

SELF MANAGED SUPERANNUATION FUND NEW FUND INSTRUCTION SHEET

MJHC LEGAL LAWYERS

Superannuation · Property · Wills · Commercial

All correspondence to:
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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/Trust Name:

C. TRUSTEE DETAILS:

Is the Trustee a company or individuals?

company ☐

individual ☐

See Part P. Important Information on Trustee Requirements
(A company should be appointed as Trustee if more than 4
members are admitted to Fund)

If company, commence at Part D

If individuals, commence at Part E.

D. COMPANY TRUSTEE:

Company Name:

Street Address:

ACN:

Date of Registration:

DD/MM/YYYY

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.

E. INDIVIDUALS INVOLVED:

It will be necessary to appoint or nominate a Founder(s) of the Fund. See Part P. Important Information on the role of Founder. Member 1 will be the sole Founder unless otherwise stated. All members will be assumed present at meeting unless otherwise stated.

1. Full Name:

Street Address:

Gender:

male: ☐

female: ☐

DOB:

DD/MM/YYYY

This person is a: founder: ☐ member: ☐ sole member: ☐ individual trustee: ☐ sole director: ☐ director: ☐

Select each check box that is relevant for the roles performed by all individuals

Individual 1 details continue over page

If the sole director, are they also the sole company secretary?

Yes ☐ No ☐

If No, is there a separate company secretary?

Yes ☐ No ☐

If Yes, name of company secretary:

Meeting attendance: In person ☐ By telephone ☐ Via webcam ☐ Not Present in any capacity ☐

2. Full Name:

Street Address:

Gender:

male: ☐

female: ☐

DOB:

DD/MM/YYYY

This person is a:

founder: ☐

member: ☐

individual trustee: ☐

director: ☐

Meeting attendance: In person ☐ By telephone ☐ Via webcam ☐ Not Present in any capacity ☐

3. Full Name:

Street Address:

Gender:

male: ☐

female: ☐

DOB:

DD/MM/YYYY

This person is a:

founder: ☐

member: ☐

individual trustee: ☐

director: ☐

Meeting attendance: In person ☐ By telephone ☐ Via webcam ☐ Not Present in any capacity ☐

4. Full Name:

Street Address:

Gender:

male: ☐

female: ☐

DOB:

DD/MM/YYYY

This person is a:

founder: ☐

member: ☐

individual trustee: ☐

director: ☐

Meeting attendance: In person ☐ By telephone ☐ Via webcam ☐ Not Present in any capacity ☐

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

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?
- ever received a civil penalty order?
- ever been disqualified by the ATO/APRA or the Federal Court?

Yes ☐

No ☐

Yes ☐

No ☐

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.

F. REPRESENTATIVE CAPACITY:

Is any trustee or trustee director acting as the representative of a member?

eg. LPR, Guarantor, Attorney, Parent, Guardian

Yes ☐

No ☐

If Yes, provide details in Part L. Additional Information

G. FOR MINUTES OF MEETING:

Place of Meeting:

Address of Individual 1 unless otherwise stated

Name of Chairperson:

Individual 1 unless otherwise stated

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

- ☐ The absent Trustees/directors will sign Resolutions having attended meeting by telephone/webcam

OR

- ☐ Circulating Resolutions required for signature by all Trustees/directors:

(See Part P. Important Information)

H. REQUIRED INFORMATION:

When is the meeting date?

(This is the date the individuals involved met and decided to establish the fund.)

DD/MM/YYYY

or for client flexibility is date to be left blank?

Yes ☐

No ☐

When is the Fund to commence?

DD/MM/YYYY

(this may be before or after the meeting date)

or for client flexibility is date to be left blank?

Yes ☐

No ☐

I. APPLICABLE LAW:

Which State or Territory laws do you wish to apply to the Fund?

- Current Address of the Founder: Yes ☐

No ☐

If No, please specify which State/Territory

- Specific State/Territory:

(see Other Issues in Part P. Important Information)

J. FUND ADMINISTRATION:

Will the Trustee(s) self administer the Fund

Yes ☐

No ☐

If No, Name of Administrator

OR is Administrator to be appointed at a future Meeting?

Yes ☐

No ☐

K. AUDITOR:

Name of Auditor

OR is Auditor to be appointed by the Administrator?

Yes ☐

No ☐

OR is Auditor to be appointed at a future Meeting?

Yes ☐

No ☐

L. ADDITIONAL INFORMATION:

M. DOCUMENT DELIVERY:

Prepared documents are to be sent by:

email: ☐

mail: ☐

express post: ☐

Additional Fee of \$18.50 applies

N. 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.

O. COMPLETED INSTRUCTIONS:

Please forward completed instructions to MJHC Legal:

email: ca@mjhlegal.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 new fund documentation and agrees to pay the Fee payable for the new fund. You understand that typing/spelling errors or incorrect information given is your responsibility

Print Form

Submit by Email

Reset

P. 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. The members cannot be employees/employers of each other unless they are related.
- 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 director 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.
- Although there is a general restriction on non related employees/employers being individual trustees or directors of a corporate trustee, SIS does permit:
 - unrelated co-directors to be members of the same fund,
 - unrelated members can still be employers of the relatives of other members.

Note: the exceptions to the general restrictions only apply where the parties are all members of the same fund.

Role of Founder

To assist in the orderly administration of a Self Managed Superannuation Fund documentation prepared by MJHC Legal operate with an individual or company performing the role of Founder.

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 an employer company or a company associated with the Members.

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, if an individual, the 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, if an individual, 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 establish the Fund. The date the parties meet will also be the date of the deed. However, the date on which the Fund takes effect can be a past or future date. For example, if there has been a member contribution, you should ensure that the effective date of the Fund establishment is a date prior to the contribution occurring.

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

- Unless otherwise stated, your Self Managed Superannuation Fund is governed by the laws applicable to the laws of the State or Territory of the address disclosed in the documents for the Founder.
- Duty may be payable on the deed amendment in the State or Territory whose laws are to apply to the Fund.
- Further information about the Role of Founder is included in the documentation prepared as part of the Fund upgrade.

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.