

client alert | smsf trustees compliance checklist

April 2009

The checklist below highlights the common areas that trustees of self-managed superannuation funds (SMSF) must be aware of when discharging their obligations to ensure compliance with superannuation legislation and other legal obligations.

Area	Description	Yes	No
Fund purpose	Is the SMSF maintained for the sole purpose of providing benefits for each member of the fund on or after the: <ul style="list-style-type: none"> • member's retirement from gainful employment; • member's attainment of her or his preservation age; or • member's death, if the death occurred before the member retired from gainful employment or before the member attained a prescribed age. 	<input type="checkbox"/>	<input type="checkbox"/>
Investment strategy	Does the fund have an investment strategy which takes into consideration the following areas: <ul style="list-style-type: none"> • risk; • diversity; • liquidity; and • ability to discharge the fund's existing and prospective liabilities? 	<input type="checkbox"/>	<input type="checkbox"/>
	Is the investment strategy documented in writing?	<input type="checkbox"/>	<input type="checkbox"/>
	Is the strategy reviewed regularly and are the investments of the fund invested in accordance with the strategy?	<input type="checkbox"/>	<input type="checkbox"/>
Investment	Are the assets of the fund maintained separately from those of the trustees and/or members?	<input type="checkbox"/>	<input type="checkbox"/>
	Do the titles to the assets properly identify the funds as the owner?	<input type="checkbox"/>	<input type="checkbox"/>
	Is a separate bank account maintained for the fund?	<input type="checkbox"/>	<input type="checkbox"/>
Investment restrictions	Did the fund lend money or provide direct (or indirect) financial assistance to a member or a member's relative?	<input type="checkbox"/>	<input type="checkbox"/>
	Did the fund incur any borrowings?	<input type="checkbox"/>	<input type="checkbox"/>
	If the fund invests in artwork and/or collectables, does the investment strategy permit these investments?	<input type="checkbox"/>	<input type="checkbox"/>
	Are the in-house assets of the fund more than 5% of the total market value of the fund's assets as at 30 June 2009?	<input type="checkbox"/>	<input type="checkbox"/>
	Did the fund intentionally acquire any assets from its members, unless an exception applied (for eg, business real property)?	<input type="checkbox"/>	<input type="checkbox"/>

Area	Description	Yes	No
Contributions	Are contributions accepted in accordance with the fund's deed and superannuation legislation?	<input type="checkbox"/>	<input type="checkbox"/>
Paying benefits	If benefits are paid to members, are the benefits paid in accordance with the fund's deed and superannuation legislation?	<input type="checkbox"/>	<input type="checkbox"/>
Trustees' responsibilities	Have all the trustees or directors of the corporate trustee consented in writing to their appointment?	<input type="checkbox"/>	<input type="checkbox"/>
	If any trustee or a director of the corporate trustee is appointed during the income year, has the trustee or director signed a declaration?	<input type="checkbox"/>	<input type="checkbox"/>
	Has the Tax Office been notified of any changes to the trustees that took place during the income year?	<input type="checkbox"/>	<input type="checkbox"/>
Record keeping	Has the fund maintained: <ul style="list-style-type: none"> • accounting records for five years; • records relating to the management of the fund (eg minutes of meetings, changes of trustees, and written consent by members to be appointed as trustees) for 10 years; • records relating to capital gains tax on the sale of assets; • records relating to deductions claimed and operating expenses of the fund; and • tax file numbers of members? 	<input type="checkbox"/>	<input type="checkbox"/>

If you answered negatively to a question, you should contact us to seek advice on whether there has been a breach of the superannuation legislation and/or related legislations.

Trustees' duties and obligations

Trustees of SMSFs are subject to extensive duties and obligations arising from

- the trust deed or governing rules of the fund;
- the law of trusts;
- the provisions of the superannuation legislation; and
- the requirements imposed by other legislations such as the Income Tax Acts and the Corporations Act.

Breaches of these duties may result in a trustee being subject to civil and criminal penalties, including fines, imprisonment or loss of complying fund status in more serious cases. Further, a trustee in breach of her or his duties may be subject to a legal claim for damages from a fund member affected by the breach of trust.