print details of the Investment

on the terms and conditions contained in the following documents tabled at the meeting:

1. Deed of Loan; and
2. other (please specify: e.g. mortgage):
 - a.
 - b.

Purchase monies:

The Chairperson reported that the Fund Trustee will provide the Bare Trustee with monies to complete the purchase of:

Please print details of the Investment

to be held according to the terms of the Bare Trust Deed.

Meeting closed:

There being no further business the meeting was declared closed.

Confirmed as a true and correct record.

Chairperson

Sample only

Minutes of Meeting of Trustee of Fund

Acquisition of the Investment and Bare Trust Deed

Smith Superannuation Fund

Attended by the Directors of ABC Smith Pty Ltd ACN 123 456 789.

Held at: 35 Saunders Street Pyrmont NSW 2009

Date:/...../.....

Time:

Present: Jack Smith
Jane Smith

Chairperson:
was appointed Chairperson of the meeting.

Quorum: The Chairperson noted that a quorum was present at the meeting to pass the proposed resolution.

Resolutions: It was resolved that:

1. the Fund Trustee execute the Bare Trust Deed tabled at the meeting between XYZ Smith Pty Ltd ACN 012 345 678 as Bare Trustee and the Fund Trustee for the acquisition of the Investment on the terms contained in that Deed, which is to be acquired by the Fund Trustee pursuant to a limited recourse borrowing arrangement;
2. XYZ Smith Pty Ltd ACN 012 345 678 as Bare Trustee be asked to acquire the legal interest in:

.....
Please print details of the Investment

by executing the copy of the draft contract, tabled at the meeting and that the Fund Trustee acquire the beneficial interest in the Investment;

3. the Fund Trustee provide the Bare Trustee with the sum of:

\$.....
Please print the Initial Amount

for the deposit and stamp duty initially payable on the acquisition of the Investment; and

4. the Fund Trustee approach:

Please print name of Lender

to borrow the sum of:

\$-----
Please print amount borrowed

to assist in funding the acquisition of the Investment under a limited recourse borrowing arrangement.

Meeting closed:

There being no further business the meeting was declared closed.

Confirmed as a true and correct record.

Chairperson

Sample only

Minutes of Meeting of Trustee of Fund

Loan for acquisition of the investment

Smith Superannuation Fund

Attended by the Directors of ABC Smith Pty Ltd ACN 123 456 789.

Held at: 35 Saunders Street Pyrmont NSW 2009

Date:/...../.....

Time:

Present: Jack Smith
Jane Smith

Chairperson:
was appointed Chairperson of the meeting.

Quorum: The Chairperson noted that a quorum was present at the meeting to pass the proposed resolution.

Loan arrangements: It was resolved that the Fund Trustee of the Fund enter into finance arrangements with the:

.....
Please print name of Lender

for the acquisition by XYZ Smith Pty Ltd ACN 012 345 678 as Bare Trustee on behalf of the Fund of:

.....
Please print details of the Investment

on the terms and conditions contained in the following loan documents which were tabled at the meeting:

1. Deed of loan; and
2. other (please specify, e.g. mortgage):
 - a.
 - b.

Resolution:

It was resolved that the Trustee of the Fund Trustee execute the following loan documents:

1. Deed of loan; and
2. other (please specify, e.g. mortgage):
 - a.
 - b.

Meeting closed:

There being no further business the meeting was declared closed.

Confirmed as a true and correct record.

.....
Chairperson

Sample only

Sample only

Sample only

Sample only

Bare Trust Deed

Prepared by:

hunt&hunt

Gateway
1 Macquarie Place
Sydney NSW 2000

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Bare Trust Deed

This **DEED** is made on the Date of this Deed as described in the Schedule.

Parties

Between

The person or persons, entity or entities named and described in the Schedule as the Bare Trustee ('the Bare Trustee')

And

The person or persons, entity or entities named and described in the Schedule as Fund Trustee ('the Fund Trustee')

Recitals

The Bare Trustee has acquired or intends to acquire the Investment described in Section 5 of the Schedule ('the Investment') as bare trustee (such trust now referred to as 'the Trust') for the Fund Trustee as trustee of the Self-Managed Superannuation Fund described in Section 2 of the Schedule ('the Fund') and in accordance with the terms of this Deed.

Provisions:

1. The Trust is established and will take effect upon execution of this Deed.
2. All monies required for the purchase of the Investment will be provided by the Fund Trustee and the Bare Trustee will at all times, hold the Investment in trust for the Fund Trustee.
3. The Fund Trustee has the beneficial interest in the Investment and in all the earnings, profits or gains accrued or to accrue in respect of the Investment at all times;
4. The Bare Trustee or the Bare Trustee's successor will effect the transfer of the Investment to the Fund Trustee for nil consideration as and when directed by the Fund Trustee following the Fund Trustee's repayment of monies borrowed for the acquisition of the investment under a limited recourse borrowing arrangement.
5. The Bare Trustee has been authorised by the Fund Trustee to complete any documents giving effect to any purchase, sale and registration of transfer of the Investment as instructed by the Fund Trustee.
6. All dealings with the Investment including the exercise and performance of all the rights duties and powers relating to the Investment will be exercised by the Bare Trustee only as directed by the Fund Trustee.
7. The Bare Trustee will grant a mortgage or charge over the Investment if requested by the Fund Trustee and not otherwise.

Sample only

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Schedule

1. **Date of this Deed:**/...../.....

2. **Fund:** Smith Superannuation Fund

3. **Bare Trustee:** XYZ Smith Pty Ltd
ACN 012 345 678

4. **Fund Trustee:** ABC Smith Pty Ltd
ACN 123 456 789
as trustee for the Fund.

5. **Investment:**
Please print details of the Investment

Sample only

Sample only

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Execution

EXECUTED as a Deed.

EXECUTED by
ABC Smith Pty Ltd
ACN 123 456 789

in accordance with section 127 of the
Corporation Act 2001 by its Directors or
Director and/ or Secretary:

Please print name of Director/ Sole Director*

Signature

Please print name of Director/ Secretary*
* Delete as appropriate

Signature

EXECUTED by
XYZ Smith Pty Ltd
ACN 012 345 678

in accordance with section 127 of the
Corporations Act 2001 by its Directors or
Director and/ or Secretary:

Please print name of Director/ Sole Director*

Signature

Please print name of Director/ Secretary*
* Delete as appropriate

Signature

Sample only