Superannuation

SMSF – Corporate or Individual Trustee

Aon Hewitt Financial Education Series

When setting up a Self-Managed Super Fund (SMSF), the choice is generally between individual trustees or a corporate trustee. A fund can have up to four individual trustees or alternatively a corporate trustee, whereby a company is set up which acts as trustee for the fund and each member is a director of the corporate trustee. When using a corporate trustee, it is advisable to use a sole purpose corporate trustee, whereby the company exists only for the purpose of acting as trustee to the fund and in no other capacity.

Cost

Generally, the ongoing administration and establishment costs are lower for individual trustees, and this is probably the main reason why it is so popular amongst trustees, particularly if cost is a key driver for initially moving to a SMSF. When establishing a fund with a corporate trustee, there are additional fees associated with establishing a company, such as the upfront ASIC registration fee. In addition to the establishment cost, the fund is required to lodge annual returns to the ATO as well as pay the ASIC annual fee and ATO supervisory levy.

Ease of administration

Whenever there is a change of membership within the fund, for example a need to add or remove a member, it is much easier to add or remove a director of the corporate trustee than changing individual trustees. As each asset owned within the fund is registered with the trustee, it can be quite onerous and time consuming to amend to reflect a change in membership. You will need to change the ownership of every single asset in the fund. In the case of a corporate trustee, the title of the assets doesn't need to be changed but just needs to be recorded to ASIC and the ATO.

Additionally, efficiencies are gained with a corporate trustee when the fund owns real estate. If the title of the property needs to change, stamp duty fees may also apply, which adds an extra layer of administration when dealing with the relevant state government authorities.

Finally, for single member funds, where no corporate trustee is established and the fund is for one individual, two individual trustees are required which also adds an additional administration layer. Compare this to a corporate trustee where the individual can simply be the sole director and shareholder of the company.

Managing assets and liabilities

One of the common breaches of the Superannuation Industry (Supervision) Act (SIS Act) faced by funds is where individuals mix assets owned by the fund with their personally owned assets. It's very important to keep assets owned by the fund and assets owned in the trustee's personal name separate, and this is where a corporate trustee is very helpful as assets are registered in the name of the company and don't get confused with assets owned personally. This is particularly true if the trustee's personal assets were being questioned, for example in a bankruptcy or personal liability case, and the asset being pursued is actually owned by the fund.

The corporate trustee structure also has the benefit of being a separate legal entity for asset protection purposes. In the case where trustees are being sued for damages or seeking a claim for personal liability, having a corporate trustee can protect assets owned personally by the trustee, whereas with individual trustees, where the SMSF does not have sufficient funds, their personal assets may be exposed. This is also particularly an issue where a sole purpose trustee is not established; rather the company used for the SMSF is also acting in multiple capacities (for example, for a business). In this case, issues arise where assets owned within the SMSF are used to pay off creditors for the company, which is an immediate breach of the SIS Act. This is why it's not only important to set up a corporate trustee, but a sole purpose corporate trustee.

As a separate note, where a fund wants to enter into a limited recourse loan with a bank to fund an asset purchase, the bank would generally impose a requirement to have a corporate trustee established before a loan is approved. This is another benefit of a corporate trustee if the purpose of the SMSF is to acquire property.

Handling penalties

If a breach of the SIS Act took place under individual trustees, each trustee would be liable for the penalty. For example if the penalty were $1,700, that would be $6,800 if there were four trustees. However in the case of a corporate trustee, the fund would only be liable for one penalty of $1,700. Whilst funds don't anticipate breaching rules, it often occurs when financial accounts and statements aren't prepared, and this is where having a corporate trustee can reduce unintended costs associated with penalties.

Estate planning

When it comes to succession planning, a corporate trustee allows for a smoother transition in the event of a trustee's death or loss of capacity. As a corporate trustee cannot die, it continues even when a member dies as that director can be replaced with a successor director. It becomes a costly and timely burden when there is a need to change individual trustees.

Issues also arise where it is a single member fund. As indicated earlier, under individual trustees, a single member fund requires two trustees. However, if one were to die, the fund cannot be retained and must be wound up. This wouldn't happen under a corporate trustee as a successor director can be introduced.

Which is right for you?

Based on the above information, please find below a summary of the benefits of each type of trustee:

	Individual Trustee	**Corporate Trustee**
Cost	✓	
Ease of administration		✓
Managing assets and liabilities		✓
Handling penalties		✓
Estate planning		✓

In conclusion, the ultimate decision falls with you; however, the efficiency gains and risk management benefits associated with corporate trustees seem to justify it over individual trustees, even though it means higher upfront and ongoing costs.