

## Corporate Trustee vs. Individual Trustees

When thinking about setting up a SMSF, choosing the right type of trustee arrangement is an important decision. A trustee of a SMSF is ultimately responsible for the operation and decision making processes of the SMSF. It is an important role and is vital to ensure the ongoing compliance of your SMSF.

### There are two choices with the trustee structure of a SMSF

- Individual Trustees, where each member of the fund is a trustee or,
- A Corporate Trustee, where each member of the fund is a director of the Trustee Company.

### Individual Trustees

It is a legislative requirement that when a SMSF has Individual Trustees, it must have a minimum of 2 Individual Trustees and a maximum of 4 trustees. The Individual Trustees will be responsible for running their SMSF. Almost anyone over 18 can be a trustee of a SMSF including a spouse, adult, child or friend.

### Benefits of having Individual Trustees

- Lower up front administrative hassles;
- Lower up front costs; and
- No ongoing ASIC reporting obligations to comply with.

### Disadvantages of having Individual Trustees

- Appointing additional members and trustees can result in tedious and expensive administration work;
- For single member funds: the member will need to appoint a second trustee; and
- Personal liability issues.

### Corporate Trustee

You may select a company to act as trustee for your SMSF. In this case, the members of the SMSF will also need to be directors of the Corporate Trustee. The directors of the Corporate Trustee will be responsible for running the SMSF.

### Benefits of having a Corporate Trustee

A Corporate Trustee can offer you the following long term benefits which Individual Trustees cannot provide:

- **Liability issues** – companies have the benefit of limited liability. Therefore, if a Corporate Trustee suffers any liability, the individual directors will not suffer personal liability (other than in exceptional circumstances). On the other hand, an individual who acts as trustee exposes their personal assets if they incur any liability as trustee of a SMSF: If the individual's right of indemnity against the SMSF is not sufficient to discharge the liability, then the individual may still be liable for the shortfall.
- **Simpler succession and control on death of an individual** – a company continues to function even after the death of one of its directors, therefore, the control of a SMSF can continue even after the death of an individual SMSF member/director.
- **Assets are kept separate** – it is easier for a Corporate Trustee to ensure that SMSF assets are kept separate from the personal assets of SMSF members. With Individual Trustees asset ownership will be recorded under the Individual Trustees names, as such, if a trustee is sued or becomes bankrupt, the trustees will incur expense and time proving that the SMSF actually owns the asset.

- **Administrative efficiency for SMSFs** – if a new member is introduced to a SMSF, then generally they must become a trustee of the fund. If the relevant SMSF has:
  - A Corporate Trustee, then the new member needs to be appointed as a director and ASIC notified of this appointment;
  - An Individual Trustee, a deed of appointment needs to be executed and, in most cases, all trust assets need to be transferred into the new trustee's name (or jointly with other trustees). This can cause major administrative hassles if the trust assets consist of real estate and shares. The hassles do not apply to a Corporate Trustee as the SMSF assets are usually held in the company name, and the company remains as trustee;
  - An Individual Trustee, some banks refuse to change the name on a bank account and instead insist on a new account being opened in the name of the new trustee; or
  - An Individual Trustee, where real estate is owned by the SMSF a change in trustee is not straightforward because you have to prove to the Office of State Revenue that you are entitled to an exemption from paying stamp duty again at ad valorem rates.
- **Lender requirements for limited recourse borrowing arrangements** – bank lenders generally insist upon (or at least prefer) the SMSF having a Corporate Trustee. LVR's are generally more favourable for a SMSF with a Corporate Trustee.
- **Single member fund** – the member can act as a sole director of the Corporate Trustee.

## Disadvantages of having a Corporate Trustee

- Additional costs to establish the Corporate Trustee;
- Ongoing annual ASIC fee;
- Additional establishment paper work involved, directors have to comply with the company constitution and articles; and
- More complicated to set up. The Corporate Trustee company has to be established as well as the SMSF.

## Summary table

In summary, this table highlights the advantages (✓) and disadvantages (✗) of having a company or individuals acting as trustee.

	Corporate Trustee	Individual Trustee
Costs of establishing the trustee	✗	✓
ASIC reporting requirements of the trustee	✗	✓
Procedural issues for holding meetings	✗	✓
Liability of the trustee	✓	✗
Succession planning	✓	✗
Keeping assets separate from non-SMSF assets	✓	✗
Administrative efficiency of SMSFs	✓	✗
Limited recourse borrowing arrangements	✓	✗

### Disclaimer

This information is intended as a guide only and is based on legislation current as at January 2013. You SHOULD seek personal legal advice before deciding on the type of trustee for your SMSF. Please note this information is of general nature only and, as such, does not take into account any individual's personal financial situation, objectives or needs. We believe this information is correct however we do not accept responsibility for any errors, omission or inaccuracies. It is important that you consider these matters or consult your financial adviser before you make any financial decisions.