

Acquisition of Assets from a Related Party

Definition of s66 SIS

Under [s66 SIS](#), an SMSF must not intentionally acquire an asset from a related party.

Some exceptions exist and come with the mandatory condition that an SMSF must acquire all assets at market value in line with [r8.02B SISR](#). These include:

- Listed shares on an approved stock exchange or licensed market
- Business real property (BRP)
- An in-house asset (IHA) that does not result in acquiring more than 5% of the fund's assets
- Other assets excluded from being an IHA under s71 SIS, such as widely held trusts and r13.22C trusts
- Life insurance policy from a related party (not from a member or related party of the fund)
- Relationship breakdown

Listed Shares

Listed shares include shares, units or bonds listed on an approved stock exchange acquired at market value. Problems arise when they are transferred from the member personally to the fund via a non-concessional contribution, especially at year-end.

The off-market share transfer from execution date is when the transfer occurs, regardless of the final transfer date to the share registry, which may impact contribution caps at year-end.

Business Real Property

While BRP is transferrable into a fund by direct purchase or in-specie contribution, this may invoke the non-arm's length (NALI) provisions in line with LCR 2021/2.

Where the fund purchases BRP through a combination of cash and an in-specie contribution, [LCR 2021/2](#) says there is a mismatch.

The problem is that the fund has paid less than the contract purchase price.

Under these circumstances, the fund can incur non-arm's length expenditure, with the income from the BRP classified as NALI forever, along with any capital gain on disposal.

The solution is to ensure the sales contract clarifies the fund is only buying part of the asset with a separate transfer document specifying the in-specie contribution.

In-House Assets

[s71 SIS](#) does not allow a fund to invest in an IHA asset exceeding 5% of total fund assets that include:

- a loan to, or investment in, a related party of a fund
- an investment in a related trust of a fund
- an asset of the fund leased to a related party.

The link between s66 and s71 SIS sets up a unique relationship for SMSFs to acquire an IHA from a related party as long it does not exceed the 5% IHA level.



Other exempted assets such as BRP, widely held trusts and r13.22C entities are not limited by the 5% IHA level as long as they are acquired at market value.

The following table shows the maximum related party investment a fund can make in shares and units:

Asset Type	Max SMSF Investment
Listed Securities	100%
Unrelated Shares/Units	0%
Related Shares/Units	5%

Life Insurance

An SMSF can acquire a life insurance policy from a related party, such as an employer sponsor. It cannot, however, acquire a policy held directly in the name of a member or relative unless there has been a relationship breakdown (refer to below).

Relationship Breakdown

An SMSF must meet specific conditions to acquire assets from a related party through a relationship breakdown. There are particular conditions to be met, and the rules of the Family Law Act 1975 apply:

1. The member and their spouse have to be separated
2. There can be no reasonable likelihood of cohabitation
3. The acquisition is purely because of the breakdown (under these circumstances, the receiving SMSF can accept a life insurance policy from the exiting member)

Merger Between SMSFs

Merging two SMSFs does not mean combining all the assets without consequence. As they are considered related parties, the same exceptions apply to a merger as to any other fund.

The newly merged fund can only acquire assets that include listed shares, BRP, widely held trusts, r13.22C entities and IHA up to the 5% limit.

Prohibition of Avoidance Schemes

Section 66(3) SIS prohibits SMSF trustees from entering into an avoidance scheme to acquire assets from a related party.

The definition of a related party becomes essential in terms of control and sufficient influence.

By way of example, if an SMSF owns 50% of an interposed entity with an unrelated party, the fund does not own a majority, and the entity is not a related party.

But if the entity purchased a residential property from a related party, which it could not do if it were an r13.22C entity, the question of control arises.



What if the investment decision was sufficiently influenced and controlled by the fund with the other investor as window dressing?

In this case, the interposed entity is related, and the residential property becomes an IHA of the fund.

ACR Reporting Requirements

Whether an SMSF auditor reports a breach to the ATO in an auditor contravention report (ACR) depends on if the asset:

1. meets the definition of an IHA
2. was purchased at market value
3. meets the financial threshold test for ATO reporting, where the value of the contravention is either more than 5% of the value of the fund's total assets or \$30,000

The following table provides an overview of the requirements for ACR reporting in line with s66 SIS.

Asset Purchased from Related Party	IHA Breach (s82 SIS)	Acquisition of Assets from Related party Breach (s66 SIS)
Meets IHA definition & acquired at market value (less than 5% IHA)		No (s66(2A) exemption)
Meets IHA definition & acquired at market value (more than 5% IHA)		Yes (reportable to ATO in ACR)
Asset purchased at less than market value	If asset meets the IHA definition (ACR if > than 5% fund assets)	Yes (ACR if > 5% fund assets or > \$30,000)

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