

# Corporate or individual trustees?

What works best

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## But first... You need to know

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# SMSF trustee basics



# SMSF definition

- Up to six members
- All trustees/directors must be members
- All members must be trustees/directors
- Special rules for:
  - Single member funds
  - Use of powers of attorney



# Membership vs trusteeship

Number of members	Number of individual trustee	Number of trustee directors
1	2	1 or 2
2	2	2
3	3	3
4	4	4
5	5	5
6	6	6

Be aware of State Trustee Acts for restriction on number of individual trustees

## POLL QUESTION

Do you clients mainly have individual or corporate trustees?

- a) Corporate trustees
- b) Individual trustees

# What the ATO tells us

<b>Trustee type</b>	<b>Overall split June 2020</b>	<b>Split for 2019-20</b>	<b>Split for 2018-19</b>	<b>Split for 2017-18</b>	<b>Split for 2016-17</b>
Corporate trustee	62.8%	81.3%	81.2%	80.7%	81.1%
Individual trustees	37.2%	18.7%	18.2%	19.3%	18.9%
	100%	100%	100%	100%	100%



# SIS & Investment considerations



# SIS considerations

SIS needs a mechanism to regulate trustees

- For corporate trustees – uses the Corporations law
- For individual trustees – old age pension powers

This requires deeds with individual trustees to specify benefits as pensions that are commutable



# SIS considerations

All investments are required to be in the name of the trustees

- Will all the names fit?

Assets need to be kept separate from related parties

- Not all registries recognise capacity
- Needs acknowledgement/declarations of trusts



# POLL QUESTION

What % of your clients have property in their SMSF?

- a) Under 25%
- b) 25 to 50%
- c) 50% to 75%
- d) Over 75%

# Investment considerations

- Liability for corporate trustees generally limited to assets for the SMSF
- Liability for individual trustees can extend to individual's personal assets
- Commercial lenders generally require corporate trustees for Limited Recourse Borrowing Arrangements
- reduced exposure to consumer credit and responsible lending regimes



Other factors to consider



## Other considerations

- Cost of corporate trustee
  - Separate entity preferred – Special purpose company
- Sophisticated investor rules
  - Corporate trustee - directors can include values of SMSF in assets test
  - Individual trustees cannot include value of SMSF in assets test



## Other considerations

- SIS prosecution penalties higher for corporate trustees
  - Crimes Act – five times individual penalty rate
- SIS administration penalties lower for corporate trustees
  - Penalties levied to each individual trustee
  - Penalty levied to corporate trustee with directors jointly & severally liable for penalty





When things change



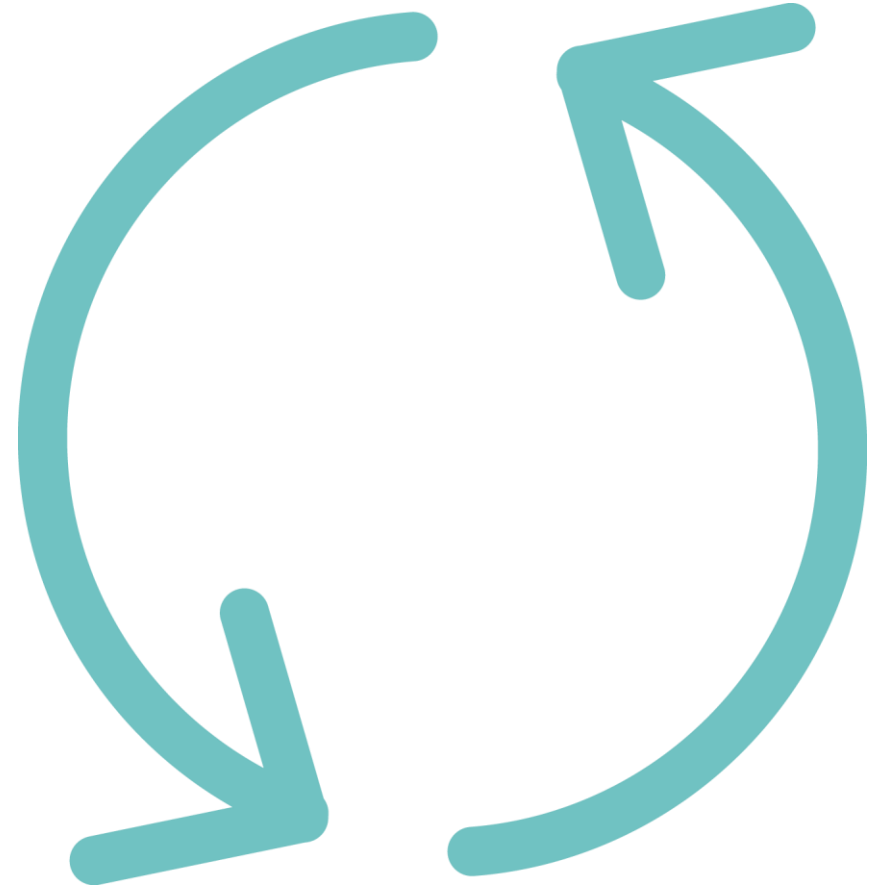
# What triggers changes to trusteeship

- Changing membership
  - Adding new members
  - Members rolling out
  - Family law splits
  - Members passing away



# What triggers changes to trusteeship

- Other changes
  - Minor members attaining age 18
  - Using a Power of Attorney for
    - Overseas absence
    - Incapacity



# SUMMARY

<b>Individual Trustees</b>	<b>Corporate Trustees</b>
Deed restriction on pensions for benefits	Pension or lump sum benefits
Title updates with member/trustee changes	Title fixed to company name
Individuals' assets exposure to liability	Limited liability
No additional costs for trustee structure	Set up cost & annual costs
Potential asset demarcation issues	Clear ownership of assets
Difficulties with bank borrowings	Acceptable for bank borrowing
SIS prosecution penalties lower	SIS prosecution penalties higher
SIS administrative penalties higher	SIS administrative penalties lower

## Director identification rules



## POLL QUESTION

What % of your clients have multiple companies?

- a) Under 25%
- b) 25 to 50%
- c) 50% to 75%
- d) Over 75%

# New regime

- Applicable from 1 November 2021 for all newly appointed directors
- Effects new corporate trustees of SMSF as well as new corporate trustees of bare trust arrangements for LRBAs
- Also new directors appointed to existing corporate trustees
- Individual applies via MyGovID
- Creates a lifetime unique identifier for an individual



# Transition timeframes

- Appointed prior to 1 November 2021 obtain Director ID by 30 November 2022
- Appointed between 1 November 2021 and 4 April 2022 obtain director ID within 28 days of appointment
- Appointed from 5 April 2022 need Director ID prior to appointment







# Questions

November 2021

## Our team of technical experts



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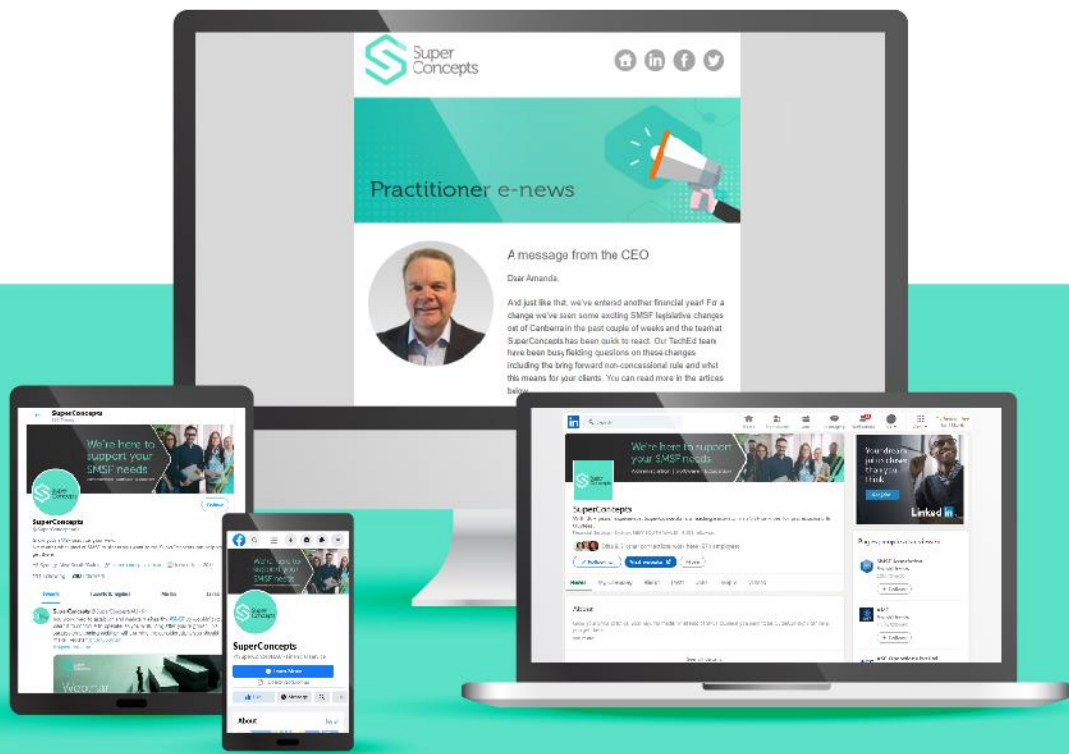
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