

TechKnowledge

SMSF Basic Conditions

SMSFs are treated differently from other superannuation funds in a number of legislative and regulatory ways and in order to qualify for this different treatment, which is generally more concessional, an SMSF must meet a set of conditions above those that all superannuation funds are required to satisfy. These conditions can be found in [section 17A of the SIS Act](#).



An SMSF is a trust and therefore requires a trustee of which there can be 2 types, individual or corporate. Depending on whether the fund is a single member fund or not and has a corporate trustee or not, the following conditions are placed on the relationships between members and trustees.

Requirements for types of funds and trustees

Members	Trustee Type	Requirements
Single member fund	Corporate	<ul style="list-style-type: none"> > Member is the sole director or member is one of two directors, the other being either a relative or not an employee of the member
Single member fund	Individual	<ul style="list-style-type: none"> > Member is one of two trustees, the other being either a relative or not an employee of the member
Not a single member fund	Corporate	<ul style="list-style-type: none"> > Each director is a member > Each member is a director > No member is an employee of another unless those members are relatives
Not a single member fund	Individual	<ul style="list-style-type: none"> > Each trustee is a member > Each member is a trustee > No member is an employee of another unless those members are relatives



Exceptions

An exception to the above rules is where the legal personal representative (LPR) of a member becomes a trustee or director of the corporate trustee in place of the member which can occur:

- > when the member has died in which case the LPR can be a trustee until the death benefits commence to be payable.
- > when the member is under a legal disability.
- > where the LPR has an enduring power of attorney in respect of the member.

Where there is no LPR and the member is a minor, a parent or guardian can step in as a trustee, or director of a corporate trustee.

Where an SMSF ceases to satisfy the above rules and it was not caused by the admission of a new member, the fund has up to six months to fix the fund before it will cease to be an SMSF. For example, where there were 2 individual trustees and one passed away, the remaining member would have up to six months to either appoint a corporate trustee, or appoint a new individual trustee or wind up the fund.

As with all superannuation funds, a disqualified person cannot be a trustee or a director of a corporate trustee of the fund. It is important to note that an LPR cannot act as trustee for a disqualified

member. In fact, there is no mechanism whereby a disqualified individual can remain a member of an SMSF.

A disqualified person is one who:

- > has been convicted of an offence involving dishonest conduct,
- > has had a civil penalty order made against them
- > Is an insolvent under administration, or
- > has been disqualified by the regulator due to contraventions of the SIS Act or because the regulator believes the person is not a fit and proper person to be a trustee.

If a disqualified person was to become a trustee of an SMSF or continues to act as a trustee of an SMSF after becoming a disqualified person, they could be subject to a conviction resulting in a sentence of up to 2 years imprisonment.

Irrespective of whether the fund has an individual or corporate trustee consideration should be given to how the fund would continue should one of the trustees pass away. While the SIS Act makes an allowance for the LPR of the trustee to act in their place until a benefit can be paid, probate may be required before the LPR can legally act in the capacity as trustee.



Trustees cannot be remunerated for their work in relation to a fund

Remuneration of trustees

A central tenet of the SMSF system is that trustees or directors of the corporate trustee cannot be remunerated for their work in relation to the fund. However, there are a couple of exceptions from this rule. Firstly, a trustee can be remunerated for services they provide to the fund which they also provide to the public in the course of running a business and the trustee is qualified and licensed to provide such services. Where this is the case, the trustee must not be paid above market rate for their services.

In addition, a trustee is entitled to be compensated for any expenses they incur on behalf of the fund. In fact, if they are not compensated, it is likely that the expenses incurred will be assessed as a contribution.





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