

# Did you know?



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## Transferring life policies into super

One of the regular questions raised by advisers through our Adviser Hotline is the possibility of transferring their clients' existing ordinary life insurance policies into self-managed super funds (SMSFs). Unfortunately, this is not permitted.

The trustee (or investment manager) of a regulated super fund must not intentionally acquire an asset from a related party of the fund, except for certain in-house assets as specified in section 66 (1) of the Superannuation Industry (Supervision) Act 1993 (SIS Act). The exceptions to the acquisition of in-house assets includes a life insurance policy issued by a life insurance company (other than a policy acquired from a member of the fund or from a relative of the member) [section 66 (2A) (iii)].

The word *acquire* is not defined. However, the word is generally taken to have a wider meaning than the acquisition of assets or property via a purchase. A *related party* of a fund means a member or a standard employer-sponsor of the fund, and their Part 8 (of the SIS Act) associates (see below). A person who contravenes subsection (1) above is guilty of an offence punishable by conviction by imprisonment for a term not exceeding one year. The prohibition applies to the intentional acquisition of an asset, and therefore an inadvertent acquisition will generally not contravene section 66 unless an avoidance scheme is involved.

Section 70B of the SIS Act deals with Part 8 associates of individuals. These are wide ranging and include an individual's (the primary entity) relative; (for super funds with fewer than five members) each other member of the fund and individual and corporate trustees of SMSFs; and trusts and companies where the individual has a controlling interest. Sections 70C and 70D cover Part 8 associates of companies and partnerships. The above-mentioned legislation prohibits the transfer of a member's ordinary (non-super) life insurance policy into a SMSF via memorandum of transfer. This issue is further addressed in the Australian Prudential Regulation Authority's Superannuation Circular No. II.D.3 *Acquisition of Assets from Related Parties*, issued in November 2000:

'The prohibition is not restricted to acquisitions of assets, which occur only as a result of a purchase. Rather, the term "acquire" has a wider meaning and is generally taken to envisage any means by which the trustee becomes the legal or equitable owner of the asset. The intentional transfer or assignment of assets from a related party to the trustee of a fund, such as a life insurance policy acquired from a member of the fund or a relative of a member, is also subject to the prohibition.'

### Alternatives

As an alternative, a client may commence a new life insurance policy with the SMSF trustee as owner. A potential problem with this approach is that the client will generally be subject to full underwriting. Fortunately, CommInsure will cancel and reissue an existing CommInsure policy with the SMSF trustee as owner – on the same terms – subject to the following limits and conditions:

- Life cover and TPD up to \$1.5 million sum insured
- Trauma up to \$1 million sum insured
- The existing policy has no loadings or exclusions or special conditions

### Summary

Whilst it may be worthwhile to hold life insurance inside the super environment, clients and their advisers need to be careful not to breach the SIS Act in relation to the transfer of assets into the SMSF.

#### Important information

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