Who can be an SMSF trustee?

Every member of a self-managed super fund must also be a trustee of the fund, or a director of its corporate trustee. Before you set up a fund or add a new member, it pays to check that everyone is eligible. Getting this wrong can stall your registration or expose you to penalties.

Meet the basic requirements

To act as a trustee or director, a person must be at least 18 years old, free of any legal disability such as mental incapacity, and not a disqualified person. If a prospective trustee has unlodged tax returns or unpaid tax debts, that alone can hold up the fund's registration until their affairs are in order.

Understand who counts as disqualified

You are a disqualified person if any of the following apply to you. You have been convicted of a dishonest offence, in Australia or overseas, such as fraud or theft. This covers offences at any time, including convictions that have been spent or were never formally recorded. You have been issued with a civil penalty order under superannuation law. You are an undischarged bankrupt or otherwise insolvent under administration. Or you have previously been disqualified by a court or regulator, such as the ATO or APRA.

A disqualification by the ATO is permanent unless the ATO revokes it, and applies to any SMSF, not just the fund you were involved with at the time. You can check the ATO's disqualified trustees register to confirm whether someone has been disqualified before.

Knowingly acting as a trustee while disqualified is an offence. A legal personal representative cannot step in to act on a disqualified person's behalf either.

Apply for a waiver where you can

If your disqualification came from an offence that did not involve serious dishonest conduct, and that conviction is the only reason you are disqualified, you may be able to apply to have that status waived. Serious conduct here means a penalty actually imposed of two years' imprisonment or more, or a fine of 120 penalty units or more. Apply in writing within 14 days of the conviction, including the court documents and your consent for the ATO to make enquiries. The ATO can only accept a late application in exceptional circumstances.

Confirm the company can act as trustee

A company cannot act as a corporate trustee if, among other things, the company knows or has reasonable grounds to suspect that a responsible officer (a director, secretary or executive officer) is disqualified, if winding up has begun, or if ASIC has deregistered the company.

Consent and declare in writing

Before consenting, make sure you understand what the role involves. You need the knowledge, time and skills to manage the fund properly. There is a free online trustee course that can help you understand your role and responsibilities.

Every trustee or director must consent in writing to their appointment, and this record must be kept for the life of the fund and for 10 years after it winds up. You must also sign the ATO's Trustee declaration within 21 days of appointment and keep it while you remain a trustee, or for 10 years, whichever is longer.

Check before you appoint

Trustee eligibility is easy to take for granted and costly to get wrong. Before establishing a fund or admitting a new member, confirm that every prospective trustee or director meets the age and capacity requirements, is not a disqualified person, and has their tax affairs up to date.