
Individual or
Corporate Trustee

 .VINCENTS

In general, there are two choices as to how to appoint a trustee to your super fund:

- Individual trustees; or
- Company trustee (with members acting as directors).

There are benefits of both, and we outline below some issues you should consider when making a decision.

Individual Trustees

Approximately 65% of SMSFs have individual trustees, and, as most funds have husband and wife as members, then it is these people that act as the trustees of the fund.

The balance mainly use a Pty Ltd company as trustee, and appoint themselves as directors of the company.

Often, when a fund has only one member, a company trustee is the only choice, as the law does not allow a single member fund to have a single individual as trustee.

Although a two, three or four member fund could use a company as trustee, the choice to use individuals is often made to avoid extra costs, as there are additional fees associated with setting up and running a company.

However, there are significant advantages in using a company, which may end up costing less in the longer term, as indicated below.

Advantages of Individual Trustees

Setting up a SMSF with individual trustees is quick and simple.

Appointing individual trustees is inexpensive – there are no additional establishment costs, less ongoing annual fees and less paperwork associated with setting up the SMSF.

Single Member Funds

As mentioned above, a single member fund cannot have a single, individual trustee. If a choice is made not to use a company, the member must appoint a second trustee.

From 1 July 2007, the Australian Taxation Office now require SMSF trustees to sign a 'Trustees Declaration'.

This is a formal document designed to make trustees accountable for their responsibility to:

- Abide by the law;
- Fulfill their trustee duties;
- Understand investment restrictions in a SMSF;
- Understand and adhere to administrative requirements.

This declaration must be retained for 10 years and made available to the ATO upon request (failure to do so may result in penalties). This increased accountability to the ATO may make finding a relative willing to take on this responsibility difficult.

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Trustee Powers

Assuming you can find a relative to take on the responsibilities of a trustee for your fund, then another issue to consider is the control this person will have over your SMSF if you die.

Unless a binding, valid and current death benefit nomination is in place, the trustee is responsible for deciding what to do with your superannuation funds which might include insurance proceeds.

Whilst they should give consideration to your wishes – they are not legally forced to – and in fact, may be able to pay the sum of money to themselves if they wish!

It is important to consider what happens to your super when you die and to know that you can trust your surviving trustee to 'do the right thing'. Unless you have specified that your super to go to your estate, it is not dealt with in your will.

There is certainly an issue of trust that should be considered before selecting your second SMSF Trustee.

Company Trustee

As mentioned, the majority of SMSFs steer away from utilising a company trustee structure due to the costs associated with it.

The cost to establish a company to act as Trustee for a fund is approximately \$1,100, and Vincents can arrange a company for you within 24 hours.

The Company is required to prepare and lodge an Annual Review with ASIC each year at a cost of approximately \$220 per annum, and pay an ASIC lodgement fee of \$212. (The lodgement fee is reduced from \$212 to \$40 for companies who are utilised solely as SMSF Trustee companies).

Occasionally clients ask if they can utilise an existing trading company to act as the SMSF Trustee, to save on cost.

However, we recommend against this as:

- The accounts for the trustee company inevitably become much more complex, having to account for its trading activities separately from its activities as a trustee. This in turn results in higher accounting fees;
- If the company gets into financial difficulty and a receiver or liquidator is appointed – the SMSF fund assets could be at risk;

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- There are potential issues associated with identifying the owner of the assets. If all of the company/SMSF assets are held in the same name, how does one distinguish between assets held in capacity of trustee compared with those held beneficially for the company?

In the past, it was considered that a super fund must have a company as trustee to enable retirement benefits to be paid as a lump sum instead of a pension. However, the Tax Office have confirmed that provided the Trust Deed allows, the members can direct the trustees to pay their benefits as a lump sum instead of a pension, regardless of whether there is a company or individuals as trustee.

Advantages of a Corporate Trustee

- Continuous succession

As a company has an indefinite lifespan — that is, it will not come to a natural end by itself — a corporate trustee is more reliable in controlling the SMSF in the circumstances of the death or incapacity of a member.

- Ceases upon death

If an SMSF has individual trustees and a member dies, then the remaining trustees need to take swift action to ensure the trustee/member rules are satisfied as SMSF rules do not allow a sole individual trustee/member SMSF.

Furthermore, with individual trustees, the death of a member requires there to be a change of trustee, and this gives rise to considerable administrative work and costs at an inopportune time.

- **Administrative efficiency**

A corporate trustee makes it easier to add, or remove, a member to the SMSF by simply adding or removing them as a director. This means there is no need to make a change to the trustee of the SMSF.

- **Avoid extra and costly paperwork**

To introduce a new member to an SMSF that has individual trustees requires the new member to become a trustee. This means an amendment to the existing Trust Deed and associated minutes. The cost to do with will be in the hundreds of dollars.

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- **Investments**

As trust assets must be held in the names of the trustees, when the member is admitted to, or exits, the fund the title to all assets needs to be transferred to the new trustees. Depending on the Fund's investments, this can be an extensive and costly process.

- **Sole member SMSF**

With a company you can have an SMSF for which one individual is both the sole member and the sole director. However, without a corporate trustee, a sole member SMSF must have another person (who is not a member) as an individual trustee.

Ease for Property Investors

A Company Trustee may be preferred by SMSFs that invest in property.

This is because the company, rather than the Individuals are named on the Certificate of Title. In the event that you need to change the trustee or members of the SMSF (such as on the death of a member or marriage breakdown), there is no need to amend the certificate of title which means you avoid the related costs to register the change of name.

- **Instalment Warrants**

If the SMSF is borrowing from a non-associated lender under an [instalment warrant](#) arrangement the lender will insist on a corporate trustee for the SMSF.

Conclusion

From the above points it appears that SMSF trustees have no other choice but go straight to a corporate trustee, BUT, I can appreciate the view of setting up an SMSF for a husband and wife or even a family with individual trustees due to one simple point – the number of times a change of trustee for a SMSF of this nature should occur is minimal — which means the cost and efficiency advantages of having a corporate trustee would not be an issue. Which leads me to my final point.... the trustee should consider the overarching purpose of their SMSF before deciding on how it should be structured because as with most decisions in life – most often than not — common sense prevails.

How to change your SMSF trustee?

If you have decided to change the trustee of your SMSF, then contact us and we can arrange the change for you.

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Disclaimer and important information

The information contained within this document is factual information only. It is based on the interpretation of the laws applicable to self-managed superannuation funds and other information available at the time of publication, being 22 November 2009.

It does not consider your personal circumstances and you should not rely upon this document as the sole means of decision making.

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