

Property & Superannuation - Direct & Indirect Investing

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Disclaimer

- This is not advice. Readers should not act solely on the basis of the material contained in this presentation. Items herein are general comments only and do not constitute or convey advice. Also, changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas covered in this presentation.
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Introduction

- Sole Purpose Test
- Investment Strategy
- Investment Rules
- Borrowing Rules
- Investment Strategies
 - Direct Investment
 - In-Direct Investment



Sole Purpose Test

- Fundamental reason for the existence of Super Fund
 - provide superannuation benefits to members on retirement, or to members' dependants when they die.
- Dual capacity of Trustee & Member
- Strict standard of compliance
 - Requires exclusively of purpose
 - Higher standard than dominant or principle purpose



Investment Strategy

- The trustees are required to formulate an investment strategy that regards the whole circumstances of the fund to include the following:
 - *Risk*
 - *Composition of the Fund's investments*
 - *Liquidity*
 - *Ability of the fund to discharge liabilities*



Investment Rules

- Want you can't do
 - Acquire assets from a Related Party
 - Invest in a Related Trust
 - Conduct Business Activities



Investment Rules

Want you can do

- Residential Property
 - Commercial / Industrial / Retail Property
 - Land Development ?
- Investment v Development
 - Investment Strategy
 - Sole Purpose Test
 - Non-Geared Unit Trusts
 - Other



Investment Rules

- Sole purpose test
- Investment Strategy
- Deal at market values & on commercial terms
- Prudent Trustee
 - Insurance
 - Repairs & Maintenance
 - Enforce contract / lease



Borrowing Rules

- A Trustee of a Superannuation Fund must not:
 - Borrow money
 - Maintain an existing borrowing of money
- Exemptions:
 - Installment Warrants
 - Installment Loan Arrangements
 - Other limited circumstances



Charges over Assets

- The Trustee of a Superannuation Fund must not give a charge over, or in relation to, an asset of the Fund.
- Exemptions:
 - Expressly permitted under the regulations
 - In relation to derivatives contracts



Investment Strategies

- Direct Investment
 - Ownership
 - Financing
- Indirect Investments
 - Ownership
 - Financing



Investment Strategies

- Direct Investment

- Ownership
 - Sole Ownership
 - Joint Ownership
- Issues to Consider
 - Investment Strategy
 - Liquidity
 - Equity, in and outside superannuation
 - Available funds
 - Fixed proportional ownership (Jointly Held)



Investment Strategies

- Direct Investment

- Financing
 - Sole Ownership
 - Vendor Terms
 - Installment Loan Arrangement
 - Jointly Held
 - Vendor Terms
 - Installment Loan Arrangement
 - In-direct borrowing
 - Security held outside super fund
 - Proportion of Ownership
 - ❖ Available Funds



Investment Strategies

- Indirect Investments

- Ownership
 - Non Geared Unit Trust (Related Trust)
 - Strict Trust Structure Rules
 - Acquiring asset from related parties
 - No Borrowings
 - Investments in Other Trusts / Companies
 - No conducting business
 - Asset not leased to related party
 - Allows for change in proportional ownership
 - Particularly Residential Property
 - Stamp Duty



Investment Strategies - Indirect Investment

- Ownership
 - Non Related Unit Trust
 - No borrowing restrictions
 - Unitholder Understanding / Agreement
 - Control & Part 8 Associates



Investment Strategies

- Indirect Investment

- Financing
 - Non Geared Unit Trust
 - Vendor Terms – Unit Trust
 - Installment Loan Arrangement – Super Fund
 - In-direct borrowing – Non Super Fund Investor
 - Borrowings and equity in non-superannuation fund assets
 - Non Related Party Unit Trust
 - Vendor Terms – Unit Trust
 - Direct Borrowing - Unit Trust
 - Installment Loan Arrangement – Super Fund



Investment Strategies

- Installment Loan Arrangements
 - Serviceability of Loan Facility
 - Terms and structure of loan
 - Contribution caps
 - Earnings from other Super Fund assets
 - Complex arrangement
 - Restricted to acquiring an asset
 - Land development?
 - Property Construction & Development?
 - Re-financing restrictions
 - Interest Deduction

