

## Instalment Warrants

In late September 2007 laws enabling superannuation funds to invest by means of an instalment warrant were passed. This provides an exception to the general prohibitions on borrowing by superannuation funds and the placing of a charge over an asset of a superannuation fund.

### The new law is significant for two reasons

1. It clarifies the issue of instalment warrants and their use in superannuation funds, a matter that has been in doubt for some time.
2. It does not limit instalment warrants to listed shares.

The basic provisions for using an instalment warrant are as follows:

- The money is used to acquire an asset. This means assets currently held by the fund cannot be used as security for borrowing. A new asset must be acquired at the time the instalment warrant is taken.
- The asset is one that the trustee of the fund would not be prohibited from investing in directly. The rules surrounding in-house assets still apply.

- The asset must be held on trust by a trustee and the fund acquires a beneficial interest in the asset. The financial benefits of ownership flow to the fund while legal ownership rests with the trustee until the final instalment payment.
- The super fund's trustee must have the right, but not the obligation, to acquire legal ownership by the payment of instalments. The contract must specify that the option to acquire the asset after payment of the final instalment is that of the superannuation fund trustee, not the lender.
- The loan must be non-recourse. In the event of default the lender only has a claim to the asset financed not any other assets of the fund.

In the near future we will see a number of providers promote innovative instalment warrants specifically designed for Self Managed Superannuation Funds.

We expect that a key focus will be instalment warrants being used to purchase real property, a popular investment that has until now has usually been limited to personal names or through unit trust structures.

It is also possible that some investors may wish to structure their own instalment warrants for use in their Self Managed Superannuation Fund. We would warn that such a decision would require attention to detail as comprehensive and careful documentation to ensure compliance with the law.

Should you require assistance or additional information, contact

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