

## Establishing a Self-Managed Super Fund – Instruction Sheet

We will prepare and engross a superannuation deed, provide associated documentation such as draft minutes, trustee declarations, member benefit statements, product disclosure statements and the ATO election form.

We have attached an information sheet which summarises the requirements that must be met in order to become an SMSF. Please read this carefully. You may need professional advice to determine which choice to make as the legislation and the resulting issues involved can be complex. Any advice we provide to you or your client in relation to this information sheet will be charged in accordance with our normal rates and conditions or as may be agreed with you or your client.

**1. Your full details**

**Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Telephone Number:** \_\_\_\_\_ **Email:** \_\_\_\_\_

**2. Name of Fund**

\_\_\_\_\_

**3. Members of Fund (Refer to Note 3)**

**Details (Include full names and addresses of each member).**

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\_\_\_\_\_

**4. Trustee(s) – Individual(s) or Corporate**

Please tick the appropriate box

- Individual(s) (please go to Question 5)
- Corporate (please go to Question 6)

**5. Individual Trustee(s) (complete this section and then go to Question 8)**

**Full Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

\_\_\_\_\_

**Full Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

\_\_\_\_\_

**6. Corporate Trustee (Advise us if you wish to establish this company)**

**Name of Company:** \_\_\_\_\_

**ACN:** \_\_\_\_\_

**Director(s) name & address:** \_\_\_\_\_

\_\_\_\_\_

**Secretary:** \_\_\_\_\_

**Registered Office:** \_\_\_\_\_

There is no requirement to have SMSF deeds endorsed or stamped under the *Duties Act* 2008 (WA) which applies from 1 July 2008.

***These notes are for client information purposes only and do not constitute legal advice. Legal advice may be obtained from Perth Probate and may be the subject of separate charges.***

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## **NOTES**

### **INFORMATION FOR FUNDS WITH LESS THAN 5 MEMBERS**

#### **Disclaimer**

The information provided below is only a summary of the main provisions dealing with the trusteeship/membership requirements for SMSFs. It is not to be taken as a substitute for professional advice. Severe penalties may apply to a trustee, director of a corporate trustee and to the fund where a fund with less than 5 members does not satisfy the conditions of an SMSF. This information is based on current law at the date on this sheet. The law and its interpretation is subject to change.

#### **WHAT IS A SELF-MANAGED SUPERANNUATION FUND ("SMSF")?**

##### **Definition**

Generally, for funds other than single member funds, an SMSF is one where:

- There are fewer than 5 members;
- All members are trustees, or directors of the trustee company;
- There are no trustees or directors who are not members;
- There are no members who are employees of other members (unless certain exceptions apply); and
- No trustee of the fund receives any remuneration for his or her services as a trustee or director of a corporate trustee.

For funds that are single member funds, an SMSF is one where:

- If the fund has a corporate trustee:
  - the member must be the sole director of the company;
  - the member must be one of only two directors where the other director is a relative;  
or
  - the member must be one of only two directors and not an employee of the other director;
- If the fund does not have a corporate trustee:
  - the member must be one of only two individual trustees and the other trustee must be a relative; or
  - the member must be one of only two individual trustees and not an employee of the other trustee.

There are, however, some exceptions to these general rules. For full details of the definition of an SMSF refer to Section 17A of the Superannuation Industry (Supervision) Act 1993.

### **What is the Definition of Employee**

The term employee has its general meaning at law but a member who is an employee of an employer-sponsor is also defined, in the case of an SMSF, to be an employee of:

- Any relative of an individual employer-sponsor;
- Any director of an employer-sponsor company and any relative of those directors (but see exception referred to below);
- Any beneficiary of an employer-sponsor trust and any relative of those beneficiaries;
- Any partner of an employer-sponsor partnership and any relative of those partners;
- Any director (and his or her relatives) of a company that is a partner in an employer-sponsor partnership;
- Any beneficiary (and his or her relatives) of a trust that is a partner in an employer-sponsor partnership;

In general terms, but subject to some limited exceptions concerning relatives, this means that the above individuals cannot be in the same SMSF as the employee member. A relative is defined widely, in relation to an individual, to mean:

- (a) a parent, child, grandparent, grandchild, sibling, aunt, uncle, great-aunt, great-uncle, niece, nephew, first cousin or second cousin of the individual or of his or her spouse or former spouse; or
- (b) another individual having such a relationship to the individual or to his or her spouse or former spouse because of adoption or remarriage; or
- (c) the spouse or former spouse of the individual, or of an individual referred to in paragraph (a) or (b).

However, on 22 December 1999 Regulations were gazetted which in effect provide that a director of an employer-sponsor will not be considered to be an employee of a fellow director of the employer-sponsor for the purposes of membership of an SMSF. This allows fellow directors of an employer-sponsor to be within the same SMSF even if they are not related to each other.

Further, Regulations were gazetted on 15 June 2000 which have the effect that an individual who is employed by a company in which his/her spouse is a director will not be deemed to be an employee of another unrelated director of the company and is therefore able to be within the same SMSF as that unrelated director.

For example, assume Mr A, Mrs A, Mr B and Mrs B are all members of a superannuation fund, They are all employed by company X of which only Mr A and Mr B are directors. Prior to 15 June 2000, Mrs A was deemed to be the employee of Mr & Mrs B and Mrs B was deemed to be an employee of Mr & Mrs A. Accordingly, Mr and Mrs A were unable to be in the same SMSF as Mr and Mrs B. Under the new rules gazetted on 15 June 2000, Mrs A and Mrs B will not be deemed to be an employee of any other member of the SMSF as both Mrs A and Mrs B are related to other members of the fund.

### **Small APRA Fund**

A fund with fewer than 5 members which is unable to comply with the definition of an SMSF must appoint an approved trustee and become a SAF if it wishes to comply with the legislation and have tax concessional status.

An approved trustee must have at least \$5 million in net assets and must be approved by APRA as having sufficient skills and competence to act in this capacity.

Funds with fewer than 5 members that do not have an approved trustee, and also do not meet the definition of an SMSF, are strongly advised not to make an election to become a regulated superannuation fund. The trustees of such a fund will be at risk that APRA would appoint a replacement trustee.

### **Leaving The Fund**

If the fund is a SMSF then under the provisions of our trust deed, a person that ceases to be a Member shall cease to be a Trustee or a director of a corporate Trustee (unless determined otherwise by the other individuals acting as Trustee or the other directors of a corporate Trustee) and a person that ceases to be a Trustee or director of a corporate Trustee shall cease to be a Member (unless determined otherwise by the other individuals acting as Trustee or the other directors of a corporate Trustee).

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