

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:

Corporate Trustee

Individual Trustee

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

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

- ✓ Four 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.

- ✓ Four 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.

SMITH COMPANY PTY LTD
AS TRUSTEE FOR

SMITH FAMILY SMSF

MEMBER
Mr John Smith

MR JOHN SMITH AND MRS EMMA SMITH
AS TRUSTEE FOR

SMITH FAMILY SMSF

MEMBER
Mr John Smith

MEMBER
Mrs Emma Smith

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.

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.



SUPER TIP

If you are going to borrow money, you should consider a corporate trustee structure for your fund. Not only do the majority of banks prefer an SMSF with a corporate trustee, in some cases they also provide a higher loan value ratio (LVR) for corporate trustee funds.

Now to compare..

| Setting up your SMSF | Individual Trustee | Corporate Trustee |
|--------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Administrative cost | Administrative cost The fund can be less costly to establish as you don't have to set up a separate company to act as trustee. | It can be more costly to set up the fund initially as you need to establish a company to act as trustee (if you don't already have one). |
| Single member funds | You can be the only member but must appoint a second trustee. You cannot be the only individual trustee. | You can have a single member fund and be the sole director of the trustee company. |
| Governing rules | The trustees need to follow the rules in the following: <ul style="list-style-type: none"> - the fund's trust deed - the superannuation law | Directors of the corporate trustee need to follow the rules in all of the following: <ul style="list-style-type: none"> - the fund's trust deed - the super laws - the company's constitution - the company law |
| Ongoing administration and reporting | Individual Trustee | Corporate Trustee |
| Administration | The fund has less reporting obligations, but changing trustees can mean increased paperwork and administrative costs. | Having a corporate trustee can make it easier to: <ul style="list-style-type: none"> - administer the ownership of fund assets - keep the assets of the fund separate from any personal or business assets |
| Reporting | As a trustee, you need to lodge an SMSF annual return for the fund | As a director of the corporate trustee you have reporting obligations to ASIC, in addition to the reporting requirements of individual trustees. You need to pay an annual review fee to ASIC. |
| Changes to trustees and members | Individual Trustee | Corporate Trustee |
| Administration of fund assets | Fund assets should be held in the name of all individual trustees as trustees for the fund. If there is a change in trustee, you need to: <ul style="list-style-type: none"> - change the name on the ownership documents (such as a title deed) for each fund asset - notify all relevant authorities/registries This process can be time-consuming and costly if your fund owns many assets, such as a wide range of shares, or property. | Fund assets should be held in the name of the company as trustee for the fund. If there is a change in directors, you don't have to change the name on the ownership documents for each fund asset (as the trustee still retains the same name). |
| Becoming a single member fund | If your fund has two trustees and one leaves or dies, you need to appoint another trustee in their place for your fund to continue to be an SMSF. | If the company has two directors, and one leaves or dies, you don't have to replace them (a corporate trustee can have a single director). The trustee doesn't change if a member/director dies or leaves the fund. |
| Penalites | Individual Trustee | Corporate Trustee |
| ATO Administrative Penalties | If the ATO determine your fund has breached the super law, administrative penalties apply to each trustee of the fund. Each trustee is personally liable for the penalties, they cannot be paid by the fund. Penalty Rates and Units are can be found on the ATO website. | As there is only one trustee company to be penalised, only one penalty would be applied for a breach. The number of members or directors is not considered when applying penalties. Each director is jointly and severally liable for payment, which cannot be made from the SMSF. |

Adapted from the Australian Taxation Office publication 'Setting up a self managed super fund'.

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

The ATO considers that a fund with a corporate trustee with one or more members under the age of 18 will not satisfy the definition of a SMSF in section 17A of the SIS Act unless a legal personal representative has been appointed as a director of the corporate trustee in place of the member who is under age 18.

As an individual is not automatically a legal personal representative of another individual simply because they are the parent or guardian of that individual, in the case of an SMSF with a corporate trustee the parent or guardian will need to go through the formal process of appointing a legal personal representative for minor members.

Once appointed, the legal personal representative must then be appointed as a director of the corporate trustee of the SMSF in place of the member who is under age 18.

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.

SuperGuardian, 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 contact your **Client Manager** or call us on **1300 216 890**.



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