

Is it possible to admit your child as a member to your SMSF?

Bob and Barbara have recently established an SMSF with a corporate trustee and want their 17-year-old son, Ben, to join their SMSF. Can Ben join?

We often get asked by our clients who are contemplating establishing an SMSF whether they can admit a child member to their SMSF. While it is not uncommon to admit a child member to join your SMSF there are a number of issues to consider first before going down this avenue.

ISSUE 1: DOES THE TRUST DEED PERMIT A CHILD MEMBER TO BE ADMITTED?

Bob and Barbara will need to consider whether the current rules of their Fund permit a child member to be admitted to the Fund.

If Bob and Barbara's trust deed expressly prohibited the admission of a child member to the Fund then the rules of the Fund would need to be amended to permit the admission of Ben as a child member.

If the rules are silent on the issue then it might be appropriate to amend them to specifically permit the admission of a child member in order to put the issue beyond doubt.

ISSUE 2: DOES THE CURRENT INVESTMENT STRATEGY OF THE FUND NEED TO BE REVISED?

Another important aspect to consider is whether the current investment strategy of the Fund will need to be revised once the child member is admitted to the Fund. That child member's investment strategies would be materially different from those of his/her parents.

ISSUE 3: WHO WILL ACT AS THE CHILD'S REPRESENTATIVE?

As Ben is under 18, he is legally unable to act as a director of the corporate trustee. An Authorised Signatory such as a parent, guardian or legal personal representative will be required to execute the member admission and appointment of a director documents to act as a member and director on the child member's behalf.

Barbara has decided that she will be a representative director on Ben's behalf until he turns 18 years old. She will need to be provided with a copy of the current General Product Disclosure Statement of the Fund. Barbara will also need to sign the application for membership documents on behalf of Ben and provide Ben's TFN to the ATO if required.

As Barbara has already been appointed as a director of the corporate trustee in her own right she is not required to be appointed as a director again. However, it is important to note here that if Barbara was not already appointed as a director then her appointment as a director must occur before or at the same time as the admission of Ben as a member of the Fund. If the appointment is made after the admission of Ben, then the Fund may not satisfy the definition of "self managed superannuation fund".

It is also important to notify the Australian Taxation Office ('ATO') of the change in membership of the Fund. This can be done by using ATO Form 3036, AUSkey or ATO Digital Certificate.

ISSUE 4: CHILD CONTRIBUTIONS

It is also worth mentioning that contributions made for a child under 18 years old count towards their non-concessional contributions cap. This means that if Barbara made a contribution for Ben then the contribution would count towards Ben's non-concessional contribution cap and would not count towards Barbara's contribution cap.

ISSUE 5: ATTAINING 18 YEARS

Once Ben turns 18 years old he is legally able to act as a director of a corporate trustee in his own right and Barbara who has been acting as a representative director will no longer be required to do so.

Section 17(3) of the Superannuation Industry (Supervision) Act 1993 (Cth) ("the SIS Act") provides that a parent or guardian of an underage member may act as trustee of the Fund in place of the member while the member is aged under 18. An underage member must be appointed as a director of the corporate trustee within 6 months of their 18th birthday to ensure the trustee structure meets the requirements of the SIS Act and for the Fund meet the definition of a self managed superannuation fund.

Alternatively, Ben could appoint Barbara who was previously acting as his representative director as his superannuation attorney. In this case, Barbara will continue to act as his representative director and he need not be appointed as a director. Ben would need to execute an enduring power of attorney to adopt this course and it would need to be restricted to superannuation matters.

If Ben didn't want to be involved in the activities of the corporate trustee he could be appointed as a director and then appoint Barbara as his alternate director. She could then exercise Ben's powers as a director in his place until he decided to take up his role personally.

For more information on any aspect covered in this article, please call SUPERCentral on 02 8296 6266 or email info@supercentral.com.au.