

SMSF CORPORATE TRUSTEE EXPLANATORY GUIDE FOR THE SPECIAL PURPOSE COMPANY

MJHC LEGAL LAWYERS

Superannuation · Property · Wills · Commercial

Suite 5, Level 2
Monash Corporate Centre
750 Blackburn Road
Clayton Vic 3168
t: +61 3 9543 5544

All correspondence to:
PO Box 412
Mount Waverley Vic 3149
www.mjhclegal.com
f: +61 3 9543 5133

The contents of the PantherCorp CST SMSF Corporate Trustee Constitution are different from familiar contents of the PantherCorp CST Constitution for proprietary companies. It has been customised to reflect the requirements of the superannuation law, desirable control and succession arrangements and desirable rules to govern the operation of an SMSF corporate trustee.

This special purpose company constitution is best used in conjunction with the PantherCorp CST Superfund Package Version 7.0 and later. This special purpose company constitution can be used with other deed providers' superannuation fund rules but the fund should obtain appropriate advice to ensure that there are no inconsistencies between the fund rules and the special purpose company constitution.

In using this special purpose company constitution, you must have regard to the following:-

1. The replaceable rules of the Corporations Act do not apply.
2. This constitution can only be used for a company whose sole role is that of SMSF trustee.
3. Company shares can only be held by fund members, the spouses, domestic partners, children, legal personal representatives of fund members and/or companies and trusts associated with those individuals.
4. The company and directors do not have any of the usual discretions that apply to share transfers when dealing with shares held by or to be transferred to fund members and their associates.
5. At a general meeting of shareholders, decisions are carried by majority vote unless a poll is required. Where a poll is required, the resolutions are made where each shareholder's vote is weighted in relation to the value of their interest or entitlement in the fund. If the shareholder is not a fund member, their vote is weighted in relation to the value of the interest in the fund of the fund member they represent. This means that on taking a poll, if the value of shareholder's superannuation fund interest is 75% of the fund net assets, then that fund member/shareholder will be worth 75% of the vote.
6. The company is only allowed to appoint directors whose appointment will permit the SMSF to satisfy the definition of self managed superannuation fund under the SIS Act. The people who are eligible to be directors are set out in s17A of the SIS Act.
7. Directors who are the parent or guardian of an infant fund member cease to be directors when the child attains the age of 18 years. Directors who are the legal personal representatives of a deceased fund member cease to be directors when the SMSF commences to pay a death benefit in relation to that deceased fund member.
8. If a fund member dies, the company directors are required to appoint the LPR of that deceased fund member as a director of the company if that LPR requests that they be appointed. An LPR cannot be 'automatically appointed' as the SIS Act and the Corporations Act require all directors to consent to their appointment.
9. In managing the special purpose company, directors' decisions are determined by a majority of votes. However:-
 - 9.1. when making decisions the directors must have regard to the covenants imposed on SMSF trustees under the superannuation law.
 - 9.2. in the case of deadlock, each individuals director's vote shall be weighted in relation to the value of the superannuation interest of the fund member they represent.
10. Where there is more than one legal personal representative eligible to be appointed as a director, the company is not obliged to appoint more than one of those legal personal representatives as a director to represent the interests of the fund member. However, the company and the directors may appoint more than one legal personal representative.
11. In managing the affairs of the company, where there is more than one legal personal representative appointed as a director to represent a fund member or a fund member who has died, only one of the directors who is a legal personal representative is entitled to vote unless all of the directors determine otherwise.
12. When the company as trustee is making decisions about the payment of death benefits for a deceased member, a resolution concerning the payment of that death benefit cannot be passed unless a director who is the legal personal representative of the estate of the deceased fund member has approved or consented to the resolution dealing with the death benefit payment.