



Corporate or Individual Trustee(s)?

When you establish a Self Managed Superannuation Fund, one of the first issues to consider is whether the trustee should be a company or a group of individuals. There is no right or wrong answer and this document sets out some of the issues to consider in helping you make a decision.

Why Is It relevant in the first place?

To be eligible for tax concessions (on income and benefit payments for example), a new fund must formally elect to be regulated by the Superannuation Industry (Supervision) Act 1993 (SIS). In order to be regulated under SIS, a superannuation fund must either:

- have a trustee that is a company; or
- have the primary purpose of providing old-age pensions (in which case the trustee can be either a company or a group of individuals).

Note that this doesn't mean that clients who opt for the second approach (ie, a primary purpose of providing old-age pensions) necessarily have to take their benefits in pension form from their DIY fund. The fund can provide the full range of benefits, it must simply ensure that its trust deed states that the primary purpose is to provide old-age pensions.

What If I change my mind?

If you take one option initially you can change your mind in the future. However, as with any change it may be necessary to amend the trust deed, report the change to the regulator and transfer all the assets held by the super fund into the new trustee(s) name.

Advantages of using a corporate trustee

In some circumstances, it may be appropriate to use a corporate trustee. Corporate trustees have the advantages of:

- Administrative ease:
 - When a new member joins that person must become a trustee (either by joining the board of the trustee company or becoming one of the individual trustees). With a corporate trustee this is straightforward – the relevant ASIC forms are completed, resolutions prepared and the change takes effect. When the trustee is a group of individuals, there is an extra step involved – the names in which all the Fund's investments are held should be changed to reflect the change in trusteeship. This can be time consuming if the Fund owns a great number of investments.
 - Separating super fund assets from individual assets as required by superannuation law. This can be made easier and less confusing when the assets are actually owned by different entities. (eg, personal assets are owned by the individuals and super fund assets are owned by the trustee company) rather than by the same group of people in different capacities.
- Single member funds:

A corporate trustee can have a single director which is ideal if you wish to establish a fund with only one person involved. If you have individual trustees instead, you must have a second person share the trustee responsibilities as it is not possible to have a single individual trustee. While that second person does not have to be a member, they do have to be actively involved in the trustee decisions made in relation to the fund;

Advantages of using Individual trustees

In other circumstances a group of individuals will be more appropriate:

- Fewer statutory forms and less reporting. With a group of individuals, there is no need to complete ASIC forms (say, in the event of a change in the trustee group) and ASIC annual reviews.
- Fewer procedural issues to consider. When a fund has a corporate trustee, the trustee must ensure that it complies with both the Constitution of the company and the requirements of the trust deed as regards meetings, changes etc.
- Less costly to establish. Unless you already have a company available to act as the corporate trustee you will need to establish one. This will be an additional expense at the start although it will not be a significant additional ongoing cost;
- Different penalty unit regime. Under SIS, fines imposed on trustees, advisors etc are defined in terms of "penalty units". Each penalty unit is currently worth \$110 – ie a fine of 1,000 penalty units equates to a fine of \$110,000. In the case of some breaches, SIS gives the courts the ability to levy a higher fine on companies than individuals (the company fine is five times the individual fine). It is unlikely that the regulator would ask the courts to impose a higher fine on a \$2 trustee company (it is more likely to pursue the directors individually). However, in the event of a serious breach, the courts may well fine the corporate trustee directly (at the higher level) if the trustee is (say) a trading entity with significant assets.

Regardless of the trustee structure, the responsibilities of those acting in trustee capacities for a superannuation fund (either individually or as a director of a company) are the same. As a general rule, the choice between corporate and individual trustees will be a matter of personal preference.