

## Should I be a Trustee of my superannuation fund?

### All superannuation funds must have a Trustee

All super funds must have a Trustee to manage its affairs.

If you have established a self managed superannuation fund you have the choice of appointing the members of the fund as individual Trustees or appointing a company to be Trustee.

### Individual Trustees

A self managed superannuation fund must have no more than 4 members. If no company is appointed as Trustee then each member must be appointed a Trustee of the fund. The Trustees cannot be paid for supplying services as Trustees.

### Company Trustee

If a company is appointed as Trustee of the fund, then each member of the fund must be a Director of the Company. Neither the company nor its Directors can be paid for supplying services as Trustees.

### What company can be appointed as Trustee?

Any company can be appointed as Trustee of a self managed superannuation fund, provided it agrees to do so. But as the members of the fund must all so be Directors, it is common place for the company to be established specifically for the purpose of managing the affairs of the super fund.

### Should I use a Company as the Trustee of my Superannuation Fund?

There are both negatives and positive aspects of using a Company as Trustee.

#### ***Negatives***

1. Additional cost  
Establishing the company usually costs between \$1,300 and \$1,500 with most of this costs being accounted for by ASIC fees (\$800).
2. On going costs  
The company will incur ASIC fees each year for lodging an annual return (\$200).

If the company is used solely as the Trustee then the accounting requirements will be pretty simple and can be undertaken by the Directors. This includes lodging the annual tax return. However, if the company uses an accountant, there will be additional fees. These are likely to range from \$300 to \$800 depending upon the amount of preparatory work provided to the accountant and the amount of administrative work (e.g. writing the minutes of meeting etc) under taken by the Directors.

### 3. Administration

Obviously, the Directors of the company are required to ensure that it is administered properly. The ASIC web site ([www.asic.gov.au](http://www.asic.gov.au)) provides a list of what is required by the Law.

For a company dedicated to the role of Trustee of your superannuation fund, the administration requirements are relatively minor and include things like keeping financial records, minutes of meetings, lodging documents with the ATO (e.g. tax return) and ASIC (e.g. annual return, notification of a change in Directors, change of address).

### **Positives**

#### 1. Protects your personal assets

If an individual acts as Trustee then in the event that something goes wrong with the super fund, such as it makes a loss or performs below expectations, each Trustee may be personally liable for the loss or under performance.

If a company is used as Trustee, then the assets of the Company may be at risk. Generally, these companies have insignificant assets (e.g. \$2 paid up capital).

It should also be noted that usually one person is appointed as responsible for the daily management of the portfolio. It is possible that the other Trustees may seek to sue the responsible person should things go wrong (e.g. not exercising due care when making investments). This may come in sharp focus in circumstances of relationship break down.

#### 2. Asset registration

If individual members are also Trustees then every asset of the fund will be registered in the joint names of the Trustees.

If one Trustee resigns (perhaps due to relationship break up or death) then each asset needs to be registered in the names of the remaining Trustees. This can be very time consuming and costly.

If a company is used as the Trustee, then no changes to registration need to be made. (The ASIC will need to be informed of the Director resignation).

#### 3. Greater flexibility at retirement

Pension or lump sum?

Unlike a corporate trustee, in the case of individual trustees, the sole or primary purpose of the fund must be the provision of old-age pensions. As the rules of the fund cannot provide for lump sum benefits alone, it is often argued that a fund with individual trustees is not permitted to provide lump sum benefits to fund members.

While this argument may be technically correct, in practice, and subject to the rules of the fund, members are typically able to overcome this restriction by electing to take a lump sum derived or commuted from the pension entitlement (see APRA Superannuation Circular No.III.A.1). However, in doubt, and the provision of lump sum benefits from the fund is important,

consideration should be given to appointing a body corporate as the trustee of the fund.

#### 4. Sole member super funds

The ability to act as the sole director of a company that acts as the trustee of a single member fund enables the member to exercise sole discretion over the operations of their fund.

In the case of individual trustees the member is not permitted to act alone as the trustee of the fund and therefore, technically speaking, is not in a position to exercise sole discretion unless permitted to do so by the non-member trustee.

Although the member trustee could hold an enduring power of attorney in respect of the non-member trustee and as a result act as the sole trustee of the fund (see ATO Interpretative Decision 2003/832), the non-member trustee would first be required to agree to the enduring power of attorney.

The decision to be or not to be a Trustee is one worth careful consideration. If on doubt you should seek professional advice.

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