SMSFD 2008/1EC - Compendium

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Ruling Compendium – SMSFD 2008/1

A compendium of responses to the issues raised by external parties to SMSFD 2007/D2 – *Superannuation: can an investment made by a self managed superannuation fund in a related company or unit trust be excluded from being an in-house asset of the fund even though an event in subregulation 13.22D(1) of the Superannuation Industry (Supervision) Regulations 1994 has happened which means investments by the fund in a different related company or unit trust are in-house assets of the fund?*

Summary of issues raised and responses

Issue No.	Issue raised	Response
1	More guidance should be given on the issue of the related party company or unit trust not being permitted to invest in another company or unit trust as we do come across instances where the related party company or unit trust has acquired shares or units in another company or unit trust. SISR 13.22D(1)(b)(i) APRA Superannuation Circular No II D 6 In House Assets paragraph 64 makes further mention of not being able to invest in other companies or trusts - is companies or trusts taken to include all listed and unlisted securities, managed funds, public trusts, closely held unit trusts etc?	A Determination considers a single issue. This Determination addresses the effect an event in subregulation 13.22D(1) of the Superannuation Industry (Supervision) Regulations 1994 happening has with regard to the exclusion of in-house assets under subparagraph 71(1)(j)(ii) of the *Superannuation Industry (Supervision) Act 1993*. The matter that you raise concerns when event 13.22D(1)(b)(i) of the SISR happens and is therefore outside the scope of this Determination. Consideration is currently being given to other publications to address this issue.
2	The question and Ruling are very difficult to follow.	The wording of the Determination has been revised, including the title, with the aim of making it easier to follow and understand. The outcomes have not, however, changed.

Issue No.	Issue raised	Response
3	With regard to 13.22D(1)(a) - Does the resolution of the trusteeship issue return the asset to a compliance with 13.22B or C? With regard to 13.22D(1)(b) to (n) – Does the resolution of the issue return the asset to a compliance with 13.22B or C?	The Determination specifically addresses these questions - see paragraphs 2, 3, 21 and 26 in Appendix 2 and the Examples in Appendix 1. Once an event has happened with the effect that regulation 13.22B or 13.22C (as applicable) ceases to apply to an investment in a company or unit trust, subregulation 13.22D(3) ensures that neither regulation can apply to any investment made at an time by the SMSF in that related company or unit trust. As a consequence, resolution of the issue which caused the event in subregulation 13.22D(1) to happen does not allow investments in the affected company or unit trust to again be excluded from the in-house assets of the SMSF under subparagraph 71(1)(j)(ii).
4	With regard to 13.22D(1)(c) – What is the impact of the SIS regulations enabling instalment investments on this regulation?	As explained in issue 1, a Determination considers a single issue and this Determination focuses on the effect an event in subregulation 13.22D(1) happening has with regard to the exclusion of in-house assets under subparagraph 71(1)(j)(ii) of the SISA. It is therefore not the appropriate publication in which to provide the guidance requested. However, instalment warrant arrangements may be addressed in a later product.