



## 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                       |
|--------------------------------|---|--------------------------|--------------------------|
| <b>Fund purpose</b>            | <p>Is the SMSF maintained for the sole purpose of providing benefits for each member of the fund on or after the:</p> <ul style="list-style-type: none"> <li>• member's retirement from gainful employment;</li> <li>• member's attainment of her or his preservation age; or</li> <li>• member's death, if the death occurred before the member retired from gainful employment or before the member attained a prescribed age.</li> </ul> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Investment strategy</b>     | <p>Does the fund have an investment strategy which takes into consideration the following areas:</p> <ul style="list-style-type: none"> <li>• risk;</li> <li>• diversity;</li> <li>• liquidity; and</li> <li>• ability to discharge the fund's existing and prospective liabilities?</li> </ul>   | <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"/> |
| <b>Investment</b>              | 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"/> |
| <b>Investment restrictions</b> | 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                       |
|-----------------------------------|---|--------------------------|--------------------------|
| <b>Contributions</b>              | Are contributions accepted in accordance with the fund's deed and superannuation legislation?   | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Paying benefits</b>            | 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"/> |
| <b>Trustees' responsibilities</b> | 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"/> |
| <b>Record keeping</b>             | Has the fund maintained: <ul style="list-style-type: none"> <li>• accounting records for five years;</li> <li>• 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;</li> <li>• records relating to capital gains tax on the sale of assets;</li> <li>• records relating to deductions claimed and operating expenses of the fund; and</li> <li>• tax file numbers of members?</li> </ul> | <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.