

SELF MANAGED SUPERANNUATION FUND APPOINTMENT INSTRUCTION SHEET

MJHC LEGAL LAWYERS

Superannuation · Property · Wills · Commercial

All correspondence to:
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NOTE: This Instruction Sheet must be completed fully and **returned** with a **copy** of the deed establishing the trust and all subsequent amending deeds, confirmatory deeds, ratifying deeds and deeds of appointment. Any omissions may result in delays in preparing documents. Unless otherwise stated, a reference to Founder is also a reference to Founding Member or Principal.

A. ADVISOR/PERSON ORDERING DEED:

Enquiries, documents, invoices will be directed to this person, unless otherwise stated

Person Ordering:

Firm Name:

Street Address:

Suburb/Postcode

Telephone:

Fax:

Email:

Signature:

B. FUND NAME:

Fund Name:

C. REQUIRED INFORMATION:

Was the existing trust deed established or amended by MJHC Legal?

Yes ☐

No ☐

You must forward signed and dated page extracts for deeds prepared by MJHC Legal. In all other cases, you must forward a complete set of all trust deed documents including changes to Trustees.

Deed establishing the Fund was dated?

DD/MM/YYYY

Any previous Amending Deeds are dated?

(go to Part M. Additional Information if insufficient space)

DD/MM/YYYY

DD/MM/YYYY

DD/MM/YYYY

Any previous Deeds of Appointment are dated?

(go to Part M. Additional Information if insufficient space)

DD/MM/YYYY

DD/MM/YYYY

DD/MM/YYYY

Any Deeds that confirmed/ratified prior documents are dated?

(go to Part M. Additional Information if insufficient space)

DD/MM/YYYY

DD/MM/YYYY

DD/MM/YYYY

Are all the above documents enclosed with this form?

Yes ☐

No ☐

If Yes, are these documents to be returned?

Yes ☐

No ☐

When is the meeting date?

(This is the date the individuals involved met to make the appointment.(see Part Q. Important Information))

DD/MM/YYYY

or for client flexibility is date to be left blank?

Yes ☐

No ☐

When is the appointment to commence?

(this may be before or after the meeting date)

DD/MM/YYYY

or for client flexibility is date to be left blank?

Yes ☐

No ☐

D. ACTION REQUIRED:

Note: For all appointments you must complete Parts A. to D., F. to G. and K. to O. If your Fund has a company Founder or Principal complete Part I.

Please select one or more of the following options.

Documents are required to:

☐

replace existing Corporate Trustee

(also complete Part E.)

with a new Trustee(s) who is/are:

☐

Company (also complete Part H.)

☐

Individual

☐

replace existing individual Trustee

with a new Trustee(s) who is/are:

☐

Company (also complete Part H.)

☐

Individual

☐

remove existing individual Trustee

☐

appoint additional individual Trustee

Options continue over page

- ☐ admit new Member
- ☐ replace existing Founder(s) (also Part I. (as appropriate))
(May be described as "Founding Member" in the Fund Rules)
with a new Founder(s) who is/are: ☐ Company (also complete Part J.) ☐ Individual
- ☐ appoint additional Founder(s) (also complete Part F. or Part I. (as appropriate))
new Founder(s) is/are: ☐ Company (also complete Part J.) ☐ Individual

E. CURRENT COMPANY TRUSTEE DETAILS:

Company Name:

Street Address:

ACN: Date of Incorporation: DD/MM/YYYY

If a sole director company, is the sole director also the sole company secretary? Yes ☐ No ☐

If No, provide details of the company secretary in Part M. Additional Information

How many directors does this company have?

Do any of the following apply to the company:

- a receiver or receiver and manager or an administrator has been appointed Yes ☐ No ☐
- a restructuring practitioner (within the meaning of the Corporations Act 2001) has been appointed Yes ☐ No ☐
- a provisional liquidator has been appointed Yes ☐ No ☐
- the company has begun to be wound up Yes ☐ No ☐
- Is any director, company secretary or executive officer a disqualified person under SISA? Yes ☐ No ☐

If Yes to any of the above, the company **cannot** be appointed as Trustee. Contact the offices of MJHC Legal to discuss.

F. INDIVIDUALS INVOLVED:

1. Full Name:

Street Address:

Gender: male: ☐ female: ☐ DOB: DD/MM/YYYY

Select Roles: **member:** new member: ☐ current member: ☐ sole member: ☐ not applicable: ☐

director of: continuing trustee: ☐ retiring trustee: ☐ replacement trustee: ☐ not applicable: ☐

individual trustee: continuing: ☐ retiring: ☐ replacement: ☐ additional: ☐ not applicable: ☐

Individual founder: continuing: ☐ retiring: ☐ replacement: ☐ additional: ☐ not applicable: ☐

meeting attendance: in person ☐ by telephone ☐ via webcam ☐ not present in any capacity ☐ deceased* ☐

*Date of death: DD/MM/YYYY

*Additional supporting material is required if a Member is deceased. See Part Q. Important Information.

2. Full Name:

Street Address:

Gender: male: ☐ female: ☐ DOB: DD/MM/YYYY

Select Roles: **member:** new member: ☐ current member: ☐ sole member: ☐ not applicable: ☐

director of: continuing trustee: ☐ retiring trustee: ☐ replacement trustee: ☐ not applicable: ☐

individual trustee: continuing: ☐ retiring: ☐ replacement: ☐ additional: ☐ not applicable: ☐

Individual founder: continuing: ☐ retiring: ☐ replacement: ☐ additional: ☐ not applicable: ☐

meeting attendance: in person ☐ by telephone ☐ via webcam ☐ not present in any capacity ☐ deceased* ☐

*Date of death: DD/MM/YYYY

Party Roles continue over page

3. Full Name:
 Street Address:
 Gender: male: ☐ female: ☐ DOB: DD/MM/YYYY
 Select Roles: **member:** new member: ☐ current member: ☐ sole member: ☐ not applicable: ☐
director of: continuing trustee: ☐ retiring trustee: ☐ replacement trustee: ☐ not applicable: ☐
individual trustee: continuing: ☐ retiring: ☐ replacement: ☐ additional: ☐ not applicable: ☐
Individual founder: continuing: ☐ retiring: ☐ replacement: ☐ additional: ☐ not applicable: ☐
meeting attendance: in person ☐ by telephone ☐ via webcam ☐ not present in any capacity ☐ deceased* ☐
 *Date of death: DD/MM/YYYY

4. Full Name:
 Street Address:
 Gender: male: ☐ female: ☐ DOB: DD/MM/YYYY
 Select Roles: **member:** new member: ☐ current member: ☐ sole member: ☐ not applicable: ☐
director of: continuing trustee: ☐ retiring trustee: ☐ replacement trustee: ☐ not applicable: ☐
individual trustee: continuing: ☐ retiring: ☐ replacement: ☐ additional: ☐ not applicable: ☐
Individual founder: continuing: ☐ retiring: ☐ replacement: ☐ additional: ☐ not applicable: ☐
meeting attendance: in person ☐ by telephone ☐ via webcam ☐ not present in any capacity ☐ deceased* ☐
 *Date of death: DD/MM/YYYY

For additional members, provide details in Part M. Additional Information

Note: Membership Applications will be prepared by MJHC Legal for all new members of the Fund

Are any of the individuals involved insolvent under administration/ bankrupt in Australia or the equivalent anywhere else in the world? Yes ☐ No ☐

Have any of the individuals involved:

- ever been convicted for dishonest conduct in Australia or anywhere else in the world? Yes ☐ No ☐
- ever received a civil penalty order? Yes ☐ No ☐
- ever been disqualified by the ATO/APRA or the Federal Court? Yes ☐ No ☐

If Yes to any of the above questions, the individual involved **cannot** be involved in the fund. Contact the offices of MJHC Legal to discuss.

G. REPRESENTATIVE CAPACITY:

Is any trustee acting as the legal personal representative of a member? Yes ☐ No ☐
 If Yes, provide details in Part M. Additional Information

H. REPLACEMENT COMPANY TRUSTEE DETAILS:

Company Name:
 Street Address:
 ACN: Date of Incorporation: DD/MM/YYYY

If a sole director company, is the sole director also the sole company secretary? Yes ☐ No ☐

If No, provide details of the company secretary in Part M. Additional Information

How many directors does this company have?

Do any of the following apply to the company:

- a receiver or receiver and manager or an administrator has been appointed Yes ☐ No ☐
- a restructuring practitioner (within the meaning of the Corporations Act 2001) has been appointed Yes ☐ No ☐
- a provisional liquidator has been appointed Yes ☐ No ☐
- the company has begun to be wound up Yes ☐ No ☐

- Is any director, company secretary or executive officer a disqualified person under SISA? Yes ☐ No ☐

If Yes to any of the above, the company **cannot** be appointed as Trustee. Contact the offices of MJHC Legal to discuss.

I. CURRENT COMPANY FOUNDER DETAILS:

Note: See Part Q. Important Information for definition of Founder

Company Name:			
Street Address:			
ACN:		Date of Incorporation:	
			DD/MM/YYYY
Names of Directors:			

If a sole director company, is the sole director also the sole company secretary? Yes ☐ No ☐

If No, provide details of the company secretary in Part M. Additional Information

This Founder is: continuing: ☐ OR retiring: ☐

J. NEW COMPANY FOUNDER DETAILS:

Company Name:			
Street Address:			
ACN:		Date of Incorporation:	
			DD/MM/YYYY
Names of Directors:			

If a sole director company, is the sole director also the sole company secretary? Yes ☐ No ☐

If No, provide details of the company secretary in Part M. Additional Information

K. CONSENTS REQUIRED:

Consents are required from:

Trustee: ☐ Founder: ☐ Founding Member: ☐ Member: ☐ Principal: ☐ Employer: ☐

If Employer consent required, please provide details: (The Employer may be described as "Principal Employer" in current Fund Rules)

Name/Company Name:		DOB: (if applicable)	
			DD/MM/YYYY
Street Address:			
ACN: (if applicable)		Date of Incorporation:	
			DD/MM/YYYY
Names of Directors:			

If a sole director company, is the sole director also the sole company secretary? Yes ☐ No ☐

If No, provide details of the company secretary in Part M. Additional Information

Address for meeting of Employer:

L. FOR MINUTES OF MEETING:

Place of Meeting:		Address of 1st Individual unless otherwise stated
Name of Chairperson:		1st Individual unless otherwise stated

If the following is **not** completed, it will be presumed that all individuals were present at any necessary meetings.

Were all Trustees/Directors present at Meeting? Yes ☐ No ☐

If No, provide details of absentees in Part M. Additional Information

If not all Trustees/Directors were present at Meeting you **must** select one of the following options:

☐ The absent Trustees/Directors attended by telephone/webcam

OR

☐ Circulating Resolutions required for signature by all Trustees/Directors
(See Part Q. Important Information)

M. ADDITIONAL INFORMATION:

N. DOCUMENT DELIVERY:

Prepared documents are to be sent by:

email: ☐

mail: ☐

express post: ☐

Additional Fee of \$18.50 applies

O. PAYMENT DETAILS:

Payment of Invoice is required before document package delivery unless other arrangements are in place.

Credit Card and bank deposit/internet banking options will be set out in the Invoice.

P. COMPLETED INSTRUCTIONS:

Please forward completed instructions to MJHC Legal:

email: ca@mjhcllegal.com

mail: PO Box 412, Mount Waverley VIC 3149

Print and review your instructions before submitting and retain printed copy for your file. Adobe Reader will not allow you to save the data in this form. The Email button will forward your completed Instruction Form to MJHC Legal.

The Reset button will clear all data in the form.

In submitting the completed Instruction Form, the person described in Part A authorises MJHC Legal to prepare the documents selected in Part D. and agrees to pay the Fee payable for those packages. You understand that typing/spelling errors or incorrect information given is your responsibility.

Print Form

Submit by Email

Reset

Q. IMPORTANT INFORMATION:

Trustee Requirements

An SMSF can have no more than 6 members. In selecting the individuals involved you must have regard to the following:

- All members of the Fund must be trustees or directors of the trustee company unless they are a guardian, an attorney, executor or other legal personal representative satisfying the requirements of the SIS Act.
- No more than 4 individual trustees can ever be appointed in Victoria, New South Wales, Queensland and Australian Capital Territory. Up to 6 individual trustees can be appointed on establishment in Western Australia but where more than 3 individual trustees are appointed on establishment there can never be more than the original number. Up to 6 individual trustees can be appointed in South Australia, Tasmania and Northern Territory. Nonetheless, it is strongly recommended that a corporate trustee be appointed to all funds if more than 4 members are to be admitted to membership either on establishment or at some time in the future.
- If the fund has a sole member, the trustee may be a sole director trustee company with the sole member being the sole director. The trustee company may have a maximum of two directors (including the member) where the other member is a relative or any other person who is not an employer of the member.
- If the fund has a sole member and the trustee is **not** a company there **must** be one other individual trustee. The other person can be a relative or any other person who is not an employer of the member.

Deceased Party

Most modern Fund Rules provide for the manner in which a trustee/founder may resign or be replaced in the event of disability or death. This may be given effect by a separate deed of appointment or by Will. In the absence of an express direction regarding replacement upon death, a deceased trustee or founder will often be replaced by the executor appointed under a Will or by the estate administrator where there is no valid Will.

Where a Member/Trustee/Founder has died, the following additional information is required:-

- Copy Death Certificate
- Did the deceased have a BDBN?

- Has death benefit been paid? If yes, on what date?
- Copy of deceased's last Will or, where obtained, Grant of Probate or Letters of Administration.
- Deceased's signed instructions, if any regarding Trustee/Founder replacement

Role of Founder/Founding Member/Principal

To assist in the orderly administration of a Self Managed Superannuation Fund documentation prepared by MJHC Legal operates with an individual performing the role of Founder. Documentation prepared by other providers may have this role performed by a Founding Member or Principal.

Powers of Founder

The role of Founder is a significant one and includes the following important powers:-

1. The Founder has the power to remove and appoint new or additional Trustees.
2. Gives consent to any amendments or variations of the Trust Deed and Rules governing the Fund.
3. Can pass on the role of Founder to others by Deed or by the Founder's Will.
4. Can require the Fund to be wound up.

Who is the Founder

Usually, the Founder will be one of the Members of the Fund. There may be more than one Founder with the powers of the Founder being exercised jointly. A Founder need not necessarily be a Member of the Fund. A Founder may be a company.

The Founder and the Appointment and Removal of Trustees

One of the key roles of the Founder is to ensure that in conjunction with the Trustees, your Self Managed Superannuation Fund complies with the legal requirements of the laws governing Self Managed Superannuation Funds and the appointment and removal of Trustees. For this reason, the Founder is empowered to remove and replace Trustees. This will ensure that at all times Members of the Fund are also Trustees or Directors of a Corporate Trustee as required by the laws governing Superannuation Funds. Details of the power of the Founder concerning the retirement, removal and appointment of Trustees are set out in the Rules governing the Superannuation Fund.

Death or Retirement of the Founder

The Rules of your Superannuation Fund will also govern the resignation or death of the Founder. A Founder can appoint a substitute Founder by a Deed of Appointment or under the terms of a Will. Often the substitute Founder will be the Executor named in the Founder's Will. Care should be taken in identifying and nominating a substitute Founder due to the role and responsibility.

If there is no nominated Founder and no replacement appointed, the Legal Personal Representative of the last named Founder will assume the role of Substitute Founder. If there is at any time no Founder, the Trustees may with the consent of Members of the Fund appoint in writing a replacement Founder. If there are no Members, the Trustees will assume the role of Founder.

Effective Dates

The Fund must resolve to appoint new Trustees and/or Founders of the Fund. The date the parties meet will also be the date of the deed of appointment. However, the date on which the appointment takes effect can be a past or future date. For example, you should ensure that the effective date of the appointment is a date prior to the new Trustee/Founder participating in Fund administration.

Meeting & Resolutions

It is not always a legal requirement that individuals physically attend a meeting of trustees or directors of a corporate trustee. Most modern trust deeds and company constitutions permit teleconferencing. Attendance by telephone can be a convenient method of meeting where parties are physically separated. You must indicate whether or not a party was or will be physically present at a meeting.

A circulating resolution is an alternative to attendance at a meeting in person or by telephone. A circulating resolution requires all parties to sign and date the resolution. It is also necessary for the parties to be provided with all relevant material relating to the resolution. This may not always be convenient or a secure means of safeguarding the material.

Importantly, a circulating resolution does not have any legal effect until the resolution is signed and dated by all required parties. It will also only be effective from the date on which the last signature is obtained to the circulating resolution. For these reasons, physical or telephone attendance at a meeting is preferred over a circulating resolution.

Other Issues

Duty may be payable on the deed of appointment in the State or Territory whose laws are to apply to the Fund.

DISCLAIMER:

MJHC Legal prepares documentation based on your written instructions. MJHC Legal is not licensed to provide financial product advice. The rules concerning Self Managed Superannuation Funds change and it may be advisable to request specific advice.

Liability limited by a scheme approved under Professional Standards Legislation