



Australian Taxation Office Superannuation Circular 2002/1 (Withdrawn) - Responsibilities of the Approved Auditor

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**AUSTRALIAN TAXATION OFFICE
SUPERANNUATION CIRCULAR**

NO. 1 / 2002

SELF MANAGED SUPERANNUATION FUNDS

RESPONSIBILITIES

OF THE

APPROVED AUDITOR

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ATTACHMENT A — Audit Report: Approved Form for a Self Managed Superannuation Fund.

ATTACHMENT B — Summary of the provisions of *the Superannuation Industry (Supervision) Act 1993* (SISA) and the Superannuation Industry (Supervision) Regulations 1994 (SISR) relevant to a compliance audit for a self managed superannuation fund.

Acronyms:

Superannuation Industry (Supervision) Act 1993 - SISA
Superannuation Industry (Supervision) Regulations 1994 - SISR
Self Managed Superannuation Fund - SMSF
Australian Taxation Office - ATO
Australian Prudential Regulation Authority - APRA

Introduction

1. The SISA makes trustees solely responsible for the prudent management of superannuation entities. In addition, the SISA mandates that an important monitoring role be undertaken by an approved auditor.
2. The ATO is the Regulator of those superannuation funds that meet the definition of an SMSF as prescribed by section 17A of the SISA.
3. The approved auditor plays a crucial role in SMSF compliance. Each SMSF is subject to a mandatory annual audit by an approved auditor who must prepare an audit report in the approved form pursuant to section 113 of the SISA.
4. The SISA requires that any contravention of the SISA or the SISR identified in the course of the audit be reported to the trustee(s) and that appropriate plans for resolving these contraventions are prepared and implemented by the trustee(s).
5. The purpose of this Circular is to:
 - (a) prescribe the approved form of audit report pursuant to section 113 of the SISA;
 - (b) identify the ATO's auditing requirements in relation to SMSFs; and
 - (c) provide information about the expectations of the ATO with respect to audits of SMSFs.

Approved Auditor

6. Definition (*Regulation 1.04 of the SISR*)

SISR subregulation 1.04(2) defines an approved auditor in relation to SMSFs as either:

- a registered company auditor;
- a member of CPA Australia;
- a member of The Institute of Chartered Accountants in Australia;
- a member of the National Institute of Accountants;
- a member or fellow of the Association of Taxation and Management Accountants;
- a fellow of the National Tax and Accountants Association Ltd; or
- the Auditor-General of the Commonwealth, a State or a Territory.

SISA Responsibilities

(Sections 36A and 113 of the SISA)

Annual Audit

7. Subsection 113(1) of the SISA requires the trustee(s) of an SMSF, for each year of income, to appoint an approved auditor to audit the operations of the fund for that year and to give the trustee(s) a report, in the approved form.
8. Subsection 113(1A) of the SISA requires the trustee(s) to provide to the auditor any relevant documents that the auditor requests, within 14 days where the request is made in writing.
9. Subsection 113(4) of the SISA requires the auditor to report to the trustee(s) within the specified period after the end of the year of income. SISR regulation 8.03 states that specified period is the period ending on the day before the day by which section 36A of the SISA requires a return to be lodged in respect of an SMSF.
10. The trustee(s) of an SMSF is required, under section 36A of the SISA, to lodge an Annual Return entitled *Fund Income Tax and Regulatory Return* (Form F) with the ATO. Form F covers lodgment requirements for both the *Income Tax Assessment Act 1936* (ITAA 1936) and the SISA and makes provision for the lodgment of surcharge information by self-assessing superannuation providers .
11. The trustee(s) is not required to include a copy of the audit report with Form F. However, Form F does require the trustee(s) of an SMSF to provide a brief explanation of any audit qualification and/or other contraventions of the relevant SISA and SISR requirements that occurred during the income year.

Other Requirements

(Sections 129 and 130 of the SISA)

12. Sections 129 and 130 of the SISA impose obligations on approved auditors when, in the course of performing the functions of an approved auditor under the SISA (ie. the carrying out of the audit of the fund's accounts and statements, and compliance with the provisions of the SISA and the SISR), he/she forms an opinion that:
 - (a) it is likely that a contravention of the SISA or the SISR may have occurred, may be occurring, or may occur in relation to the superannuation entity; or
 - (b) the financial position of the entity may be, or may be about to become, unsatisfactory.
13. In such circumstances, the auditor is required to notify the trustee(s) about the matter in writing [subsections 129(3) & 130(2) of the SISA]. Also, depending upon the seriousness or materiality of the matter, the auditor may also, at this time, report their concerns directly to the ATO.
14. If the approved auditor reports the matter to the trustee and not the ATO, the approved auditor must request a report from the trustee(s) about the action (if any) the trustee(s) has

taken, or proposes to take, to deal with the matter [subsections 129(5) & 130(4) of the SISA].

15. If the trustee(s) fails to respond or the approved auditor does not consider the action taken or proposed to be taken by the trustee(s) satisfactory, the auditor **must** inform the ATO in writing [subsections 129(6) & 130(5) of the SISA].
16. Where the auditor identifies a weakness in an administrative procedure or system during the course of the audit, the auditor has a duty to report the weakness to the trustee(s) and include it in the management letter even if it has no impact on the financial report or does not give rise to a contravention of the SISA.

Approved Form of the Audit Report

(Subsection 113(3) of the SISA) - ATTACHMENT A

17. Subsection 113(1) of the SISA requires that each superannuation entity be audited and that the auditor provide a report in the approved form to the trustee(s).
18. The SISA approved form audit report for SMSFs was developed with a view to ensuring consistency with current auditing standards and formats. In preparing the form, the ATO consulted with APRA and representatives of the audit profession.
19. Auditors must not vary the wording of the report, except where it is explicitly allowed for this to occur.
20. Where a trustee is responsible for more than one fund, the auditor is required to perform appropriate testing and provide a separate audit report in respect of each superannuation entity. It is not acceptable to provide one audit report relating to multiple SMSFs.
21. Both the financial and compliance sections of the audit report provide scope for additional material to be inserted where the auditor has been engaged by the trustee to express an opinion on additional aspects. Such insertions must not limit or detract from the scope/opinion prescribed in the approved form. Any other variations to the content of the audit report would not be in the approved form.
22. **Financial Report** - The approved form to be completed in respect of the financial report of an SMSF for the year of income as required under subsection 113(3) of the SISA is set out in Part A of Attachment A.
23. **Compliance** – Approved auditors are mandated to audit trustees' compliance, in all material respects, with the requirements of the following provisions of the SISA and the SISR:

Sections: 17A, 19, 62, 65, 66, 67, 69 – 71E, 73– 75, 80 – 85, 103, 104, 106A, 109, 111, 112, 113, 118, 121, 124
Regulations: 5.08, 6.17, 7.04, 13.14
24. The approved form to be completed in respect of an SMSF's compliance with the SISA and the SISR for the year of income is set out in Part B of Attachment A.

25. A detailed summary of the above provisions , together with ATO expectations of the auditor in relation to compliance, is contained in Attachment B.

Auditing Standards

26. The approved form, issued by the ATO for the purpose of section 113 of the SISA, requires that audits undertaken for the purposes of the SISA must be conducted in accordance with Australian Auditing Standards. Australian Auditing Standards are prepared by the Auditing Standards Board of the Australian Accounting Research Foundation (AARF) and are issued by AARF on behalf of CPA Australia and The Institute of Chartered Accountants in Australia. Members of these associations, and members of the other associations listed in paragraph 6, are required by relevant association rules to comply with Australian Auditing Standards when performing all audit services.
27. Australian Auditing Standards state that an unqualified audit report may only be issued if the auditor is satisfied that the financial report of the entity has been presented fairly and in accordance with applicable Accounting Standards and relevant statutory and other requirements.
28. Whilst the ATO does not monitor compliance with Australian Auditing Standards or Australian Accounting Standards, it may, as the result of its review of an SMSF, form the view that significant deficiencies are apparent in the work of an approved auditor. If the ATO considers that such deficiencies bring into question the person's fitness and propriety to be an approved auditor, it may, pursuant to section 131A of the SISA, refer the matter to the person's professional association for possible disciplinary action. The ATO may also consider disqualifying the person from being an approved auditor pursuant to section 131 of the SISA.

Auditor Independence

29. Whilst the SISA does not specifically comment on the issue of independence of auditors, the auditors should conduct their audit in accordance with Australian Auditing Standards and Guidelines.
30. 'Code of Professional Conduct – 'Professional Statement F.1 - Professional Independence issued by the Institute of Chartered Accountants in Australia states that professional independence is a concept fundamental to the accounting profession requiring a member to approach their work with integrity and objectivity.
31. Statement of Auditing Practice AUP 32 – Audit Independence defines independence as a freedom from any interest incompatible with integrity and objectivity. An auditor must not only be independent, but must also appear to be independent. Independence requires a freedom from bias, personal interest or association and susceptibility to undue influence or pressure.

Materiality

32. The wording of the compliance audit report incorporates the concept of materiality in the opinion paragraphs.
33. An auditor will be required to qualify the audit report for contraventions of the specified provisions which in his/her professional opinion are material. In forming an opinion as to whether a contravention is material, the auditor should refer to relevant professional guidelines issued by the professional bodies. The guidance on the meaning and application of the concept of materiality contained in those professional guidelines should be adapted as appropriate to the task of judging compliance with the relevant legislative provisions.
34. All instances of non-compliance must be reported to the trustee(s) (or the ATO as relevant) in accordance with section 129 of the SISA. It is stressed that the concept of materiality does not apply to section 129 of the SISA. Under section 129 of the SISA, if the trustee(s) does not rectify the contravention, or satisfactorily address the cause of the contravention, the auditor is required to refer the matter to the ATO.
35. It is possible that some instances of non-compliance which have since been rectified by the trustee(s) will nevertheless be material and accordingly will require qualification of the audit report. The ATO would also consider it unlikely that a contravention would be deemed immaterial if the trustee(s) failed to respond to or provided an inadequate response to concerns raised by the auditor under section 129 of the SISA.

ATO Access to Audit Working Papers

36. As the Regulator of SMSFs, the ATO relies on the audit process and the approved auditor's report to monitor the compliance of these funds with the provisions of the SISA and the SISR.
37. The ATO, as part of its regulatory role, will carry out regular reviews of the work performed by approved auditors to validate the fund's compliance with the SISA and to ensure that there are no significant deficiencies in the audit processes.
38. These reviews will take the form of both visits to the approved auditor's premises and desk audit questionnaires, and will incorporate an examination of the auditor's working papers.
39. The approved auditor will be required to make available to the ATO their audit working papers and any other documentation deemed relevant to the fund's compliance with the SISA and the SISR [section 255 of the SISA].
40. It is therefore essential that the auditor maintains sufficient documentation to ensure that the ATO can be satisfied that the audit was conducted in accordance with the legislative requirements and auditing standards. The auditor should document all matters, and working papers should include copies of all relevant papers, statements and documents, which are important in providing evidence that support the auditor's findings and opinion.

Penalty Provisions

Failure to Provide an Audit Report within the Prescribed Time (Subsection 113(5) or 113(6) of the SISA)

It is an offence for an approved auditor to fail to provide an audit report to the trustee(s) within the prescribed time. Under subsections 113(5) and 113(6) of the SISA, the maximum penalty that may be imposed is a term of imprisonment not exceeding 6 months or a fine of 50 penalty units. Subsections 113(5) and (6) of the SISA provide a 'two tier' offence for contravention of subsection 113(4) of the SISA. Subsection 113(5) of the SISA is a fault liability offence, which requires the prosecution to prove relevant fault elements, and carries a maximum penalty of 6 months imprisonment. Subsection 113(6) of the SISA is a strict liability offence, which does not require proof of fault elements, and carries a lesser maximum penalty of 50 penalty units. Notes to subsection 113(5) of the SISA highlight that where a person is convicted, the Court, under the provisions of subsection 4B(2) of the *Crimes Act 1914 (Cth)*, may convert a term of imprisonment to a monetary penalty which may be imposed in place of (or in addition to) the term of imprisonment. Using this formula, the maximum monetary penalty that may be imposed in place of or in addition to a term of imprisonment is a fine not exceeding 30 penalty units.

41. Failure to Inform the Trustee(s) of a Contravention of the SISA and the SISR (Subsections 129(3), 129(7), 130(2) and 130(6) of the SISA)

Subsections 129(3) and 130(2) of the SISA provide that, should the approved auditor, in carrying out the audit under the Act, become aware of possible contraventions of the SISA or the SISR, or form the opinion that a fund's financial position may be, or is about to become, unsatisfactory, the approved auditor is required to bring these matters to the notice of the trustee(s) in writing. Where it can be shown that the auditor intentionally or recklessly failed to advise the trustee(s), the auditor is guilty of an offence under subsections 129(7) and 130(6) of the SISA which carries a maximum fine of 50 penalty units upon conviction.

42. Obtaining trustee's report (Subsections 129(5), 129(7), 130(4) and 130(6) of the SISA)

Subsections 129(5) and 130(4) of the SISA require that if an auditor informs the trustee of a contravention, or that the financial position of the fund is unsatisfactory, and has not informed the ATO, the auditor must give the trustee a written notice requesting the trustee to provide the auditor with a written report detailing the action (if any) that the trustee has taken, or proposes to take, to deal with the matter. Where it can be shown that the auditor has intentionally or recklessly failed to adhere to the requirements of subsections 129(5) or 130(4) of the SISA, the auditor is guilty of an offence, punishable on conviction by a fine not exceeding 50 penalty units.

43. Failure to Report to the ATO (Subsections 129 (5), 129(7), 130(4) and 130(6) of the SISA)

Where the trustee(s) does not respond to an auditor's request under subsections 129(5) or 130(4) of the SISA or provide the auditor with a satisfactory course of action, the auditor must give the ATO a written report about the matters of concern or non-compliance. Failure by the auditor to report to the Regulator is an offence under subsections 129(7) and 130(6) of the SISA punishable on conviction by a fine not exceeding 50 penalty units.

Misleading Information

(Subsections 129(3B) and 130(2B) of the SISA)

Where the auditor is aware of a matter that must be told to the trustees under section 129 of the SISA and knowingly tells another person that he/she has told the trustees or the ATO about the matter but has not taken that action, the auditor is guilty of an offence punishable by a term of imprisonment of 12 months.

44. Failure to Carry Out or Perform the Duties of an Auditor (Section 131 and 131A of the SISA)

Section 131 of the SISA provides the ATO with the power to disqualify a person from being an approved auditor, and section 131A of the SISA allows the ATO to refer matters to the approved auditor's professional association where:

- (a) the person has failed to carry out or perform adequately and properly the duties of an auditor under the SISA or any other law of the Commonwealth, State or Territory or any functions that an auditor is entitled to perform in relation to the SISA; or
- (b) the person is otherwise not a fit and proper person to be an approved auditor for the purposes of the SISA.

45. Failure of the Trustee(s) to Appoint an Auditor or to provide Relevant Documents (Section 113(2) or 113(2A) of the SISA)

The Trustee(s) is guilty of an offence under subsection 113(2) of the SISA or guilty of an offence of strict liability under subsection 113(2A) of the SISA if the trustee(s):

- (a) fails to appoint an approved auditor for each year of income within the prescribed period [subsection 113(1) of the SISA], or
- (b) fails to provide relevant documentation to the auditor within 14 days of an auditor's written request [subsection 113(1A) of the SISA]

Subsections 113(2) and (2A) of the SISA provide a 'two tier' offence for contravention of subsections 113(1) or 113(1A) of the SISA. Subsection 113(2) of the SISA is a fault liability offence, which requires the prosecution to prove relevant fault elements, and carries a maximum penalty of 2 years imprisonment. Subsection 113(2A) of the SISA is a strict liability offence, which does not require proof of fault elements, and carries a lesser maximum penalty of 50 penalty units.

Notes to subsection 113(2) of the SISA highlight that where a person is convicted, the Court, under the provisions of subsection 4B(2) of the *Crimes Act 1914 (Cth)*, may convert a term of imprisonment to a monetary penalty which may be imposed in place of (or in addition to) the term of imprisonment. Using this formula, the maximum monetary penalty that may be imposed in place of or in addition to a term of imprisonment is a fine not exceeding 120 penalty units.

ATTACHMENT A

SUPERANNUATION INDUSTRY (SUPERVISION) ACT 1993

Audit Report Approved Form for a Self Managed Superannuation Fund

NOTE: 1. This form must be used to report on only one self managed superannuation fund #.
2. A self managed superannuation fund is not A Reporting Entity as defined by Accounting Standard AAS 25##.

SECTION 113 - APPROVED FORM

..... *[Insert name of the superannuation entity]*

Independent Report by approved auditor to the [Trustee(s)/ Members / *[OR]* Trustee(s) and Members](*)

Part A - Financial Report

Scope

I / We have audited the special purpose financial report comprising

[Insert the title of statements audited; see section 112, regulations 8.01 and 8.02 of the Superannuation Industry (Supervision) Act 1993 and Regulations eg “Statement of Financial Position”, “Operating Statement”, “Statement of Cash Flows”, “Statement of Net Assets”, “Statement of Changes in Net Assets”]

of *[Insert name of the superannuation entity]* for the [year ended .../.../... *[OR]* period .../.../... to .../.../...]. (*)

The superannuation entity's trustee(s) is responsible for the financial report and has determined that the accounting policies used are consistent with the financial reporting requirements of the superannuation entity's governing rules, comply with the requirements of the *Superannuation Industry (Supervision) Act 1993* and are appropriate to meet the needs of the members.

I / We have conducted an independent audit of the financial report in order to express an opinion to the [*Trustee(s)/ Members/ [OR] Trustee(s) and Members*](*) of*[Insert name of the superannuation entity]*. No opinion is expressed as to whether the accounting policies used are appropriate to the needs of the members.

The financial report has been prepared for distribution to the members for the purpose of fulfilling the trustee's financial reporting requirements under the superannuation entity's governing rules.

I / We disclaim any assumption of responsibility for any reliance on this report or on the financial report to which it relates to any person other than the members, or for any purpose other than that for which it was prepared.

My audit has been conducted in accordance with Australian Auditing Standards ### applicable to the audit of special purpose financial reports. My procedures included examination, on a test basis, of evidence supporting the amounts and other disclosures in the financial report and the evaluation of significant accounting estimates. These procedures have been undertaken to form an opinion whether, in all material respects, the financial report is presented fairly in accordance with the accounting policies described in the Notes to the financial statements. (These policies do not require the application of all Accounting Standards ##### and other mandatory professional reporting requirements in Australia).

[NB Additional material may be inserted here at the discretion of the auditor eg. in relation to compliance with provisions of the trust's governing rules - so long as this in no way limits or detracts from the scope expressed above.]

The financial report audit opinion expressed in this report has been formed on the above basis.

Qualification (*)

[Provide details where audit findings include a Qualified () Audit Opinion]*

In my / our opinion [except for the effects on the financial report of the matter(s) referred to in the qualification paragraph] (*) the financial report does

- (a) present fairly in accordance with the accounting policies described in the Notes to the financial statements the financial position of*[Insert name of the superannuation entity]* as at .../.../... and the results of its operations and its cash flows for the [year ended .../.../... [OR] period .../.../... to .../.../...]. (*) [OR]
- (b) present fairly in accordance with the accounting policies described in the Notes to the financial statements the financial position of*[Insert name of superannuation entity]* as at .../.../... and the results of its operations for the [year ended .../.../... [OR] period .../.../... to .../.../...]. (*) [OR]
- (c) present fairly in accordance with the accounting policies described in the Notes to the financial statements the net assets of*[Insert name of superannuation entity]* as at .../.../... and the changes in net assets for the [year ended .../.../... [OR] period .../.../... to .../.../...]. (*) [OR]
- (d) present fairly in accordance with the accounting policies described in the Notes to the financial statements (and the Trust Deed) the operations of*[Insert name of superannuation entity]* for the [year ended .../.../..., [OR] period .../.../... to .../.../...]. (*)

[Delete (a), (b), (c) or (d) above, whichever is not applicable]

[NB Additional material may be inserted at the discretion of the auditor eg. in relation to compliance with provisions of the trust's governing rules - so long as this in no way limits or detracts from the opinions expressed above.]

Part B - Compliance

Scope

I / We have conducted tests in accordance with Australian Auditing Standards as necessary to provide reasonable assurance whether the trustee(s) of the*[Insert name of the superannuation entity]* has/have(*) complied, in all material respects, with the relevant requirements of the following provisions (to the extent applicable) of the *Superannuation Industry (Supervision) Act 1993* and Regulations:

Sections: : 17A, 19, 62, 65, 66, 67, 69 – 71E, 73– 75, 80 – 85, 103, 104, 106A, 109, 111, 112, 113, 118, 121, 124

Regulations: 5.08, 6.17, 7.04, 13.14

[Additional sections and regulations may be inserted here at the discretion of the auditor.]

for the [year ended .../.../... [OR] period .../.../... to .../.../...](*)).

My / Our procedures included examination, on a test basis, of evidence supporting compliance with those requirements of the *Superannuation Industry (Supervision) Act 1993* and Regulations.

These tests have not been performed continuously throughout the period, were not designed to detect all instances of non-compliance, and have not covered any other provisions of the *Superannuation Industry (Supervision) Act 1993* and Regulations apart from those specified. The superannuation entity's trustee(s) is/are (*) responsible for ensuring compliance with the requirements of the *Superannuation Industry (Supervision) Act 1993* and Regulations.

The opinion on compliance expressed in this report has been formed on the above basis.

Qualification (*)

[Provide details where audit findings include a Qualified () Audit Opinion]*

In my / our opinion [except for the matter(s) referred to in the qualification paragraph](*) the trustee(s) of *[Insert name of the superannuation entity]* has/have (*) complied, in all material respects, with the requirements of the *Superannuation Industry (Supervision) Act 1993* and Regulations specified above for the [year ended .../.../... [OR] the period .../.../... to .../.../...](*)).

Signature of Auditor Date.....

Name of Auditor Firm.....

Approved auditor qualification as required under Regulation 1.04(2) of the SISR:

[Delete which is not applicable - a registered company auditor; a member of CPA Australia; a member of The Institute of Chartered Accountants in Australia; a member of the National Institute of Accountants; a member or fellow of the Association of Taxation and Management Accountants; a fellow of the National Tax and Accountants Association Ltd; or the Auditor-General of the Commonwealth, a State or a Territory] ()*

Professional Organisation Membership Number / Identifier

(*) Delete as appropriate

Wherever appearing, means a self managed superannuation fund as defined in section 17A of the *Superannuation Industry (Supervision) Act 1993*

Australian Accounting Standard AAS 25 Financial Reporting by Superannuation Plans as issued in March 1993.

Wherever appearing and as applicable, the Australian Auditing Standards issued by the Australian Accounting Research Foundation on behalf of CPA Australia and The Institute of Chartered Accountants in Australia.

Wherever appearing and as applicable, the Australian Accounting Standards issued by the Australian Accounting Standards Board.

ATTACHMENT B

SUPERANNUATION INDUSTRY (SUPERVISION) ACT 1993

SELF MANAGED SUPERANNUATION FUNDS

Compliance Requirements under the SISA and the SISR

Provisions of the *Superannuation Industry Supervision Act 1993* (SISA) and Superannuation Industry Supervision Regulations (SISR) relevant to a compliance audit for a self managed superannuation fund.

SUPERANNUATION INDUSTRY (SUPERVISION) ACT 1993

Section 17A

Definition of a self managed superannuation fund.

When conducting the audit the auditor should ensure that the fund meets the definition of an SMSF as defined under section 17A of the SISA.

Section 19

The superannuation fund must have a trustee(s). The trustee(s) must be a constitutional corporation pursuant to a requirement contained in the governing rules, or the governing rules must provide that the sole or primary purpose of the fund is the provision of old age pensions.

The trustee(s) have made an election to become a regulated superannuation fund.

The auditor should ensure that the trustee(s) has made the appropriate election with the ATO to become a regulated superannuation fund.

Section 62

The trustee(s) of an SMSF must ensure that the fund is maintained for the "sole purpose" of providing benefits to fund members upon their retirement, or their dependants in the case of the member's death before retirement.

The auditor should test whether an SMSF has contravened the sole purpose test by examination of:

- (a) the Trust Deed to ensure that the fund has been established solely for the provision of providing benefits to fund members upon their retirement, or their dependants in the case of the member's death before retirement, and
- (b) the character and purpose of the fund's investments to ensure:
 - that the investment arrangements do not indicate that the purpose of the fund is to provide financial assistance to another party, unless allowed by the legislation.
 - the fund is not running a business as part of its investment strategy, the view is that if a superannuation fund is conducting a business, then it is not being administered for the sole purpose of providing benefits for members and beneficiaries of the fund, as there is an inherent risk that running a business may jeopardise the members' benefits.
 - the trustee(s) have not made the assets of the fund available for his/her own private use or that of his/her family and friends.
- (c) benefit payments to ensure that there were no preserved benefits paid before a condition of release was met. [SISR regulation 6.01 & Schedule 1 of the SISR]

Section 65

The trustee(s) or an investment manager of a regulated superannuation fund must not lend money, or give any other financial assistance to a member or relative of a member.

The auditor should satisfy him/herself that the trustee(s) have not lent money, or provided any other financial assistance to a member or relative of a member at any time during the financial year under review.

Section 66

The trustee(s) or an investment manager of a regulated superannuation fund must not intentionally acquire an asset from a related party, except in limited circumstances as provided in the legislation.

A person must not intentionally enter into or carry out a scheme, which would have the effect of avoiding the general prohibition to the acquisition of assets from a related party.

Definition of Related Party – all member/trustees, standard employer-sponsors and all Part 8 associates of these (including, but not limited to, relatives, partners, companies where the members or their associates have a significant influence and majority voting interest).

The auditor should satisfy him/herself that the trustee(s) did not acquire any assets from any related party, unless the acquisitions of assets were covered by the exceptions to section 66 of the SISA.

Section 67

The trustee(s) of a regulated superannuation fund must not borrow or maintain an existing borrowing of money except in limited circumstances, which include the temporary borrowing:-

- *to pay a beneficiary, limited to 10% of the value of the fund and must not exceed 90 days,*
- *to cover superannuation surcharge debts, limited to 10% of the value of the fund and must not exceed 90 days, and*
- *to meet the settlement of security transactions, limited to 10% of the value of the fund and must not exceed 7 days.*

The auditor should satisfy him/herself that the trustee(s) did not borrow any moneys or enter into an overdraft position at any time during the financial year, except for the purposes and under the conditions outlined above.

Sections 69 to 71E, 73 to 75, 80 to 85

Subject to grandfathering and transitional provisions, the trustee(s) of a regulated superannuation fund must not make a loan to, invest in, or lease fund assets to a related party of the fund, including a related trust of the fund, that causes the total in-house asset ratio to exceed the specified limits (currently 5% of the market value of the fund's assets).

The trustee(s) must not intentionally enter into or carry out a scheme, which would have the effect of artificially reducing the market value ratio of a fund's in-house assets.

The auditor should examine all loans, investments, and leases to determine whether these were made to related parties or a related trust. If made to related parties or related trusts of the fund the auditor should satisfy him/herself that the total in-house asset ratio does not exceed the current limit of 5% of the total market value of the fund's assets.

Section 103

The trustee(s) must keep minutes of all meetings for at least 10 years.

The auditor should confirm that the minutes of all trustee meetings have been kept and retained for a minimum of 10 years or since the establishment of the fund, if less than 10 years.

Section 104

The trustee(s) of a superannuation entity must keep and retain for at least 10 years, records of changes of trustees, changes of directors of any corporate trustee and all written consents to be appointed trustee.

The auditor should confirm that records of changes of trustees, changes of directors of any corporate trustee and all written consents to be appointed as trustee have been maintained and kept for a minimum of 10 years or since the establishment of the fund, if less than 10 years.

Section 106A

Where a superannuation entity changes its status to become / or ceases to be a SMSF, the trustee(s) must give written notice to the ATO.

The auditor should confirm that the trustee(s) have given written notice to the ATO where the fund has changed its status to become / or ceases to be a SMSF.

Section 109

The investments made by the trustee(s) or investment manager must be made and maintained on an arm's length basis.

The auditor should satisfy him/herself that all of the fund's investment transactions have been made and maintained at arm's length. When assessing whether a particular transaction is on an arm's length basis, the auditor should consider the following:

Purchase or sale of assets

- the purchase/selling price was at a fair market value (valuation reports to be sighted where possible),
- money actually paid - bank accounts statements to be sighted.

Lease arrangements

- written contracts have been drawn up, to be sighted,
- the investment was entered into and maintained on commercial terms,
- lease payments and residual value equate to market value rates,
- lease payments have been made - bank account statements to be sighted.

Loans

- written contract and repayment schedule have been drawn up, to be sighted,
- the terms of the loan agreement are commercial including the term of the loan, repayments, interest rate,
- repayments have been made - bank account statements to be sighted.

Investments in entities

- realisation of investments, shares issued, units allocated at market value,
- commercial rate of return on investments ,
- investment returns have actually been paid (eg. trust distributions, dividends, etc) - bank account statements sighted.

Section 111

The trustee(s) must keep accounting records, and retain them for at least 5 years.

The auditor should confirm that accounting records have been kept for a minimum of 5 years or since the establishment of the fund, if less than 5 years.

Section 112

The trustee(s) must ensure that the accounts and statements are completed. The statements to be prepared must include, at least, a Statement of Financial Position and an Operating Statement.

The auditor should confirm that the accounts and statements have been maintained and prepared in accordance with accepted Australian accounting principals and practices.

Section 113

The trustee(s) must appoint an approved auditor within the specified period and make available all documents relevant to the audit of accounts and statements.

The auditor should be satisfied that the trustee(s) have made all arrangements and provided the necessary support to enable the audit to be conducted in a professional and timely manner.

The auditor should ensure that the audit is completed within the specified period

Section 118

Consent to appointment, as trustee must be made in writing.

The auditor should sight the trustee's written consent to be appointed as a trustee of the SMSF.

Section 121

The trustee(s) or responsible officer of a corporate trustee must not be a disqualified person.

The approved auditor should confirm with each trustee whether the trustee is or has at any time during the year been a disqualified person..

Section 124

Appointment of investment manager must be in writing.

The auditor should sight the written contract of appointment of all investment managers.

SUPERANNUATION INDUSTRY (SUPERVISION) REGULATIONS

The auditor should be satisfied that requirements of the following regulations have been met:

Regulation 5.08

The trustee(s) must ensure that a member's minimum benefits in the fund are maintained in the fund until the benefits are cashed, rolled over or transferred as benefits of the member.

Regulation 6.17

Subject to the preservation rules, members' benefits in a fund may only be paid in accordance with certain conditions of release.

In addition, under certain circumstances benefits must be paid to members.

Regulation 7.04

Trustee(s) may only accept contributions in circumstances as specified.

Regulation 13.14

The trustee(s) must not give a charge over, or in relation to, an asset of the fund.

A charge is defined as including a mortgage, lien or other encumbrance. It is an arrangement where one party has a right to hold or use as security an asset of the party that has effective ownership of the asset until a debt is repaid [SISR regulation 13.11].

SISR regulation 13.14 prevents the trustee(s) of the fund from using the assets of the fund or their future benefit as security for personal loans, mortgage or other type of encumbrance.