

**Checklist to determine the appropriateness of an SMSF deed**

*We note that this checklist is to be used as a general guide only, and is not to be taken as an exhaustive list of factors to determine the appropriateness of an SMSF deed. Furthermore, a deed may still be inappropriate even if it contains provisions in relation to the factors listed below. The wording of the provisions should be analysed to ensure compliance with Australian superannuation law, and to check that the powers and restrictions are adequate for the current and proposed activities of the SMSF trustee. Where the SMSF trustee is uncertain about whether the SMSF trust deed should be updated, we recommend that they seek expert advice.*

<p><b>Factors to consider in determining whether your SMSF deed is appropriate</b></p> <p><i>In relation to each of the below factors, a 'No' response highlights that the SMSF deed may not be appropriate in relation to this factor. Further consideration may be required to determine whether the SMSF deed should be updated.</i></p>	<p><b>Yes / No</b></p>
<p><b>Date of the Deed</b></p> <p>Substantial superannuation law reforms have been implemented since 2007. Was the deed executed after 2006? If 'No', the deed will require updating.</p>	
<p><b>Enduring Power of Attorney</b></p> <p>Does the deed contain powers allowing an attorney under an enduring power of attorney to act (or be appointed) in place of a member / individual trustee (eg, on loss of capacity)?</p>	
<p><b>Legal Personal Representative ('LPR')</b></p> <p>Does the deed contain powers allowing an LPR (ie, executor of a will) to act (or be appointed) in place of a member / individual trustee on their death?</p>	
<p><b>Investment</b></p> <p>Does the deed contain expansive powers for the SMSF trustee to invest in different assets and classes of assets?</p>	
<p><b>Insurance</b></p> <p>Does the deed contain powers for the SMSF trustee to hold insurance?</p>	
<p><b>Limited Recourse Borrowing Arrangements ('LRBAs')</b></p> <p>Does the deed contain powers for the SMSF trustee to undertake an LRBA?</p>	
<p><b>Custodial Arrangement Power</b></p> <p>Does the deed contain powers for the SMSF trustee to hold trust assets in the name of a custodian / bare trustee?</p>	
<p><b>Elections</b></p> <p>Does the deed provide flexibility to make elections or any tax choices, including for capital gains tax ('CGT') relief?</p>	
<p><b>Contributions and Total Super Balance ('TSB')</b></p> <p>Does the deed contain powers to deal with contributions that may cause the TSB to exceed a given threshold?</p>	

<p><b>Transfer Balance Cap ('TBC')</b></p> <p>Does the deed contain powers to manage a member's TBC in retirement (pension) phase, including powers relating to the partial commutation of an account-based pension?</p>	
<p><b>Account-Based Pensions ('ABPs')</b></p> <p>Does the deed contain powers for a member to commence and be paid ABPs?</p>	
<p><b>Transition to Retirement Income Streams ('TRISs')</b></p> <p>Does the deed contain powers for a member to commence and be paid TRISs?</p>	
<p><b>Conditions of Release</b></p> <p>Does the deed allow for benefit payments consistent with all conditions of release under current superannuation law (including, eg terminal medical condition, total permanent disablement, and temporary incapacity)?</p>	
<p><b>Payment of Binding Death Benefit Nominations ('BDBNs')</b></p> <p>Does the deed provide an express power to pay a death benefit in a specific form, eg lump sum (including in specie) or income stream?</p>	
<p><b>Non-Lapsing BDBNs</b></p> <p>Does the deed contain powers for a member to make a BDBN that continues in full force and effect until it is revoked despite regulation 6.17A(7) of the <i>Superannuation Industry (Supervision) Regulations 1994</i> (Cth)?</p>	

Reviewed and prepared by:

Dated: