

Deciding on your SMSF Trustee

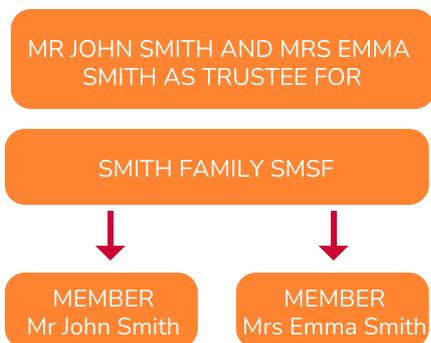
Deciding on the type of trustee which will be responsible for your SMSF is important. There are two types of structures available.



Individual Trustee

Where the members of the fund act as the fund Trustees.

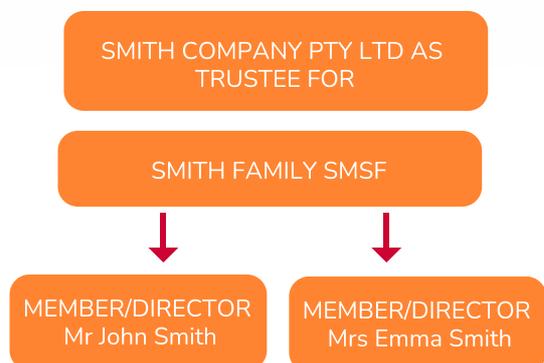
- Six members or less,*
- Each of those members must also be a trustee,
- Unless they are related, no member may be employed by the other member,
- Cannot be remunerated for your services.



Corporate Trustee

Where the members of the fund appoint a company to act as Trustee and those members are Directors of the company.

- Six members or less,*
- Each member must also be a director of the a company
- No member is an employee of another member, unless they are related.
- Cannot be remunerated for your services.



*Note: As an SMSF is a type of trust, it is important to check relevant State and Territory laws if there are any restrictions on the number of trustees a trust can have. A corporate trustee may be required in some circumstances.

Individual Trustee with Single Member Funds

Funds are permitted to have only one member, but they are still required to appoint two individual trustees. The member of the fund is one trustee and the other can be either a relative of the member, or any other person who does not employ them. The second trustee need not have a balance in the super fund, and has the same rights and responsibilities as the trustee who is a member of the fund.

Consider carefully when appointing a second person to act as trustee for your single member super fund. The role entails legal rights and responsibilities in relation to the SMSF, the same as the trustee who does have money in the fund, so the position is not to be taken lightly. They may also have significant control over your super fund monies in the event of death. The alternative is to set up a corporate trustee and be a sole director and secretary, and this is discussed next.

Corporate Trustee with Single Member Funds

The sole member of an SMSF can set up a company to act as the trustee of their super fund. In this instance they do not require an additional person to act as trustee of their fund as they can be the sole director and secretary of the company. This alleviates the risk of involving a second person if you are the sole member of your super fund.

Whilst there is no requirement to have a second director, a single member fund with a corporate trustee can have one or two directors. If there are two directors and the fund member is an employee of the other director, then they must be relatives.

Please note there are risks associated with using an existing company to act as the trustee of your super fund – unless it is available to act solely as the corporate trustee of the super fund and is not used in any other capacity.



Now to compare..

Funds are permitted to have only one member, but they are still required to appoint two individual trustees. The member of the fund is one trustee and the other can be either a relative of the member, or any other person who does not employ them. The second trustee need not have a balance in the super fund, and has the same rights and responsibilities as the trustee who is a member of the fund.

Consider carefully when appointing a second person to act as trustee for your single member super fund. The role entails legal rights and responsibilities in relation to the SMSF, the same as the trustee who does have money in the fund, so the position is not to be taken lightly. They may also have significant control over your super fund monies in the event of death. The alternative is to set up a corporate trustee and be a sole director and secretary, and this is discussed next.

Adapted from the Australian Taxation Office's information on the comparisons:

<https://www.ato.gov.au/super/self-managed-super-funds/setting-up/choose-individualtrustees-or-a-corporate-trustee/>

Costs	
Individual Trustee	Corporate Trustee
Establishing the fund can be less costly as you don't have to setup a separate company to act as trustee. Ongoing administrative fees are less as there are no annual review fees payable to ASIC.	Establishing the fund can be more costly as you need to establish a company to act as trustee (if you don't already have one). There is an annual review fee payable to ASIC.
Ownership of fund assets	
Individual Trustee	Corporate Trustee
The title of the SMSF's assets must be in the name of the current trustees 'as trustees for' the fund. If an individual trustee is removed or a new one added, you need to change the title of the SMSF's assets which can be time consuming and costly where fees may be involved.	The title of SMSF's assets must be in the name of the corporate trustee 'as trustees for' the fund. If a director needs to be removed or a new one added, the ATO need to be advised and ASIC. The corporate trustee doesn't change so the title of the SMSF's assets does not need to be changed.
Separation of assets	
Individual Trustee	Corporate Trustee
The SMSF's assets must be in the fund's name and not combined with personal assets.	The SMSF's assets must be in the fund's name and not combined with the director's personal assets. As companies have limited liability, there is greater protection if the trustee is sued for damages.
Penalties	
Individual Trustee	Corporate Trustee
If the super laws are breached, the administrative penalties apply to each trustee of the fund. Each trustee is personally liable for the penalties, they cannot be paid by the fund.	If the super laws are breached, the administrative penalties apply to the corporate trustee. Only one penalty applies and the number of members/directors is not considered. Each director is jointly and severally liable for the penalty and it cannot be paid by the fund.
Succession	
Individual Trustee	Corporate Trustee
Where a change in trustees occur, the fund is less likely to continue as usual unless a succession plan has been prepared.	A corporate trustee can continue in the event of a member's death. Control of an SMSF and it's assets is more certain with a corporate trustee in the event of death or incapacity of a member.

Deciding on your SMSF Trustee

Too often the direct costs associated with establishing a company to act as the corporate trustee of an SMSF is the overriding reason why individual SMSF trustees are appointed.

The administration, operational and estate planning benefits of a corporate trustee are often not fully identified or considered. While the set up costs of an SMSF with individual trustees will always be less than an SMSF with a corporate trustee, the administration and estate planning complications and costs which may be incurred by the trustees later on also need to be considered. Only once all of these costs have been considered can the most cost effective option truly be identified.

Minor members

A fund can still satisfy the definition of a SMSF in section 17A of the SIS Act where a legal personal representative (or parent/guardian) is a trustee of the fund or a director of the corporate trustee in place of a member where they are under a legal disability because of age. One parent/guardian can act in place of multiple children.

They need to be formally appointed as a trustee or director of the corporate trustee on behalf of the member until they turn 18 years of age.

ASIC reporting obligations

Xpress Super is not a registered ASIC agent and therefore cannot act on behalf of your corporate trustee in relation to ASIC matters.

Our parent company, is a registered ASIC agent and can act in this role for a small annual fee. This service includes acting as the registered address, handling of communication from ASIC and updating of details as required.

Summary

It is important for people to understand the advantages and disadvantages of each type of trustee structure and be able to apply this knowledge to their individual circumstances.

For further information call us on 1300 216 890.

