



**SMSF FACT SHEET:
TRUSTEE**



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There are several areas that finance brokers should be particularly mindful of when establishing an SMSF or using an SMSF to acquire a property with borrowings. Find out more from SMSF specialist, Chris Levy, Aquila Super.

What is a Self-Managed Super Fund (SMSF)?

- An SMSF is a private super fund that you manage yourself. They have some similarities to the large industry or retail super funds that most people are familiar with, but also some significant differences.
- An SMSF can give you greater control over your super; however, it also comes with additional responsibilities.
- A SMSF can now have up to six members; however, all trustees must be members of the SMSF and vice versa. This is not the case where children under 18 will be members of the fund.
- SMSFs also have tremendous flexibility with the types of investments that the fund can invest in. Apart from the standard asset classes of listed securities, managed funds and term deposits, SMSFs can also invest directly into property (residential, commercial, etc...) and even do so with borrowings if structured correctly.
- Having said that, there are some very strict rules around how fund assets can be used, mainly relating to dealings with related parties. For example, SMSFs are generally prohibited from lending money to relatives even on commercial terms, and related parties cannot be tenants in a property owned by the Fund unless it's a business property and only then if it abides by some strict rules.
- Before engaging in any non-standard investment or venture it is vital to discuss the proposed investment with a properly qualified adviser or accountant to ensure that it will not breach various superannuation rules.
- Whilst this Fact Sheet provides a brief overview of SMSFs and how to establish one, much greater detail is available in the ATO publication 'Starting a SMSF' available online.

Is an SMSF right for me?

- Whether an SMSF is appropriate for your personal circumstances is very much beyond the scope of this fact sheet.
- Fortunately, there is a significant amount of useful information about SMSFs available online, including some useful guides from the two regulators involved (ATO and ASIC).
- It is also important to recognise that SMSFs are financial products, and if you are keen to obtain professional guidance on whether an SMSF is appropriate for your specific circumstances, you should discuss it with a suitably qualified and licenced financial adviser.

The process of establishing an SMSF

- Although trustees can in theory organise the establishment of a SMSF themselves, they are typically assisted by an accountant/administrator working with the assistance of a law firm.
- The first step is often the hardest - picking the name of the SMSF. Most trustees will typically choose a variation of their name (e.g. Smith Super Fund, A&B Smith Super Fund, ABS Super Fund), or they may choose a name or words that means something to them such as a place, a pet or something else. Your advisor can help with this.
- The next major step is selecting the trustee structure of which there are two choices - individual trustees or a corporate trustee (discussed in greater detail below).
- Once this decision is made, the legal paperwork will get drafted, and once prepared and reviewed, will need to be signed by the trustees and members. This includes the appointment of the trustees, establishing the Fund, and applying for membership.



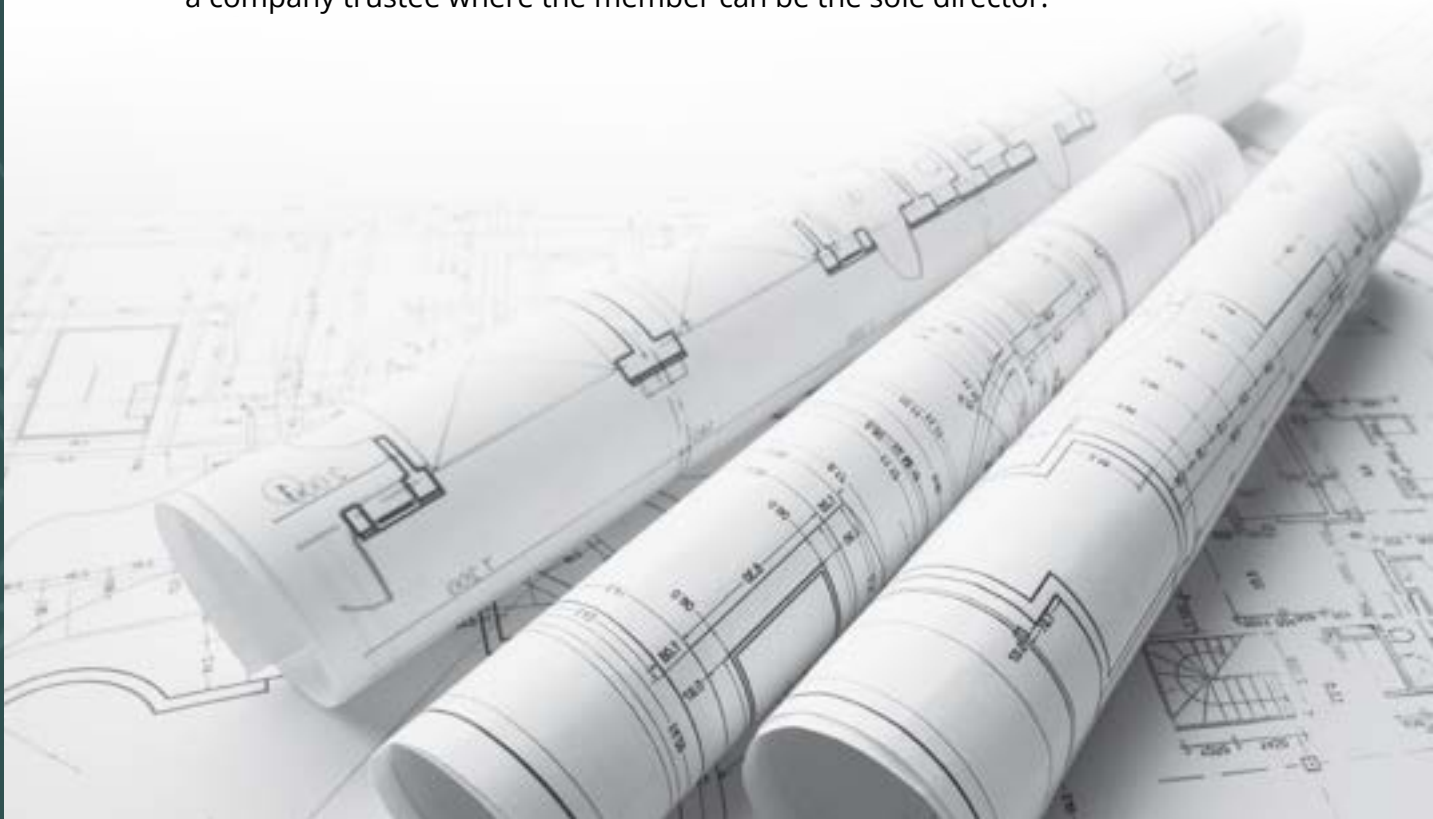
The process of establishing an SMSF cont.

- After the paperwork is signed, the Fund is legally valid, however, it will require registration with the ATO to be regulated. This is done by your accountant and, apart from registering the fund as an SMSF, will also entail obtaining a TFN and ABN. In our experience, these can often take a week or so, however, they may also take several weeks if there are delays with the ATO.
- Following receipt of the TFN, you will be able to establish a bank account for the Fund. Note that the Bank will often want to see various documentation relating to the Fund such as the signed trust deed. Also note that if they want a copy of this deed, they should take a copy themselves, not the original, as you'll need this yourself.
- Upon being issued an ABN, your accountant should be able to obtain an 'Electronic Service Address' (ESA), which is required for any rollovers from your previous super fund.
- Once you have a Fund bank account and this ESA, you are now able to initiate any rollovers from your current super funds. This uses the ATO's relatively new SuperStream service and it's worth noting that we have seen significant delays in having the money transferred, as the system seems to be easily thrown off kilter. Please be aware of such delays if you have any time-sensitive investment concerns (e.g. A looming property development).
- Finally, it is also worth noting that many new trustees find themselves being contacted directly by the ATO when establishing the Fund. The ATO are attempting to work out whether you fully understand what's involved in running an SMSF and have some basic understanding of what is allowed. With this in mind, it is recommended that prospective SMSF trustees familiarise themselves with these rules.
- More information on managing and investing by SMSFs can be found at <https://www.ato.gov.au/individuals-and-families/super-for-individuals-and-families/self-managed-super-funds-smsf>



Trustee structure – individual or corporate

- From a legal perspective, SMSFs are a type of trust, unlike a company which is a legal entity or 'person' in its own right. As such, in order to be legally valid, the SMSF requires a trustee(s) to act on its behalf.
- There are two options – have the members of the Fund be trustees in their own right (i.e. as individuals), or alternatively establish a company to act as the trustee with the members being appointed as directors of this trustee company.
- The main downside to setting up a corporate trustee is the large upfront cost involved – doing so typically adds approximately \$1,000 to the establishment process. The advantage is that it is significantly easier to change the membership structure in the future. That is, if a new person were to be added to the Fund later, using a company involves simply appointing them as a director of the company. If an individual trustee structure is in place, adding the new member as a trustee involves an amendment to the Fund's original trust deed which can only be done by a lawyer. Furthermore, updating the legal title for all the Fund's investments to now also include the new individual trustee can be time consuming.
- Also note that this trustee structure decision is not final. Some SMSF trustees will establish the Fund with just themselves as individuals as trustees with the intention of potentially amending the Trust Deed later changing the trustee to a company.
- Finally, be aware that where the proposed SMSF only has a single member, another person must also be a trustee where individual trustees are being used. That is, the member of the fund needs to be an individual trustee along with another person who does not also have to be a member. This is not the case for a company trustee where the member can be the sole director.




Annual requirements

- Being a regulated SMSF, the ATO requires not just a tax return to be lodged but also financial and member statements to be prepared and audited.
- Although your accountant or administrator will be able to help with all this, you do have the responsibility to retain all relevant financial information that might be needed including bank and loan statements, share trading and dividend information, rental statements, etc.
- These can be provided to your accountant after 30 June every year to allow the annual reports to be prepared.

Borrowing in SMSFs

- Although there is a general prohibition on borrowing within SMSFs, there is an exception for property if structured correctly by using a Limited Recourse Borrowing Arrangement (LRBA).
- The legal reasoning behind the use of these structures is that the superannuation laws permit super funds to skirt the prohibition on borrowing provided the asset is held in a semi-separate structure not mixed in with the other assets of the Fund, and that there is no recourse that the lender may have on the fund's other assets (i.e. limited recourse).
- To satisfy the rules, the Fund will need to establish a separate custodian structure such that the property is being held by the custodian on behalf of the SMSF via a bare trust structure.
- As can be imagined, the additional legal paperwork involved in setting up an LRBA structure makes them more costly as compared to normal borrowing.
- Although your accountant can establish the relevant LRBA paperwork if required, in many cases the lender will have their own paperwork.



CONTACT YOUR
FINANCE BROKER TO
DISCUSS YOUR SMSF
LENDING REQUIREMENTS
IN FURTHER DETAIL

