

YOUR QUESTIONS JOHN WASILIEV

# Arm's length the only way to involve family in loans

**I'm confused about the self-managed super fund lending rules. Can a fund make a loan to an individual trustee or director of a corporate trustee if the loan is less than 5 per cent of the assets and is at commercial rates? I'm thinking of my father, who is a non-member trustee of my single member fund.**

The important thing to understand about super lending rules, says technical adviser Craig Day of Colonial First State, is that a fund must never lend money or provide financial assistance to a member or any of their relatives.

Brendan Daw, of super administrator SuperGuardian agrees, and notes the law specifically mentions a parent as a relative. Daw agrees the law is confusing but that's because there are two sets of rules that can apply. There are lending rules that prohibit loans to members or relatives and in-house asset rules that allow a fund to lend money to related parties so long as the loan represents no more than 5 per cent of the fund assets. Where the confusion lies is that relatives are

mentioned in the definition of related parties along with businesses owned by fund members and relatives. As far as these two sets of rules are concerned, you need to know that the prohibition on lending to members and their relatives takes precedence over in-house asset rules. This means related parties under the in-house asset rules can really only be the businesses of members or relatives.

Day says where a loan is permitted, fund trustees will need to ensure it is consistent with the arm's length rules and sole purpose test. Arm's length rules require a loan to be established with a legally binding contract, be fully secured against real assets and charge a commercial interest rate. The sole purpose test says the loan must be an investment that delivers a return to enhance the fund's retirement saving objective and no other purpose like providing a business with a convenient source of finance.

**I have been quoted by a financial adviser to look after my super**

## ASK US

It's critical to get your superannuation right. Many readers send us questions about retirement saving, and more are welcome. We seek expert advice where necessary to help make sense of it all. Send any query, big or small, to: [wasiliev@yoursuper.net](mailto:wasiliev@yoursuper.net)

**investments. I have \$320,000 in savings and while I'm comfortable with the investment suggestions, I've been quoted a one-off fee of \$3955, then an annual fee of \$5536 plus \$8 per month account keeping fees to look after my money. I recently read that you ought not to be paying more than 1 per cent per annum per \$100,000 of your savings.**

You are quite right to query the fees you are quoted to look after your investments as they do seem to be on the high side. Whether you have a self-managed fund or belong to a larger public super fund, analyse fees because they are a deduction against your investment returns.

To understand fees you must establish what you are getting for your money and how the fees are being charged. Put your financial adviser in the same category as anyone else who provides you with a service. If you use a fee-for-service provider, how much use will you be making of them, remembering they could be charging you on an hourly rate?

If you are on a fixed fee arrangement check that you will be able to extract value from it. If it is a commission arrangement, think about converting that into an hourly rate and estimate whether you are likely to need this service.

**My wife and I want to start a transition to retirement pension from our do-it-yourself fund. I want some help to do it but I'm finding most super professionals want to provide me with investment advice which I don't need. What can I do?**

The most important thing about setting up a transition to retirement pension is correct documentation. Depending on how confident you feel about the technical aspects of super, there are a number of pension kits available that you can either complete yourself or complete with the help of a superannuation or legal professional. These kits cost from \$250 if you do it yourself and \$800 if you get some help. Firms that provide these kits include DBA Lawyers, Lawcentral and Cleardocs.