



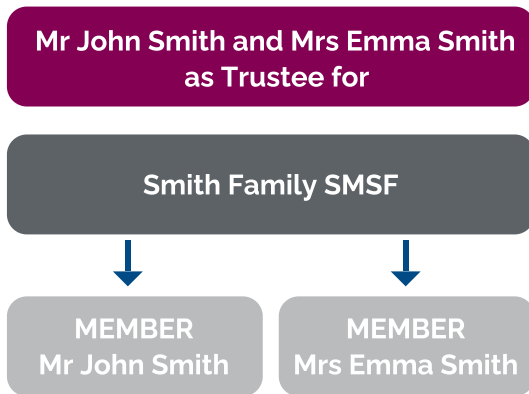
# The Benefits of a Special Purpose Corporate Trustee

Deciding on the type of trustee which will be responsible for your SMSF is important.

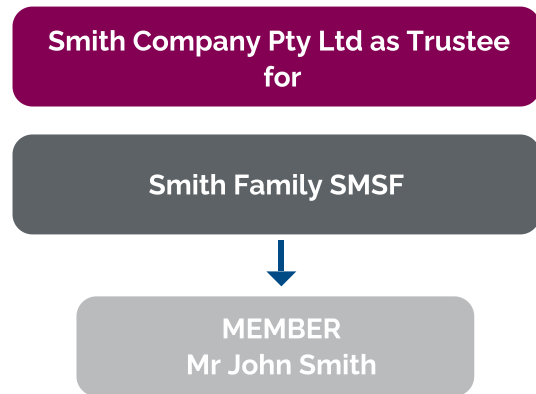
There are two types of structures available:

- Individual Trustees – Where the members of the fund act as the fund Trustees
- Corporate Trustee – Where the members of the fund appoint a company to act as Trustee – and those members are Directors of the company.

## Individual Trustees



## Corporate Trustees



## Individual Trustees

If you choose to have individuals acting as the trustees of your self managed super fund, the fund must have:

- 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
- Trustees are not paid for their role as trustee of the fund.

### Single member funds and individual trustees

You are permitted to set up a fund with only one member. However, you are still required to have 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 shortly.

## Corporate Trustees

You may choose to incorporate a company to act as trustee for your SMSF. If so the following is required:

- Fund is to have six members or less
- Each member must also be a director of the company
- No member is an employee of another member, unless they are related
- Neither the corporate trustee, nor the directors of the corporate trustee are remunerated for their service as trustees.

### Single member funds and corporate trustees

The sole member of a 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 we do not recommend 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.

It is widely accepted by the ATO, and professionals in the industry, that a company trustee structure is the preferred option. We recommend the use of a Special Purpose SMSF trustee company.

## **Benefits of having a corporate trustee:**

### **Preparing for a change in member's circumstances**

With Individual trustee funds it's a case of when, not if, the fund assets are going to need to be renamed.

As the fund's assets are held in the individual's names – when there is a change to the structure due to death, divorce, disablement (to name a few) – there's going to be significant time and money spent varying the trustee structure and changing the trustee names on all the investments. This is even more difficult where an SMSF holds property in the fund.

A key benefit of an SMSF special purpose corporate trustee is you can add or remove members without having to worry about the names on the underlying assets.

### **Reduced litigation exposure and separation of assets**

Individuals acting in the trustee role are jointly and severally liable for any action taken against the fund as the assets are held in their individual names. In cases where any litigation taken against the fund exceeds the assets held in the name of the trustees, the personal assets of the individual could be at risk.

Companies, on the other hand, have limited liability and so any action taken against the corporate trustee is restricted to the assets held in the name of the company.

### **Limited Recourse Borrowing Arrangements**

A key benefit of SMSFs is the ability to borrow money to leverage your super. If you are considering borrowing money to invest in property it is a common requirement of lenders that a corporate trustee structure be in place.

### **SMSF administration penalties**

If the superannuation laws are breached, SMSF administrative penalties are levied on the SMSF trustee. This penalty cannot be paid or reimbursed by the super fund.

If you have an Individual trustee structure, the penalty is imposed on each individual trustee – which could be up to 6 penalties. With a corporate trustee, only one penalty can be issued.

### **State Trust Laws**

SMSFs are able to have up to 6 members from 1 July 2021. SMSFs are trusts and need to comply with the trust laws of the state or territory they are established in. The laws set out what an appropriate trustee structure can be. The laws across the states and territories are inconsistent and many jurisdictions only allow 4 individual trustees of a trust.

Therefore if an SMSF is to have more than 4 members, a corporate trustee may be the only option to ensure compliance with the legislation. It's important to check the relevant trust law requirement but a solution to the issue of having too many individual trustees is to establish a corporate trustee.

## Corporate trustee fees

There is a fee involved to incorporate a company. The company will need to be administered by an ASIC Agent, and pay an annual fee to ASIC. A special purpose corporate trustee pays a reduced annual fee to ASIC as opposed to an ordinary company, and more closely aligns with superannuation rules in section 17A of the SIS Act 1993.

While using individuals as trustees of the fund does reduce the annual running costs this must be weighed up against the potential issues or cost down the track of who controls the fund in the event of death/incapacity.

## ASIC reporting obligations

SuperGuardian can act as the ASIC agent for your company and facilitate the preparation of the annual ASIC return. They maintain responsibility for ensuring all company compliance obligations are being met.

## In summary

The decision to save on the cost of a corporate trustee structure may save you money in the short term, but cost you more long term. We recommend for ease of administration and flexibility, the special purpose corporate trustee structure for an SMSF.

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