

# SMSF

individual or corporate trustees?



**EMPIRE SMSF ADVISERS**  
Superannuation & Investment Specialists

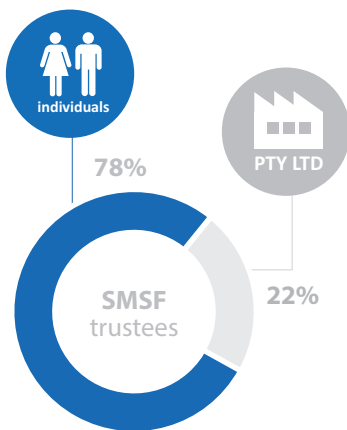
# SELF MANAGED SUPERANNUATION FUNDS



## Individual or Corporate Trustees?

This guide offers a brief description of the advantages and disadvantages associated with using individual and corporate trustees for your superannuation fund.

### A little bit about trustees & members



IN JUNE 2015, THE ATO REPORTED THAT 78% OF ALL SMSFs USED INDIVIDUAL TRUSTEES.

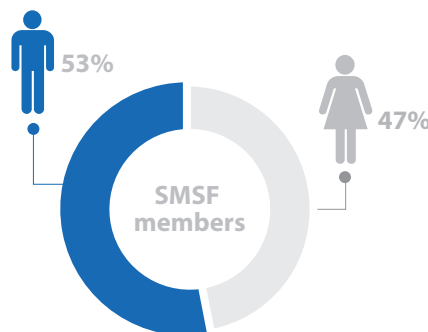
Self-managed superannuation funds (SMSFs) consist of trustees and members. It is the trustees' responsibility to administer the SMSF for the benefit of the members.

When establishing a self-managed superannuation fund you have two options. You can choose to establish a fund with individual trustees or you can set up a company to act as a 'corporate' trustee. A corporate trustee for an SMSF is not a regular company but a 'special purpose' company. Its only purpose is to act as the trustee of the SMSF.

A special purpose company has the advantage of paying cheaper annual ASIC fees.

Currently the annual ASIC fees for a regular company are \$249\*. Whilst the fees for a special purpose company are just \$47\* per annum.

\*Fees at June 2017.

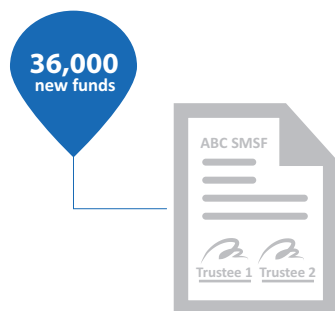


IN DECEMBER 2016, THE ATO REPORTED THAT 53% OF ALL SMSF MEMBERS WERE MALE AND 47% WERE FEMALE.

# SELF MANAGED SUPERANNUATION FUNDS



## Individual or Corporate Trustees?



BETWEEN 2011 AND 2015, THE ATO REPORTED AN AVERAGE OF 36,000 SMSF ESTABLISHMENTS A YEAR.

### Individual trustees - RULES

**A single member SMSF cannot operate with one trustee, so you will need to appoint an extra trustee to administer the fund.**

For an SMSF which has two members, two trustees will be required to administer the fund. An SMSF with three members will require three trustees. An SMSF can have no more than four members and therefore no more than four trustees.

All members must be trustees and all trustees must be members (except for a single member SMSF where an extra person is required to act as a trustee)

See the table below for a representation of the rules for an SMSF which uses individual trustees.



**Figure 1.1**  
RULES: Individual trustee structure

### Member / trustee rules

- The fund has a maximum of four members.
- No member of the fund can be an employee of another member of the fund unless they are related.
- Trustees cannot be paid to administer the fund (except in limited circumstances).

SMSF MEMBERS

SMSF TRUSTEES

Single member fund <b>Single member funds</b> are required to have <b>two trustees</b> - (adults over the age of 18).	Minimum of two individual trustees

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## Individual or Corporate Trustees?



IN 2014, THE AVERAGE ASSETS PER SMSF EXCEEDED \$1,000,000.

### Corporate trustee - RULES

The only way to operate a single member SMSF using a sole trustee is to establish a 'special purpose' company to act as the corporate trustee.

When using this structure, the sole member of the SMSF will be the sole director of the trustee company.

A single member SMSF has the option of appointing an extra director to help administer the fund (maximum two directors of the trustee company).

For an SMSF with two members, two directors of the corporate trustee company will be required, an SMSF with three members will require three directors. An SMSF can have no more than four members and therefore no more than four directors of the trustee company.

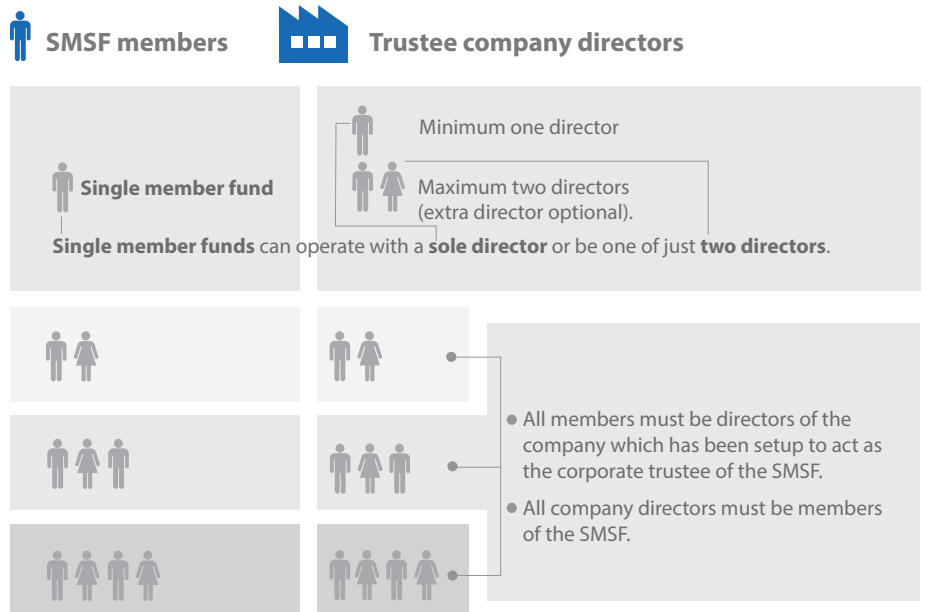
All members of the SMSF must be directors of the trustee company and all company directors must be members of the SMSF (single member funds are the exception where an extra director can be appointed to help administer the SMSF).



Figure 1.2  
RULES: Corporate trustee structure

### Member / trustee rules

- The fund has a maximum of four members.
- No member of the fund can be an employee of another member of the fund unless they are related.
- The directors of the corporate trustee cannot be paid to administer the fund (except in limited circumstances).



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## Individual or Corporate Trustees?




### CORPORATE TRUSTEE: COSTS.


WHEN SETTING UP A CORPORATE TRUSTEE COMPANY, A ONE-OFF ESTABLISHMENT FEE IS CHARGED BY ASIC. AN ANNUAL FEE ALSO HAS TO BE PAID OVER THE LIFE OF THE COMPANY (PRICES: JUNE 2017).

### Issues to consider when choosing your structure


#### INDIVIDUAL TRUSTEES

-  Setting up a fund with individual trustees is cheaper.

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-  The law requires the assets of an SMSF to be registered in the names of the individual trustees of the fund. Each asset will have ownership documents and these all need to record the names of the individual trustees.


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-  The death, divorce or resignation of fund members will necessitate a change in the ownership documents for each of the fund's assets. This can be a costly and time consuming administrative task.




INITIALLY, USING A CORPORATE TRUSTEE FOR YOUR SMSF WILL BE MORE EXPENSIVE, BUT ONCE IN PLACE, IT WILL ALLOW MEMBERS TO COME AND GO FROM THE FUND WITH GREATER EASE.

#### CORPORATE TRUSTEES

-  Initially, the cost of setting up an SMSF with a corporate trustee is more expensive, the ASIC fee for establishing a company is \$469 (June 2017).

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-  This cost aside, the advantage of using a corporate trustee can come in to play later down the track.

The assets of the fund will need to be registered in the name of the trustee company. In the case of death, divorce or resignation of a fund member, there will be no requirement to change the name in which the assets are held.

This is because all assets are held in the name of the company. A company doesn't die, it is an indefinitely continuing entity which allows multiple generations of a family to come and go from the SMSF.

There is much greater fluidity. This is a practical option because it means easier administration.

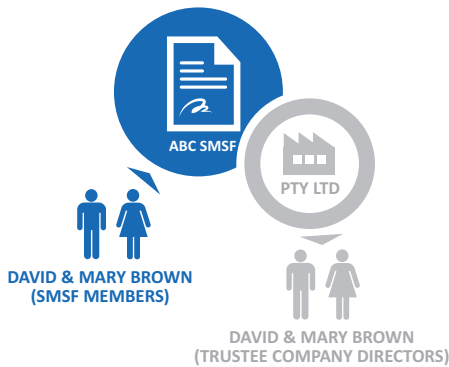


# SELF MANAGED SUPERANNUATION FUNDS



## Individual or Corporate Trustees?

A CORPORATE TRUSTEE IS AN INDEFINATELY CONTINUING ENTITY. IT CONTINUES TO CONTROL THE FUND AFTER THE DEATH OF A MEMBER.



SELF MANAGED SUPERANNUATION FUNDS WITH A HUSBAND AND WIFE AS TRUSTEE / MEMBER ARE QUITE COMMON.

### Other important considerations

#### ESTATE PLANNING

Many SMSFs are set up with a husband and wife as members of the fund. If either the husband or wife pass away, a fund which uses a corporate trustee structure will remain compliant. A corporate trustee will continue to control the fund and its assets after the death of a member. This is an important estate-planning strategy.

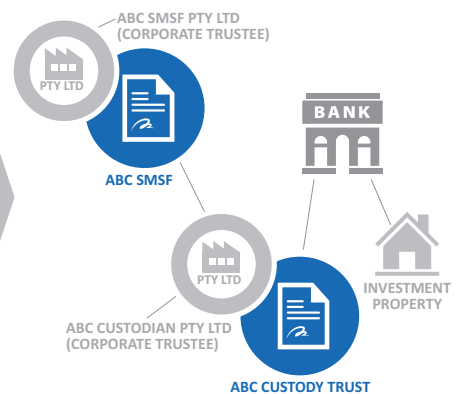
In the case of a fund with individual trustees, the death of a husband or wife would necessitate the appointment of a replacement trustee. For the surviving fund member, this task could create unnecessary stress at a difficult time. Until the new trustee is appointed, the fund would not be compliant.

STRUCTURES WITH CORPORATE TRUSTEES ARE PREFERRED BY BANKS BECAUSE OF INCREASED LIABILITY USING INDIVIDUAL TRUSTEES.

#### BANKS, CUSTODY TRUSTS AND PURCHASING PROPERTY IN YOUR SMSF

If you're planning to use a custody trust to purchase a property for your SMSF, most banks will prefer a separately recognised legal entity to act as trustee of the fund.

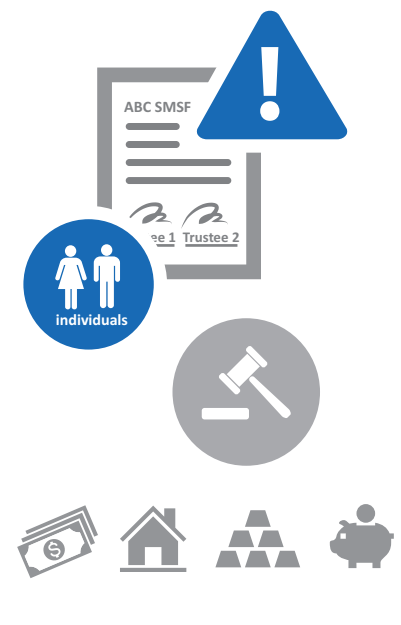
If your fund has individual trustees, you may need a special purposes company to meet the banks lending requirements. The corporate trustee will replace the individuals, so an amendment will need to be created to record the change of trustees for the SMSF.



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## Individual or Corporate Trustees?




THE PERSONAL ASSETS OF A FUND WITH INDIVIDUAL TRUSTEES MAY BECOME COMPROMISED IN LIABILITY CLAIMS.


### Other important considerations


#### ISSUES OF LIABILITY

 For a fund which uses individual trustees, liability claims could lead to the personal assets of trustees being compromised.

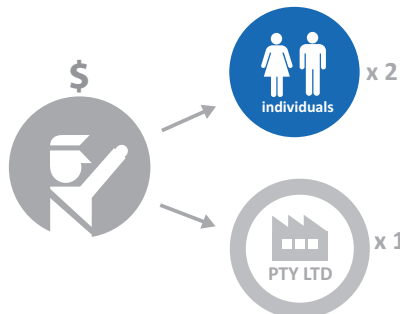
 A fund which uses a corporate trustee provides greater protection if a trustee is sued for damages. The personal liability is generally limited to the assets in the SMSF where a corporate trustee is in place.

### CORPORATIONS LAW AND COMPLIANCE

 A fund which uses a corporate trustee must comply with corporations law. Therefore a company constitution which has been prepared by a solicitor is essential.

 Whether using individual trustees or a corporate trustee, the fund must remain compliant. Fines for a non-compliant SMSF can be quite severe. A fund with a corporate trustee will only be liable once for each contravention.

Where an SMSF has individual trustees, each trustee is required to pay the full amount of the penalty.



IF AN SMSF IS NOT COMPLIANT, A TRUSTEE IS LIABLE TO BE FINED FOR EACH CONTRAVENTION.



**GENERAL ADVICE WARNING**

The advice may not be suitable to you because it contains general advice which does not take into consideration any of your personal circumstance. All strategies and information provided on this website are general advice only.



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