



Self-Managed Superannuation Funds – Structure and Duties

Role & Obligations of SMSF Trustees

You will both become trustees of the new SMSF. There is a long list of duties and obligations which come with being a trustee. These include the need to comply with legislation, prepare an investment strategy, accept contributions, manage and value the fund investments, prepare annual accounts, undertake an annual financial audit and lodge a tax return. For your existing superannuation, these tasks are all handled by Plum/BUSSQ super accounts.

It is expected that you will engage Westwood Group to assist you with these duties and obligations and this support is included in the cost comparison above.

You must however recognise that you will both need to put some of your own time into understanding your trustee responsibilities and ensuring they have been satisfied. Significant financial penalties can apply where you get it wrong.

The ATO will require you to sign a Trustee Declaration which sets out some of your duties and obligations. This must be lodged within 21 days of establishing the SMSF. We have discussed this declaration and you have both confirmed that with the support of Westwood Group and your Accountants you have the ability, time and willingness to understand and fulfil your trustee obligations.

Below is an ATO link regarding what it means to be a trustee of a SMSF for your reference.

<https://www.ato.gov.au/super/self-managed-super-funds/setting-up/appoint-your-trustees/>

The ATO also offers free online education for trustees. These are a great way to get a more detailed understanding of SMSF's and your role as a trustee of a SMSF. Please see below link for more information.

<https://www.ato.gov.au/super/self-managed-super-funds/administering-and-reporting/how-we-help-and-regulate-smsfs/approved-education-courses/>

Use a Corporate Trustee

We have recommended that you use a corporate trustee structure rather than individual trustee structure. We have recommended you establish a corporate trustee for your Family Trust (also refer Recommendation 4). You will only need to set up one corporate trustee and it will be the trustee for both your Family Trust and SMSF. Recommendation 4 outlines the set up costs and ongoing costs associated with the Corporate Trustee.

There are additional initial establishment and ongoing costs associated with a Corporate Trustee however it does provide several meaningful advantages. Some of the key advantages are as follows:

- Limited liability for directors;
- Simpler segregation of SMSF assets;
- Administration efficiencies for changes in members;
- Simpler trustee succession (a corporate trustee will continue in the event of a member's death / incapacity and required in the case the SMSF becomes a single member fund).
- ATO administration penalties only apply to the corporate trustee (not individual directors), whilst as individual trustees it will apply to each of you individually.

The ATO website has some content which explains the advantages and disadvantages of a corporate trustee:

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

Investment Restrictions

Although a SMSF provides a great level of choice and flexibility there are some important restrictions in the investments that it can make.

An important element in these restrictions is the sole purpose test which only allows a SMSF to make investments which have the purpose of providing a benefit for your retirement. As an example, you cannot buy a holiday house as the investment property for your SMSF and then use it for personal use before retirement.

Other important restrictions are that a fund cannot:

- Lend money or provide financial assistance to a member of the fund or a member's relative.
- Acquire assets from members or their related parties except in some limited circumstances.
- Borrow money except in certain limited circumstances.
- Have more than 5% of the fund's total assets at the end of the income year as in-house assets.
- Enter into investments that are not made or maintained on a commercial basis.

Investment Strategy

As trustees of a SMSF, you have an obligation to ensure the fund's money is invested appropriately and for the sole purpose of saving for your (the members) retirement. A SMSF must prepare an Investment Strategy which sets out how the SMSF will deliver the level of returns required to adequately fund your retirement. This would address:

The financial situation, needs and circumstances of members.

- Diversification by investing in a range of assets and asset classes.
- The risk and likely return from investments, to maximise member returns.
- The liquidity of the fund's assets including how easily they can be converted to cash to meet fund expenses.
- The ability to pay benefits when members retire and any other costs the fund incurs.
- The need for personal risk insurance.

Winding-Up Process

It is expected that you will operate your SMSF for many years however you should be aware of some of the common reasons why a SMSF is wound up:

- divorce of members
- death of a member
- loss or lack of capacity of a member
- SMSF is no longer a suitable investment vehicle (e.g., trustee / director no longer has the time or ability to operate the SMSF)
- member becomes a non-resident.
- member becomes a disqualified person e.g., bankruptcy.

The ATO provides some information on the processes involved in winding up a fund.

<https://www.ato.gov.au/Super/Self-managed-super-funds/Winding-up/>

Other Information

The ATO website has a lot of further information on the establishment and operation of a SMSF and we suggest you refer to the following short videos that they provide:

<https://www.ato.gov.au/Super/Self-managed-super-funds/Thinking-about-self-managed-super/>

<https://www.ato.gov.au/Super/Self-managed-super-funds/Setting-up/>

<https://www.ato.gov.au/Super/Self-managed-super-funds/Contributions-and-rollovers/>

<https://www.ato.gov.au/Super/Self-managed-super-funds/Investing/>

<https://www.ato.gov.au/Super/Self-managed-super-funds/Paying-benefits/>

<https://www.ato.gov.au/Super/Self-managed-super-funds/Administering-and-reporting/>

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