



# **STEPS IN SETTING UP**

## *a Self Managed Super Fund*



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# SETTING UP A SELF MANAGED SUPERANNUATION FUND

*So you have completed your research or discussed your financial plan with your advisor and have decided that a Self Managed Superannuation Fund (SMSF) is the right investment vehicle for you.*

*Where do you go from here?*

*Firstly, a SMSF is a trust structure. This means that a 'trustee' will hold the 'trust's' assets in trust for the benefit of the 'members' until such time as they have met certain requirements and can therefore have access to these assets or funds.*

## SO WHO CAN BE A TRUSTEE OF A SMSF?

A trustee must meet certain legal requirements. They must be at least 18 years of age, or they can be an incorporated company. If the trustee is an individual they must not be a disqualified person, which means they must not have been convicted of an offence in respect of dishonest conduct, subject to a civil penalty order, they cannot be bankrupt or an undischarged bankrupt or disqualified due to a prior contravention of the Superannuation Industry Supervision (SIS) Act.

If the trustee is a corporate entity then they cannot have a director, secretary or executive officer that has been a disqualified person. Also the company cannot be in liquidation or have appointed an administrator.

It is a requirement under the SIS Act that all members are generally also trustees, so given the trustee/s are responsible for operating the superannuation fund and ensuring that all compliance and reporting obligations are met, it is very important that a great deal of consideration be given to who will be an appropriate trustee and whether the trustee be individuals or a corporate trustee.

## GOING WITH INDIVIDUALS AND TRUSTEE

The main advantage of having individuals as trustees of your SMSF is that there are no additional structures required to be set up at the time, which makes this option cheaper and simpler in the beginning. Unfortunately, an individual is not permitted to be the sole member and sole trustee of a SMSF. Therefore this requires the member to have another person who is willing to act as trustee with them, which may not be appropriate.

Initially there can be cost savings in going down the path of an individual trustee. However, it may end up costing more in the long run because if a trustee becomes bankrupt they become known as a 'disqualified person' then they need to resign as trustee and this could require another trustee to be appointed and the holding title of assets would need to be updated with the new trustee details. Also as individuals do unfortunately have a habit of dying, eventually a new trustee needs to be appointed and again all the asset holding details need to be updated.

Also if an individual trustee loses mental capacity this would require another trustee to be appointed



and again asset details would need to be altered. This can become time consuming and costly. Admitting a new member also would require the trustees to alter all the asset titles again, so this becomes time consuming and costly.

From a legal standpoint it is also easier for an individual trustee to breach the trustee requirements of the Superannuation Regulations which can mean large monetary penalties and fines.

### **WHAT IF YOU DECIDE TO GO THE 'CORPORATE' WAY?**

If you decide a corporate trustee is more appropriate for your needs then there are additional initial set up costs, that is a corporate structure needs to be also set up at the same time as establishing the SMSF. You are also required to pay an ongoing annual fee to the Australian Securities and Investments Commission (ASIC).

However, the big advantage here is that unlike individuals companies do not die and changes can be made to the directors of the company without the need to change the asset titles. Often if a new member is admitted or one leaves the SMSF then one form is required to be lodged with ASIC and there is no need to change any of the underlying investment names or holding details.

Having a corporate trustee for a single member fund can also give the member back the control they wanted to achieve from having a SMSF, as a single member fund can have a trustee that is a company with just a single director. This means that those that want a SMSF on their own can have complete control over their superannuation investment.

### **WHAT NEXT?**

Once you have decided on who is going to be the trustee, and whether it is going to be either a corporate or individual trustee, you then need to establish the SMSF Trust Deed.

The Trust Deed outlines the operational rules of the SMSF and should allow the trustees to adapt quickly to changes in legislation and regulations. The Deed once established should be regularly reviewed to ensure that it continues to meet the needs of the members of the fund and allows them to take advantage of the ever changing rules.

When the Deed is in existence and has an Australian Business Number (ABN) and Tax File Number (TFN) the trustees/members can then open a bank account and start investing in their retirement futures.

### **FORMULATING AN INVESTMENT STRATEGY**

As a trustee one of your responsibilities is that you formulate, and give effect to, an investment strategy. It is also a requirement that this investment strategy be reviewed regularly.

The rules state that the trustee must consider the following when formulating an investment strategy for their SMSF:

- a) the risk involved in making, holding and realising, and the likely return from the entity's investments, having regard to its objectives and expected cash flow requirements;
- b) the composition of the entity's investments as a whole, including the extent to which they are diverse or involve exposure of the entity to risks from inadequate diversification;
- c) the liquidity of the entity's investments, having regard to its expected cash flow requirements;
- d) the ability of the entity to discharge its existing and prospective liabilities;
- e) whether the trustee of the fund should hold contract of insurance that provides insurance cover for one or more members of the fund.



In summary as part of your role as trustee you must be able to show that a plan exists as to how the Fund's assets (including cash) will be invested and that you are investing as per the plan you have formulated. Although the Superannuation Industry Regulations do provide guidance to trustees on the issues that they should consider when formulating the plan as noted above it does not stipulate what it should look like or what constitutes "following the plan", but as the trustee you need to provide evidence to the auditor and regulator that a plan exists, you are implementing the plan and reviewing it on a regular basis.

### TRUSTEE REPORTING OBLIGATIONS

Another statutory requirement is that as trustees you are required to prepare annual financial statements, member statements and a tax return for the fund. These accounts are then required to be audited by a register SMSF auditor each year before the annual return is lodged with the Australian Taxation Office.

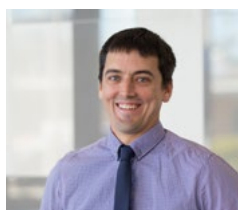
As the steps involved in setting up and running a SMSF can be quite complex it is important that you surround yourself with professionals like Solicitors, Accountants and Financial Planners that specialise in this area to ensure you get it right from the start.

## FOR MORE INFORMATION CONTACT



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