

# Update on Limited Recourse Borrowing Arrangements (LRBAs)

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Presented by

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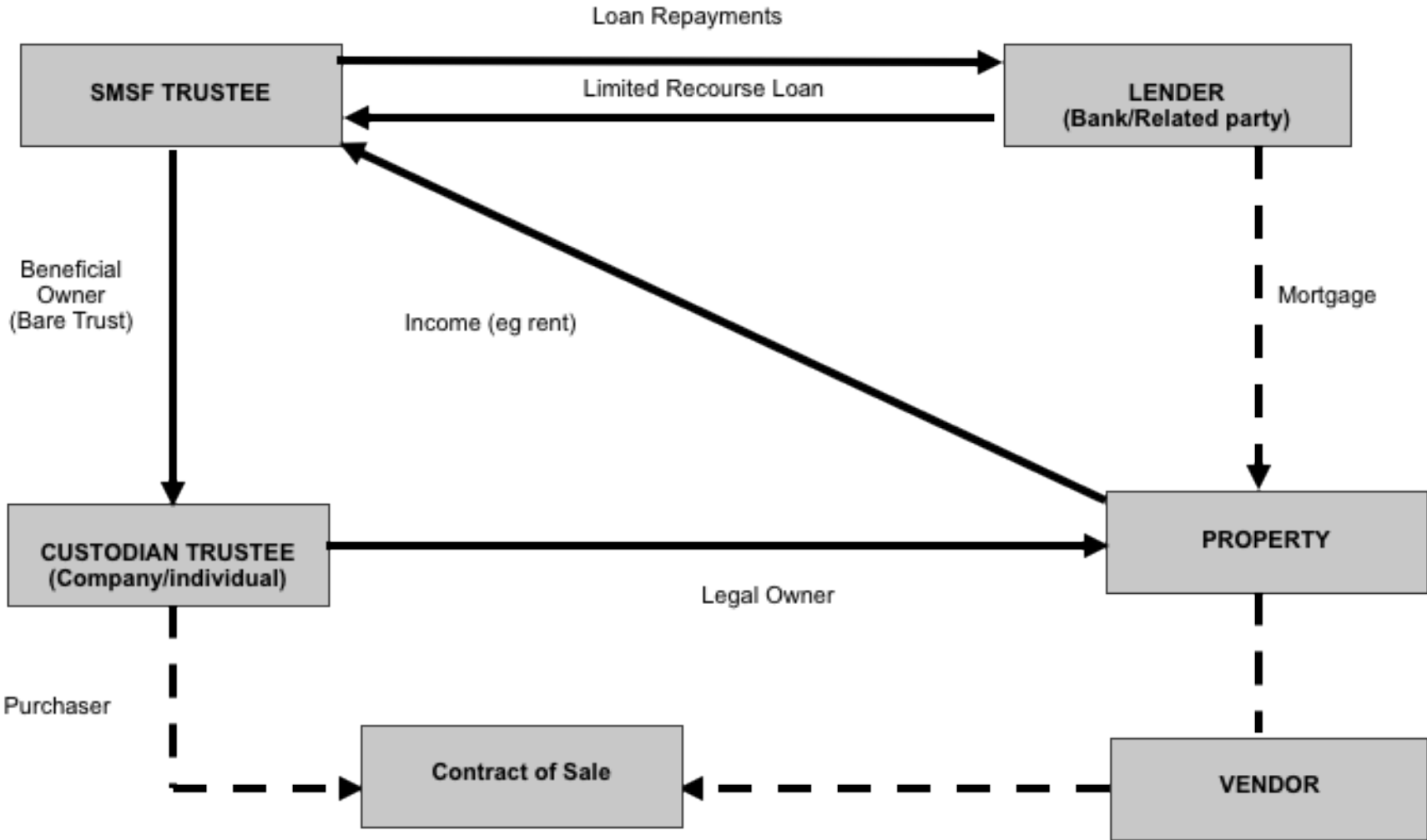
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# Background to LRBAs

- Introduced from **September 2007** - “instalment warrants”
- Former s 67(4A) SIS Act
- SMSFs permitted to borrow to buy permitted assets provided borrowing meets legislative requirements
- **July 2010** - section 67A and Section 67B SIS Act
- Changes brought amount more complexity – e.g. **Single Acquirable Asset**
- Listed Shares, Real Estate, Unlisted Equity Interests

# LRBA Structure



# Benefits of LRBAs

- Enabled SMSFs to invest without full cash funding
- Increase the investments of the SMSF long term
- Not solely reliant on contributions, returns
- Flexibility in assets acquired by the SMSF
- Wider exposure to residential and commercial properties
- Particularly attractive for purchasing Business Real Property

# Complexities of LRBA's

- Getting the structure and documentation right
  - correct entities on loan docs, bare trust deed, tripartite agreement
- Need for separate Custodian Entity – added costs
- Added conveyancing, legal and finance costs
- Inability to develop asset while LRBA in place,
  - e.g. no improvements, maintenance & repair only
- Duty implications upon establishing and winding up LRBA

# LRBAs made even more Complex

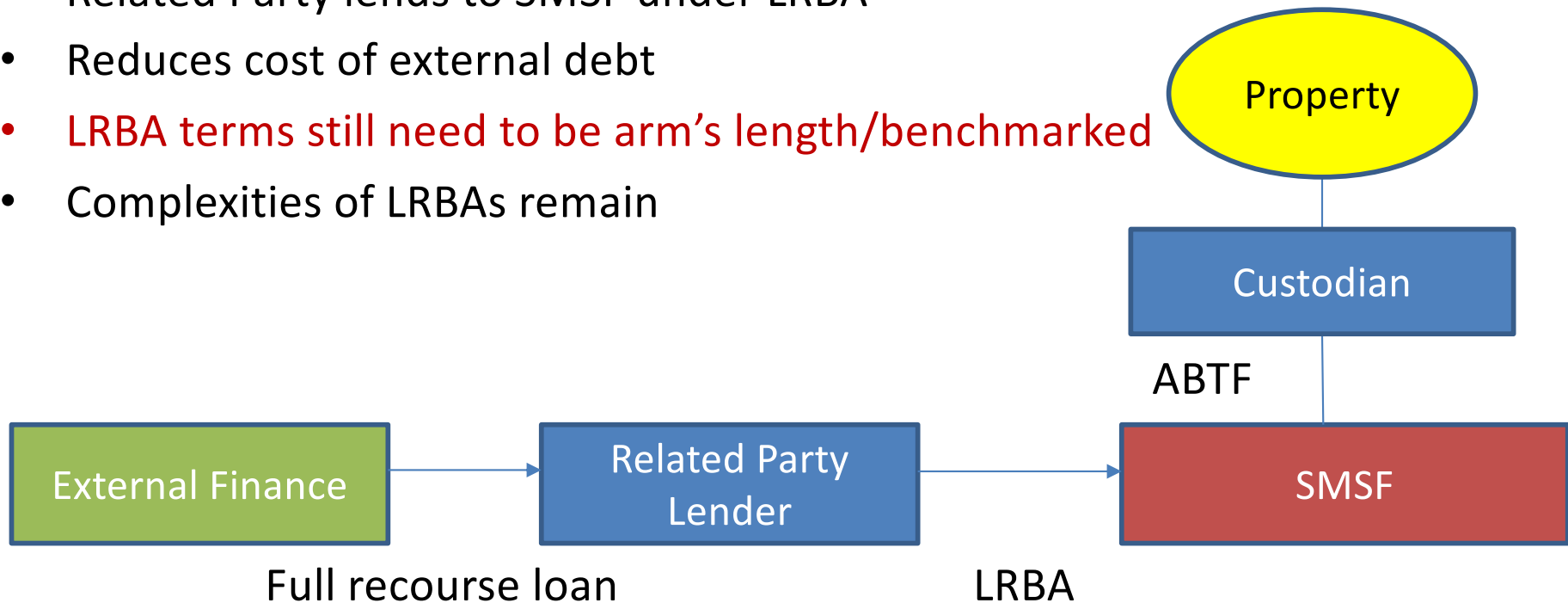
- 2018 saw major banks cease lending to SMSFs – narrowed finance available
- ATO's position on Non-Arm's Length Income (NALI) position
- PCG 2016/5 – Arm's Length Terms for LRBA
- **ATO Safe Harbour terms:**
  - 70% LVR / 50% LVR
  - interest rate – variable, or fixed for 5 years / 3 years: currently 5.94% / 7.94%
  - repayment over 15 or 7 years, principal and interest
  - written agreement and security required
- Listed equities, real estate only – if other asset need benchmark evidence

# But wait there's more!

- ❖ Member's share of LRBA included in Total Superannuation Balance (**TSB**) – LRBAs on and from 1 July 2018
  - TSB impacts non-concessional contributions cap, catch-up concessional contributions (TSB sub \$500K) T-BAR obligations, ECPI methods
  - Member must have met nil cashing restriction condition of release or the LRBA is with a related party
  
- ❖ \$1.6m Transfer Balance Cap & Transfer Balance Account impacted by repayments under LRBA
  - Where member has retirement phase superannuation income stream (e.g. pension) and asset supporting income stream under LRBA
  - If repayment increases value of income stream, credit to TBA
  - Less of \$1.6m cap available
  
- ❖ ATO concerns regarding investment diversification

# Alternative Options – External Finance & Related Party LRBA

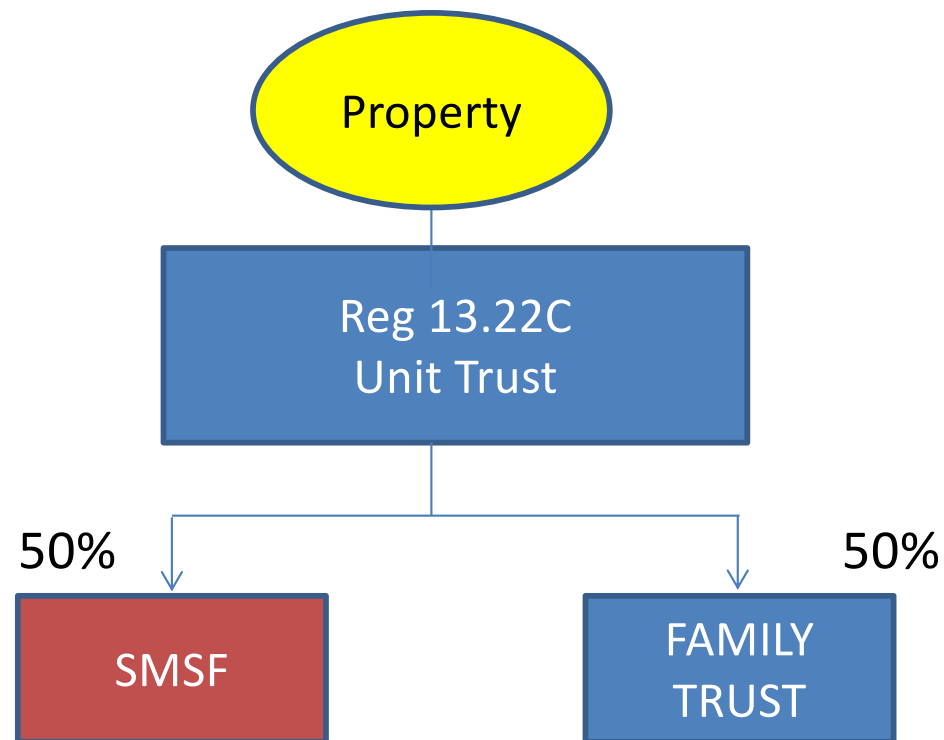
- Debt financed externally using other assets of group
- Related Party lends to SMSF under LRBA
- Reduces cost of external debt
- **LRBA terms still need to be arm's length/benchmarked**
- Complexities of LRBAs remain





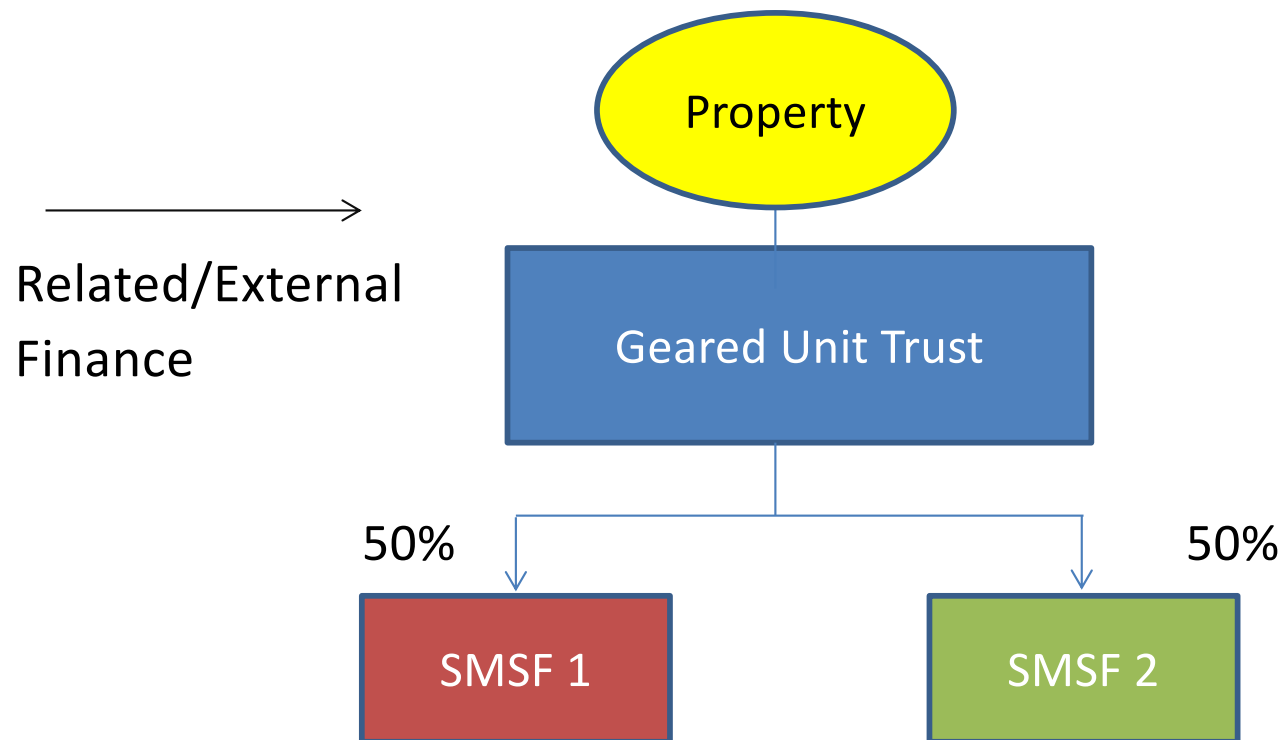
# Alternative Options – Reg. 13.22C unit trust / company

- Controlled entity / related party of SMSF
- Ungearred
- Using resources of related parties



# Alternative Options – Geared, Uncontrolled unit trust/company

- Uncontrolled entity / unrelated party of SMSF
- SMSF and related parties must not have more than 50% ownership
- SMSF / related party cannot control decision making power / voting



# Conclusion

- LRBAs remain a viable investment option if used correctly
- Be mindful of additional complexities and costs
- Beware impact of LRBAs on TSB and TBC
- Consider alternative structures and finance options

**Thank You**

**Questions?**

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