

Is an individual or
corporate trustee

right
for your SMSF?

One of the greatest aspects of a self managed super fund (SMSF) is the level of control you have in tailoring your fund to meet your needs now, and in the future.

After deciding that an SMSF is right for you, you're faced with your first question—is an individual or corporate trustee structure right for your SMSF?

Why do I need a trustee?

To qualify as an SMSF, you must appoint either a group of individuals or a company to act as the trustee of your fund. The trustee structure you choose will influence how your fund is administered and the cost of setting up and running your fund. So it's important to choose the arrangement that best suits your needs and the needs of the other members of your fund.

What are the requirements of each structure?

Individual trustee structure

If you choose an individual trustee structure for your SMSF, and will have more than one member in your fund, there is a basic requirement that:

- the fund has four members or less
- all members must be trustees of the fund
- all trustees must be members of your fund
- no member of your fund can be an employee of another member of the fund, unless they are relatives
- trustees cannot be paid for their services (except in limited circumstances).

If you are the only member of your fund, you are required to appoint another individual to act as a trustee of your fund with you. This other individual cannot be your employer, unless you are relatives, and cannot be paid for their services (except in limited circumstances).

Corporate trustee structure

If you choose a corporate trustee structure for your SMSF, and will have more than one member in your fund, there is a basic requirement that:

- the fund has four members or less
- all members must be directors of the company that has been set up to act as the corporate trustee
- all directors must be members of the fund
- no member of your fund can be an employee of another member of the fund unless they are relatives
- the corporate trustee and the directors cannot be paid for their services (except in limited circumstances).

If you are the only member of your fund, you must be either the sole director or one of only two directors of the corporate trustee. You cannot be an employee of the other director and directors cannot be paid for their services (except in limited circumstances).

What is the difference between an individual and corporate trustee?

One of the main differences between the two structures relates to the way the assets of your fund are registered.

Individual trustee structure

The assets of the fund need to be registered in the name of the individual trustees of the fund.

Corporate trustee structure

The assets of the fund need to be registered in the name of the company that has been setup to act as corporate trustee.

There are several considerations which may impact the trustee structure you select for your SMSF.

Things to consider with an individual trustee structure

Lower cost

An individual trustee structure may initially be better suited to those who are cost conscious, as it is typically cheaper to establish an SMSF with an individual trustee. However, the potential fees and hassle associated with adding or removing a member, when member's circumstances change, may outweigh the upfront cost savings.

A simpler structure

An individual trustee structure is usually simpler. Since it is not necessary to establish a company, members are not required to understand and follow corporation law requirements.

If you don't envisage any changes to the members of the fund, an individual trustee structure may be right for you due to its simplicity and value for money.

Things to consider with a corporate trustee structure

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A corporate trustee structure is more costly to establish and maintain, but generally reduces some of the hassle associated with an SMSF.

Changing members

If an SMSF is set up with a corporate trustee structure you can add a member (eg a spouse or child) or remove a member (eg if a member dies or can no longer act as trustee) with much less hassle than an individual trustee structure.

If there is a change of fund members, it's not necessary to change the name on the ownership documents for each fund asset as the trustee of the fund remains the same. On the other hand, a fund with an individual trustee structure will be required to re-register all assets held in the SMSF (with relevant authorities and registries) each time a member is added or removed. If you have a number of different investments in your fund, this can result in a lot of administration, paperwork, time, and potentially cost, to manage this change. You may wish to consider the value of your own time and effort.

The ATO has also acknowledged that the easiest way to deal with changes to fund membership in an SMSF is for the SMSF to have a corporate trustee in place¹.

Estate planning

As previously mentioned, an SMSF set up with a corporate trustee can have a single member and director. So, if one member of a two member fund leaves (for example, where either a husband or wife member passes away) and a corporate trustee structure is in place, the fund will continue to satisfy the trustee structure rules.

In the case of a two member SMSF with an individual trustee structure, if one member dies, another individual (eg the deceased member's legal personal representative) will need to be appointed as a trustee of the fund. This may create an unwanted hassle at an already difficult time for the surviving member.

Borrowing to purchase property

If you're looking to borrow to purchase property in your SMSF most banks require a corporate trustee arrangement. Banks generally prefer that a separately recognised legal entity is identified as trustee of the fund.

¹ ATO: <http://www.ato.gov.au/Super/Self-managed-super-funds/In-detail/News/General-information/Ownership-of-assets-by-self-managed-superannuation-funds/>

Things to consider with a corporate trustee structure

Reduced liability

A corporate trustee structure can also provide greater peace of mind around liability. Your personal liability, as a director of a corporate trustee, is generally limited to the assets held within the SMSF. An individual trustee arrangement does not provide this security and members' personal assets may be subject to liability claims. This could be particularly important for you if you are considering holding property in your SMSF as public liability claims can be substantial¹.

Requirements of a corporation

A company established as the corporate trustee of an SMSF will require a company constitution and certificate of registration (AMP provides these documents to you upon application). AMP will also set up the superannuation trustee company as a 'special purpose company' to ensure you qualify for reduced ASIC annual review fees, as an annual ASIC return must be prepared. You must also ensure you comply with corporations law.

You may consider a corporate trustee if you:

- are seeking reduced liability
- are considering a loan within your SMSF
- may have a change in members within your fund, or
- you want to be the sole director and sole member of the fund.

¹ Important to note that a corporate trustee may not necessarily provide protection from penalties. Under the SIS Act the regulator is able to pursue any person involved in a breach of the applicable legislation.

These questions can assist you in determining the right trustee structure for your SMSF

» What are the establishment costs?

Individual trustee

Arrangements are generally less costly as there is no need to establish a company to act as trustee.

Corporate trustee

Arrangements are generally more costly because a company must be established.

» Will your SMSF be a single member fund now or in the future?

Individual trustee

Requires you and another individual to be appointed as the trustees of your fund. You are not permitted to act alone as the single trustee of your fund.

Corporate trustee

You can be appointed as the sole director or one of only two directors of the corporate trustee.

» Are you considering borrowing to purchase property?

Individual trustee

Many banks will not lend to an SMSF with an individual trustee structure.

Corporate trustee

Many banks require a corporate trustee structure when lending to an SMSF.

These questions can assist you in determining the right trustee structure for your SMSF

- ▶ Do you expect a change of members? For example, have you considered marriage, adding children, divorce or death? Do you have an elderly partner?

Individual trustee

Member changes require an update to the registration of each asset in the fund to reflect the change in trustees. This may incur additional costs due to the need for relevant authorities and registries to be notified.

Corporate trustee

There is no need to change the registration of fund assets if there is a change in member or director. Generally a change of member(s) will not result in any additional costs.

Also, there may be no need to appoint a new director if one of the directors of the corporate trustee dies. This may provide important estate planning benefits if you and your spouse are the only members of the fund.

- ▶ Are you comfortable with your level of personal liability?

Individual trustee

Members are jointly and severally liable for their actions. This means that you may be personally held responsible for losses incurred due to the dishonest, reckless or intentional misconduct of another trustee. Your personal assets, outside of the SMSF, may be subject to liability claims.

Corporate trustee

Members generally have limited liability which may provide greater protection of personal assets¹. Liability is often restricted to assets held within the SMSF.

¹ Self Managed Super Funds: A Statistical Overview 2010 – 2011 Member Demographics

Why AMP for my SMSF?

AMP, Australia's experts in self managed super, provides you with access to SMSF Specialists to support you in setting up your SMSF. If you decide you're looking for more support, we have financial advisers throughout Australia who can contact you directly.

We will take care of the paperwork to help you set up your fund, including the legal requirements, such as providing the trust deed for the fund and setting up the fund with the ATO. We'll also help with the documents to appoint your fund's trustees.

If you're looking to establish a corporate trustee, AMP will coordinate the registration and preparation of the company constitution using our external lawyers. The cost of this is included in the fee to establish a company to act as corporate trustee.

We'll also assist with your ongoing company requirements such as secretarial duties and acting as the registered place of business.

Regardless of the trustee structure you choose, AMP SMSF Solutions makes it easy for you to run your own SMSF. We help keep the day-to-day paperwork in check so you have the time and freedom to focus on what matters to you.

Costs of setting up an SMSF

Establish an SMSF with an individual trustee with AMP

\$550 SMSF set up

\$440 Trust deed

Establish an SMSF with a corporate trustee with AMP

\$550 SMSF set up

\$440 Trust deed

\$990 Establish a company to act as corporate trustee

Includes a \$435 ASIC registration fee

\$43 Annual ASIC fee

Not a setup cost

Other SMSF costs can be found in the AMP SMSF Solutions Administration Services Guide.

There are a variety of aspects that should be considered before selecting a trustee structure. Establishing an individual trustee may save you money, but depending on your circumstances, the benefits of a corporate trustee may better align to your objectives.

costs

For more information on establishing or administering an SMSF, contact us on 1300 767 483 or visit amp.com.au/smsf.

What you need to know

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Before making a decision about the service, consider the AMP SMSF Solutions **Administration Services Guide** and **Financial Services Guide** available from us at amp.com.au/smsf or by calling 1300 767 483.

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