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SELF-MANAGED SUPERANNUATION FUND TRUSTEES

In a Self-Managed Superannuation Fund ("SMSF"), generally all members of the fund must be trustees and all trustees must be members.

The exceptions to this general rule are:

1. **Where a member is under 18 years of age** – they will require a representative to act as a trustee on their behalf
2. **Where a member loses capacity** – they will also require a representative to act for them
3. **In the case of a single member fund** - where the trustee is not a company, they will require an additional person to act with them as trustees

A superannuation fund is a type of "trust" and must be run by trustee/s. There are two options available in regard to the trustee structure for a SMSF:

a. **Individuals as trustees** - in this case there must be more than one individual and would generally be the members of the fund themselves. In the case of a sole member fund, the member would need to appoint an additional person to act with them as joint trustees.
b. **A company as corporate trustee** – in this case, generally all of the members fund will need to be directors of the trustee company. In the case of a sole member fund, that member can be the sole director of the trustee company

Note that trustees (or trustee directors) cannot generally be in an employee/employer relationship (unless they are related) and are not permitted to be paid by the fund for their services as trustees. However, they could be paid for professional services supplied such as bookkeeping, legal or taxation services.

People acting as trustees must not be "disqualified persons" – for example, people who have been convicted of an offense involving dishonesty or who are un-discharged bankrupts. They will generally need to be Australian residents as the place of central management and control of a SMSF must always be in Australia. All trustees must sign a declaration acknowledging their roles and responsibilities.

Statistics from the Australian Taxation Office indicate that as at 30 June 2017, the majority (58.6%) of all SMSF's had a corporate trustee.

The current "best practice" recommendation from most professionals in the industry is to use a trustee company and it is evident that more than 80% of newly established funds have a corporate trustee. The reasons for this are varied but include:

i. **Continuity when members change**. Unlike other types of trusts which have a limited life (80 years) due to the "rule against perpetuities", a superannuation fund is exempt from this and can last for multiple generations. A company lasts until it is wound up or deregistered.

ii. **Administration simplicity**. Members can move in and out of a fund through death, marriage, divorce, etc. Where this occurs when the trustees are individuals, the fund will be required to change all of the ownership details of its assets and investments and this can be a daunting and time consuming task. On the other hand, changing the directors of a trustee company is very simple and no other changes are required to assets or investments.

iii. **Concessional tax guarantee**. The rules for SMSF's provide that where the fund has individual trustees, its sole or primary purpose must be to pay old-age pensions. Where funds have both member pension accounts and accumulation accounts, this could be brought into question. This may become more significant with the latest round of changes to superannuation law which limit the total amounts that can be held in pension accounts and may result in some cases where accumulation accounts are held long term. Having a company as a trustee will avoid these uncertainties.

iv. **Asset protection**. In the case of a fund being sued, individual trustees could potentially be liable but this would not normally be the case for directors of a trustee company.

v. **Sole member funds**. Single member funds with a corporate trustee can have a sole director and no additional trustees are required.

It is also generally recommended that the trustee of a SMSF should be a "special purpose superannuation trustee company". This means that the company only acts in that single capacity and does not operate a business or act as trustee of another trust (these conditions are set out in the company's constitution). The advantages of this approach include that there is no possible confusion over the separation/ownership of superannuation fund assets and the annual ASIC filing fees are only around 20% of the usual fee.

The additional one-off set up costs for a company trustee will generally be less than $1,000 (with annual filing fees of less than $50) but this represents good value in light of the advantages outlined above.

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Bob's career spans more than 40 years in accounting, taxation and financial services. His specialty is self-managed superannuation funds and the development and management of financial accounting software.

Bob has experience as a partner in a large accounting firm, as administrator of a large corporate superannuation fund with more than 1000 members and as owner/founder of Practical Systems.