Self-Managed Super Funds – Individual or Company Trustee?

We often get asked whether it is better to have a 'company trustee' or 'individual trustees' for a self-managed super fund. This question gets asked both when we are setting up a new super fund, and when we are reviewing an existing super fund.

In our view, the short answer is that it is better to have a company trustee. However, this comes with the small additional set up cost of around $860, and an ongoing annual fee to ASIC of $46 (provided the company qualifies as a 'special purpose company' and is not also used for any other purpose). In our view, these additional costs are worthwhile.

That said, we sometimes hear that a self----managed super fund must have a company trustee. This is not the case. There is nothing in the super law that requires a company trustee. Some financial planning dealer groups mandate that advisers must recommend a company trustee, but this is an internal policy within the dealer group, and not a legal requirement, (although we think it is a good policy).

Admitting new members

When a new member joins an existing fund that person must either become an individual trustee, or become a director of the company trustee. It is much easier to appoint a person as the director of a company, than it is to make the person an individual trustee of the fund. Appointing a director requires a simple form and notification to ASIC. Appointing an individual trustee requires the person to be registered as one of the legal owner of all of the fund assets. This may require property and shares to be transferred, trading accounts to be amended, and bank account details to be changed. This can be time consuming and expensive.

Single member funds

A super fund either needs a company trustee, or more than one individual trustee. If the super fund is being set up for just one member, or someone dies leaving only one member, then the member must choose between appointing a company trustee, or appointing a qualifying person to act with them as a co----trustee.

If a company trustee is chosen, then the single member can also be the sole director of the company, and exercise complete control over the fund. If the member choses to appoint an individual co----trustee, then the co----trustee will need to be involved in all aspects of running the fund.

Perpetual succession

A company does not die. Accordingly, the death of a member will not impact on the holding of investments. If individual trustees are adopted, on the death of a member/trustee, legal title to all the assets must be transferred from the deceased member to the continuing members. This can take some time because the deceased member's personal representative will need to be formally appointed to act in the deceased's name.

Separation of assets and asset protection

It is a legal requirement for the assets of the super fund to be kept separate from the other assets of the trustee. This can be easier to implement and less confusing when the assets are owned by a different legal entity, i.e. a company trustee.

Furthermore, super provides an excellent environment in which to protect assets for retirement. Holding the legal title to investments in a company trustee keeps these investments one further step away from potential claims and creditors. If the assets are held in the individual member/trustee's name, then they must prove to potential creditors that the assets are held on behalf of the super fund in order to benefit from the asset protection of super. Holding the assets in a separate company serves as automatic proof that the assets are super assets.

Qualifying for complying status

In order to get the various tax and asset protection concessions associated with being a regulated super fund, the fund must satisfy the requirements set out in the Superannuation (Industry) Supervision Act. One of these requirements is that the fund must either:

- Have a company trustee; or
- Have providing old----age pensions as the 'primary purpose' of the fund, (in which case the trustee can be either a company or a group of individuals).

This does not mean that a fund with individual trustees cannot pay a lump sum benefit. This just means that the super fund deed must clearly state that the primary purpose of the fund is providing old----age pensions if individual trustees are adopted.

Changing trustees

Whether you adopt a company or individual as trustees, your decision need not be final. It is possible to change the trustee of your fund from individual trustees to a company (and vice versa) at any time. There is a little legal work and therefore cost associated with this. First you must appoint the new trustee in accordance with the Super Fund Deed, and then move any fund assets from the existing trustee to the new trustee.

Regardless of the trustee structure, the responsibilities of those acting in trustee capacities for a superannuation fund (either individually or as a director of a company) are the same.

What next?

If you would like to speak to someone about setting up your Self-Managed Super Fund, call us on 1300 654 590 or email us at wehelp@adlvlaw.com.au.

Further information can also be found on our website at www.adlvlaw.com.au.