

SMSF LRBA Advice & Alternatives

One of the key requirements for an SMSF applying for a Limited Recourse Borrowing Arrangement with Thinktank is the written assurance that the trustee/s and member/s have sought and obtained informed professional advice on the proposed transaction. The legal and regulatory burden placed on those in charge of managing an SMSF alongside those that additionally fall upon the lender, is wide ranging and remains in place for the duration of the loan, which may be up to 30 years. The risks associated with poor or inadequate advice are considerable. The financial penalties for non-compliance, whether un-intentional or otherwise, can lead to severe consequences for trustee/s and the member/s.

It is therefore important for loan applicants and their advisers to demonstrate within the application process that informed professional advice particular to their situation is at hand. Thinktank's set requirements in this regard are described in the table below.

Provision of one of the documents in the table is **mandatory** where a **property purchase** is involved. Where the loan being applied for is to **refinance** an existing SMSF-LRBA loan, the completion of a Thinktank Trustee Acknowledgement form and copy of the current Investment Strategy accepted by the trustee/s, is required.

1. Statement of advice (SOA)

An AFSL licence-holder or AFSL Authorised Representative has produced a SOA that specifically confirms:

- The purchase of a property (being a "single acquirable asset") by the SMSF **is consistent with the Investment Strategy** of the fund as accepted by resolution of the trustee/s; and
- **Borrowing** for that purpose is appropriate.

Notes:

- A full or scaled SOA is acceptable.
- Refer to ASIC Regulatory Guides 90 and 244.

2. Financial adviser certification

In the absence of an SOA being provided, an AFSL licence-holder or AFSL Authorised Representative may **sign a standard Thinktank declaration certifying** that:

- Relevant LRBA financial advice has been provided to the borrower;
- The SMSF, in entering into the transaction, will comply with the Superannuation Industry (Supervision) Act 1993 (the "SISA");
- The finance approval, by way of Thinktank Letter of Offer, is consistent with that advice;
- They are sufficiently aware of the borrower's financial affairs to properly advise on the financial risks and implications of entering into the transaction; and
- The borrower both understands the associated obligations and risks and enters the transaction willingly.

Notes: A copy of the certification should be reviewed by the licenced Financial Adviser prior to considering this option and is available upon request.

3. Trustee acknowledgement

In the absence of 1 or 2, the following documentation will qualify as a form of a self-certification by the SMSF Trustee(s) and confirms amongst other things:

- **Advice has not been given by the Lender** or its legal advisers regarding the financial risk of entering into the transaction nor the ability of the fund to make the required loan payments;
- The fund **will comply in all respects** with the SISA;
- The trustee/s understands that the transaction is consistent with the acquisition of a "single acquirable asset" and ownership of that asset by a bare trustee and that the Lender requires the property not be transferred to the SMSF Trustee until the loan is repaid in full;
- The SMSF Trustee acknowledges and confirms that **where the Property is residential in nature, a related party is prohibited from occupying the Property;**
- The trustee/s are aware that LRBA's may not be varied to increase the loan amount or redrawn and if a refinance must be of a complying LRBA that may not be increased in principal amount; and
- The trustee/s are aware that all members of the SMSF will be required to **provide a personal guarantee** of the loan amount.

Notes: A copy of the certification should be reviewed by the trustee/s for the SMSF prior to considering this option and is available upon request.

We also refer you to additional information contained in the following Thinktank SMSF loan materials:

- SMSF Loan Essentials Guide
- SMSF-LRBA Glossary of Terms & Useful Tips
- SMSF-LRBA Step Through Checklist