

- ▶ The provision of actuarial advice should the fund self-insure or the trustee pay a pension from a pool of the fund's assets not segregated for this purpose; and
- ▶ Maintaining currency of the rules of the fund and the product disclosure information supplied to members

Costs associated with any of the above may be obtained in a schedule from the provider of any financial services to the trustee.

17. Understanding the Governing Rules of the Fund

A SMSF has a lifecycle and the governing rules of the *Strategist* SMSF have been designed to reflect this. This lifecycle at first requires the fund to be formed, a trustee appointed and members admitted. The fund will then receive contributions and may receive transfers of benefits from other superannuation funds. Once received the trustee then invests those monies or assets. The trustee must comply with the superannuation laws in all its operational activities. The SIS Act requires the fund to be audited each and every year. An important part of the lifecycle – the most important for members – are the benefits; when, how and the quantity that are to be paid to members. Although SMSFs can continue indefinitely the trustee may also terminate the fund.

To reflect the lifecycle of the fund the governing rules are contained in the following Parts:

Part One	Establishment of the Fund
Part Two	Operation and Administration of the Fund
Part Three	Payment of Benefits by the Trustee
Part Four	Changes to the Fund
Part Five	Winding up of the Fund
Part Six	Interpretation

For a more detailed look at what each part contains refer to the index at the start of the rules.

Great care has been taken to ensure that the rules remain as flexible as possible yet still ensure that they meet current standards of the superannuation laws as well as other laws that may impact on the trustee and members of the fund. These other laws include taxation, bankruptcy, family, social security and trustee laws.

Most rules have been divided into two parts. The first part provides a broad explanation of the rule. This explanation is designed to assist the reader to understand the purpose of the rule. Importantly the explanation does not form part of the rules; rather it is ancillary to them. The second part of each rule is the rule itself.

At the end of the rules are interpretative provisions. When reading the rules, if a particular term or word is capitalised then a definition may be found in Rule 62.

Establishment of the MAS Superannuation Fund

Explanation

A superannuation fund is a form of trust. Trusts are normally required to be established by deed. By execution of this Deed the Trustee formally establishes the Fund.

To benefit from concessional taxation rules the sole purpose of the Fund must be the provision of superannuation pension benefits or retirement, incapacity or death benefits to Members (or relatives of deceased Members). The Fund might also be able to provide pension benefits to members prior to the retirement of the member. However the Fund should not be formed to carry on a business.

In order for this Deed to be admissible as evidence in a court of law it may have to be stamped in the local jurisdiction of the Trustee.

The Deed does not contain the rules of the Fund. Rather the rules of the Fund are contained in a separate document and unlike the Deed can be (and should be) amended from time to time to reflect legislative changes.

THE DEED

THIS DEED is made on 01 April 2008

ABN 66 012 878 629
WESTERN AUSTRALIA STAMP DUTY
04/04/08 15:46 001958117-002
DUP \$ ***** 5.00
O/S \$ *****20.00

BY:

Manmahon Samrita Singh ("Trustee")

Arvind Singh ("Trustee")

WHEREAS

- A The Trustee is that person who has executed this Deed or if more than one person those persons collectively.
- B The Trustee wishes to establish a superannuation fund ("the Fund").
- C By execution of this Deed the Trustee signifies its consent to its appointment as the first Trustee of the Fund and acknowledges that it has read and agree to be bound by the rules of the Fund.
- D The Trustee intends that the Fund should be a complying self managed superannuation fund as defined for the purposes of the *Superannuation Industry (Supervision) Act 1993*.

NOW IT IS HEREBY AGREED

Initial Trustee

- 1** The Trustee if allowed by the rules of the Fund to be appointed as a trustee of the Fund is hereby appointed as the trustee of the Fund.

Establishment of the Fund

- 2** The Trustee hereby agrees to receive contributions and any other amounts paid to it on behalf of members and will hold those contributions and any income thereon according to the rules of the Fund.

Name of the Fund

- 3** The name of the Fund will be **MAS Superannuation Fund** or such other name as the Trustee might in writing determine.

Rules of the Fund

- 4** The rules of the Fund are those rules attached to this Deed, any amendment of or substitution of those rules, and any other rule that is deemed by any law to be a rule of the Fund.

Purpose of the Fund

- 5** The Fund is to be maintained solely for the provision of one or more of those purposes referred to in section 62 of the *Superannuation Industry (Supervision) Act 1993* as core purposes or ancillary purposes including any purpose that the Regulator (as defined by the *Superannuation Industry (Supervision) Act 1993*) approves in writing.

Complying Self Managed Superannuation Fund

- 6** The Fund must at all times do those things that would cause it to be a "complying self managed superannuation fund" as defined for the purposes of the *Superannuation Industry (Supervision) Act 1993* and must not do those things that would or might cause it not to be a "complying self managed superannuation fund" as defined for the purposes of the *Superannuation Industry (Supervision) Act 1993*.

Successor Acts

- 7** A reference to an Act includes a reference to any successor act to that Act.

This Deed establishing the MAS Superannuation Fund is hereby executed as a deed on

01 / April / 2008

by

Manmohan
~~Manmohan~~ Samrita Singh as
Trustee

Mrs Manmohan Singh
(Signature)

in presence of

Armit Singh
9 Querrin Ave
Willetton 6155

Armit Singh
(Signature of Witness)

Arvind Singh as Trustee

Arvind Singh
(Signature)

in presence of

Armit Singh
9 Querrin Ave
Willetton 6155

Armit Singh
(Signature of Witness)

THE RULES OF THE FUND

Note – terms capitalised are defined in the Definitions.

Part One: Establishment of the Fund

Purpose of the Fund

Rule 1. The Fund must satisfy the sole purpose test

Explanation

- *The Fund must be established and must be maintained solely for the provision of Core Purposes or for the provision of Core Purposes and Ancillary Purposes of the 'sole purpose test' in the SIS Act.*
- *The SIS Act defines Core Purposes to include the provision of Benefits to a Member upon his or her retirement or to the Legal Personal Representative or Dependants of the Member in the event of the Member's death.*
- *The SIS Act also provides that the Trustee may maintain the Fund for both Core Purposes and for Ancillary Purposes. An Ancillary Purpose may include the provision of Temporary or Permanent Incapacity Benefits to a Member where the Member terminates employment as a consequence of ill health.*
- *An Ancillary Purpose also includes the provision of such Benefits as the Regulator has approved in writing.*

Rule

- 1.1.** The Trustee must ensure that the Fund is maintained for one or more of the Core Purposes or for one or more of the Core Purposes and for one or more of the Ancillary Purposes and for no other purpose.
- 1.2.** If the Trustee is not a Constitutional Corporation the sole or primary purpose of the Fund is the provision of old age pensions.

Appointing the Trustee

Rule 2. Who may and may not be a Trustee

Explanation

- *The Fund must have a Trustee.*
- *Section 17A of the SIS Act must be satisfied in order for the Fund to be a Self Managed Superannuation Fund. This section requires that:*
- *each Member must be a Trustee or if the Trustee is a company each Member must be a director of that company;*
- *a person who is not a Member may not be a Trustee or a director of a company which is a Trustee,*
- *except that a Legal Personal Representative may also be a Trustee.*
- *On the Death of a Member the Legal Person Representative of that Member should be appointed as a Trustee or as director of a company that is a Trustee – see Rule 52.*
- *For single member funds another person is required to be appointed as a Trustee, not being an employer of the Member unless also a relative of the Member.*

However these Rules do not allow – for the purposes of administrative simplicity – for a company to be a Trustee if a Member is also a Trustee.

If a company is appointed Trustee the constitution of that company should be compatible with the Rules.

Any person accepting appointment as a Trustee or director of a company that is the Trustee must read and agree to the Rules.

A disqualified person may not be a Trustee. A disqualified person may include a person who has committed a civil or criminal offence or is bankrupt.

If a natural person is a Trustee a company cannot also be a Trustee.

Rule

Who may be a Trustee

- 2.1. Natural persons may be Trustees or a company may be the Trustee but natural persons and companies cannot both be Trustees.
- 2.2. Subject to this Rule and Rule 52 below (which applies on death of a Member) an individual may only be a Trustee if the individual is a Member.
- 2.3. Subject to this Rule and Rule 52 below (which applies on the death of a Member) a company may only be a Trustee if all the directors of the company are Members.
- 2.4. Notwithstanding Rule 2.2 and Rule 2.3 if there is only one person who is a Member then:
 - (a) that Member or the Legal Personal Representative of that Member and one other natural person who is a Relative of the Member or is a person who is not an employer of the Member may be the Trustee; or
 - (b) a company may be the Trustee the sole director of which is the Member or the Legal Personal Representative of the Member or the company may have two directors one of which is the Member or the Legal Personal Representative of the Member and another person who is a Relative of the Member or is a person who is not an employer of the Member.
- 2.5. If the Member is under a legal disability then that Member cannot be appointed as a trustee but the Legal Personal Representative of that Member may be appointed as a Trustee.
- 2.6. If the Regulator appoints a person or company as a Trustee that person or company may be a Trustee.
- 2.7. Notwithstanding any other provisions of these Rules a person or company shall not be appointed as a Trustee unless they have provided the Trustee with a written consent to that appointment and have acknowledged that they have read and agreed to be bound by the Rules.
- 2.8. Notwithstanding any other provision of these Rules an Approved Trustee may be appointed as the Trustee.

Who may not be a Trustee

- 2.9. A person cannot be a Trustee if:
 - (a) at any time
 - (i) the person was convicted of an offence against or arising out of a law of the Commonwealth of Australia, a State or a Territory of Australia or a foreign country, being an offence in respect of dishonest conduct; or
 - (ii) a Civil Penalty Order was made in respect of the person; or

- (b) the person is an insolvent under administration; or
- (c) a Regulator has disqualified the person (for the purposes of section 120A of the *SIS Act*) and the Regulator has not waived that person's status as a disqualified person.

2.10. A company cannot be a Trustee if:

- (i) the company knows, or has reasonable grounds to suspect, that a person who is, or who is acting as a Responsible Officer of the company has been disqualified by the Regulator (for the purposes of section 120A of the *SIS Act*); and
- (ii) the company knows or has reasonable grounds to suspect that:
 - (1) the person is not eligible under section 126B(1) of the *SIS Act* to apply to APRA for a declaration waiving his or her status as a disqualified person; or
 - (2) the person is so eligible under section 126B(1) of the *SIS Act* to apply to APRA for a declaration waiving his or her status as a disqualified person but that person will not make an application under subsection 126B(3) of the *SIS Act* seeking a waiver of that status; or
- (b) a receiver, or a receiver and manager, has been appointed in respect of property owned by the company; or
- (c) an official manager, deputy official manager or administrator has been appointed in respect of the company; or
- (d) a provisional liquidator has been appointed in respect of the company; or
- (e) the company has begun to be wound up.

2.11. Notwithstanding Rules 2.9 and 2.10 above a person or company can be appointed as a Trustee if that appointment as a Trustee is authorised by the Regulator.

Rule 3. Appointment of a Trustee

Explanation

This Rule provides the mechanism for appointing those persons eligible to be appointed as Trustees. This Rule also allows an individual to be replaced as a Trustee by a company which is a Trustee and for a company which is Trustee to be replaced as Trustee by an individual.

Trustees of the Fund will be personally liable for any liabilities incurred by the Fund (although they may be entitled to indemnity by the Fund). Where there is more than one Trustee each Trustee is jointly and severally liable for the liabilities of the Fund. As a consequence persons causing the establishment of the Fund might prefer that a company be appointed the Trustee of the Fund rather than individuals being appointed Trustees of the Fund.

Rule

- 3.1.** Upon establishment of the Fund a person is appointed as Trustee provided that that person:
- (a) has agreed to be Trustee by reason of execution of the Deed; and
 - (i) has consented in writing to become a Member or is the Legal Personal Representative of a person and has agreed in writing to that person becoming a Member; or
 - (ii) if the Fund has only one Member – is a Relative of the Member or is a person who is not an employer of the Member;
 - (b) has agreed to be bound by the Rules;

- (c) is eligible to be appointed a Trustee; and,
 - (d) has read the Product Disclosure Statement.
- 3.2.** Upon establishment of the Fund a company is appointed as Trustee provided all the following conditions are met:
- (a) the company and its directors have agreed to be Trustee by reason of execution of the Deed;
 - (i) all directors have consented in writing to become Members or they are the Legal Personal Representative of a person and have agreed in writing to that person becoming a Member; or
 - (ii) if the Fund has only one Member and two directors – the director that is not a Member is a Relative of the Member or is a person who is not an employer of the Member;
 - (b) the company and its directors agree to be bound by the Rules;
 - (c) the company is eligible to be appointed a Trustee; and
 - (d) all the directors have read the Product Disclosure Statement.
- 3.3.** Subject to the provisions of these Rules where the Trustee accepts a person as a Member, that person or a Legal Personal Representative of that person is appointed as a Trustee unless that person or a Legal Personal Representative of that person becomes a director of a company which is the Trustee.
- 3.4.** On appointment of a person as a Trustee or on appointment of a company as a Trustee after 30 June 2007 that person or each director of that company shall sign a declaration in that form as required by the Act certifying that he or she understands their duties as a trustee of a self managed superannuation fund or as a director of a company which is a trustee of a self managed superannuation fund.
- 3.5.** If a person is a Trustee or a director of a company which is a Trustee and another person is appointed after 30 June 2007 as a Trustee or as a director of a company which is a Trustee then that person must ensure that the newly appointed person signs a declaration in that form as required by the Act certifying that he or she understands their duties as a trustee of a self managed superannuation fund or as a director of a company which is a trustee of a self managed superannuation fund.
- 3.6.** Any such declarations referred to in Rules 3.4 and 3.5 shall be kept for at least 10 years or such longer period so far as it is relevant and shall be available for inspection by the Regulator if so required.
- 3.7.** Upon retirement of a Trustee and at the direction of that Trustee one of the following is appointed as Trustee in place of the Trustee who has retired:
- (a) if that Trustee is a person - another person who is a Member or a Legal Personal Representative of a Member or a company of which the Member or the Legal Personal Representative of the Member is a director; or
 - (b) if that Trustee is a company - a company all the directors of which are Members or are Legal Personal Representatives of Members
- provided that person or company is not already a Trustee.

Becoming a Regulated Superannuation Fund

Rule 4. The Trustee must ensure that the Fund is a Regulated Superannuation Fund

Explanation

To obtain a tax concession the Fund must be a Complying Self Managed Superannuation Fund. A Self Managed Superannuation Fund will not be a Complying Self Managed Superannuation Fund if it is not a Regulated Superannuation Fund.

Rule

The Trustee must cause the Fund to at all times be a Regulated Superannuation Fund.

Trustee Operations and Obligations

Rule 5. Removal and Retirement of a Trustee

Explanation

The purpose of this Rule is to provide a mechanism for the removal or retirement of a person or company as a Trustee.

Rule

- 5.1.** A Member may retire as a Trustee provided:
- (a) a company of which the Member is a director is appointed as Trustee; or
 - (b) a Legal Personal Representative of that Member is appointed as a Trustee.
- 5.2.** If the Fund has only one Member, a person who is not a member and who is a Trustee may retire as a Trustee provided that another person who is a Relative of the Member or is a person who is not an employer of the Member is appointed as a Trustee.
- 5.3.** A company may retire as a Trustee provided:
- (i) all the directors of that company are appointed as Trustees; or
 - (ii) another company is appointed as a Trustee, provided the directors of that company are also directors of the company retiring as Trustee.
- 5.4.** Notwithstanding any Rule a Trustee may retire as Trustee of the Fund if an Approved Trustee is or has first been appointed as the Trustee of the Fund;
- 5.5.** Subject to these Rules and the Act a person or company is removed as a Trustee:
- (a) if the Trustee is a Member – upon that person ceasing to be a Member;
 - (b) If the Trustee is a Member – upon that Member becoming incapable of acting as Trustee unless a Legal Personal Representative of that Member is appointed as a Trustee in place of that Member;
 - (c) if the Trustee is a company – on that date four months from the time one or all of the directors of the company cease to be Members or the Legal Personal Representatives of Members;
 - (d) if the Trustee is prohibited from being a Trustee by reason of Rules 2.9, 2.10 or Rule 2.11 – on that date a Trustee is so prohibited from being a Trustee;
 - (e) if the continued appointment of the Trustee as a Trustee will cause the Fund to be a Non-Complying Self Managed Superannuation Fund – on the day before the

day the continued appointment of the Trustee as a Trustee will cause the Fund to be a Non-Complying Self Managed Superannuation Fund.

Rule 6. Remuneration and Indemnification of a Trustee

Explanation

A Fund will not be a Complying Self Managed Superannuation Fund if the Trustee receives any remuneration for acting as Trustee unless the Trustee is an Approved Trustee.

Rule

- 6.1.** A Trustee shall not be entitled to be remunerated for acting as a Trustee unless the Trustee is an Approved Trustee.
- 6.2.** A Trustee may apply the assets of the Fund in indemnification of itself or a former Trustee for expenses incurred by itself or a former Trustee in managing or administering the Fund provided:
 - (a) the Trustee or the former Trustee acted honestly in the matter in respect of which the indemnification is sought;
 - (b) the Trustee or the former Trustee did not intentionally or recklessly fail to exercise, in relation to the matter in respect of which indemnification is sought, the degree of care and diligence that the Trustee or the former Trustee was required to exercise.

Rule 7. Meetings of the Trustees

Explanation

If there is more than one Trustee, the Trustees should meet to decide matters such as the:

- *appointment of various professional advisers to the Fund including the Auditor,*
- *establishment of a bank account or cash management trust for the Fund,*
- *setting of an investment objective and investment strategy for the Fund,*
- *admission of Members to the Fund,*
- *acquisition and disposal of investments pursuant to the Fund's investment strategy,*
- *approval of the payment of Benefits to a Member (including payment of a Pension),*
- *payment of a Death Benefits,*
- *acceptance of a Binding Death Benefit Nomination from a Member,*
- *review of audit reports,*
- *creation of any Reserves.*

Normally the Manager, the person whom the Trustees have appointed to be responsible for the day-to-day administration of the Fund, will call meetings. However Members with Members' Account balances equal to 50% or more of the balances of all Members' Accounts can also call a meeting.

Where the Trustee is a company decisions will be made at meetings of the directors of that company rather than at meetings of the Trustees. In this case meetings of the company must be held in accordance with the constitution of that company. It is important that the constitution of any company that is a Trustee be compatible with the Rules.

These Rules are designed to ensure that Members would normally vote according to their interests in the Fund. The constitution of the Strategist special purpose company contains rules that are designed to only allow directors of any such company to vote at directors' meetings of that company according to the directors' interests in the Fund (or the interests of those Members who those directors represent).

Rule

- 7.1.** If there is more than one Trustee the Trustees must meet if the Manager or Members, the balance of whose Members' Accounts is equal to more than one half of the balance of all Members' Accounts, serves a notice of the meeting upon the Trustees requiring the Trustees to make a decision in respect of the Fund.
- 7.2.** The Manager or Members must give reasonable notice of any such meeting to each of the Trustees (which may be by mail, facsimile or email to that address, facsimile number or electronic address last nominated by each Trustee) unless the Trustees unanimously agree that the meeting may be held on some earlier date. Such written notice must:

 - (a) set out the place, date and time for the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this); and
 - (b) state the general nature of the business of the meeting.
- 7.3.** Where, through a link established by means of any system of telephone, audio or audio-visual communication approved by the persons eligible to attend a Trustee Meeting those persons will be taken to be assembled together at a meeting and all proceedings of those persons, conducted with the aid of the link, will be as valid and effectual as if conducted at a meeting at which all those persons were physically present.
- 7.4.** At any Trustee Meeting a quorum is equal to that number of Members, or the Legal Personal Representatives of those Members, the balance of whose Members' Accounts, is equal to more than one half of the aggregate balance of all Members' Accounts.
- 7.5.** At any Trustee Meeting, unless the persons entitled to and present at that meeting unanimously agree otherwise, a person shall be entitled to cast that number of votes as is equal to the nearest number of whole dollars of the balance of the Member's Accounts of that person plus that amount in any Reserve which the Trustee has determined might be transferred to that person's Member's Account.
- 7.6.** A resolution shall not be passed at any Trustee Meeting unless it is passed by the casting of a majority of the votes entitled to be cast by persons who are present at that meeting.
- 7.7.** A person may appoint another person to act as that person's proxy at any Trustee Meeting.
- 7.8.** If a circulating minute, containing a statement that the Trustee is in favour of a resolution in the terms set out in that document, has been signed by all persons entitled to attend a Trustee Meeting, a resolution in those terms will be taken to have been passed at a meeting held on the day and at the time at which the document was last signed by any such person. Two or more separate documents containing statements in identical terms, each of which is signed by one or more persons, will together be taken to constitute one document for the purposes of this Rule.

Rule 8. Trustee's records

Explanation

A written record must be kept of all decisions made by the Trustee in relation to the Fund. Those records should be held for ten years.

Rule

- 8.1.** If there is only one person who is a Trustee that person must make a written record of all decisions made by that person as Trustee.
- 8.2.** If there is more than one person who is a Trustee the Trustee must keep minutes of every meeting held by the Trustees.
- 8.3.** If the Trustee is a company the minutes of the meetings of the directors of that company shall be deemed for the purposes of this Rule to be records of the Trustee.
- 8.4.** Records and minutes required by this Rule must be kept for at least ten years from the date the decision was made or the date of the meeting.

Rule 9. Trustee's covenants

Explanation

The Act requires that the rules of a Regulated Superannuation Fund contain certain covenants (if the rules do not contain these covenants the Rules are deemed to contain those covenants). Whilst some of those covenants are contained elsewhere in these Rules they have all been reiterated here to highlight the code of conduct that a Trustee must adopt as a Trustee.

Rule

A person by accepting appointment as a Trustee agrees:

- (a) to act honestly in all matters concerning the Fund;
- (b) to exercise, in relation to all matters affecting the Fund, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another with whom the person felt morally bound to provide;
- (c) to ensure that duties and powers of the Trustee are performed and exercised in the best interests of the Members;
- (d) to keep the money and other assets of the Fund separate from any money and assets, respectively:
 - (i) that are held by a Trustee personally or,
 - (ii) that are money or assets as the case may be, of a Standard Employer-Sponsor, or an Associate of a Standard Employer-Sponsor, of the Fund;
- (e) not to enter into any contract or do anything else, that would prevent the Trustee from, or hinder the Trustee in properly performing or exercising the Trustee's functions and powers;
- (f) to formulate and implement a written investment strategy in accordance with the provisions of the Act;
- (g) if there are any Reserves – to formulate and implement a written strategy for the prudential management of those Reserves consistent with the Fund's investment strategy and its capacity to discharge liabilities (whether actual or contingent) as and when they fall due; and
- (h) to allow a Member access to Prescribed Information and any Prescribed Documents.

Admittance of Members

Rule 10. Who may become a Member

Explanation

There are generally no restrictions on who can be a Member of the Fund provided the Member or their Legal Personal Representative is eligible to be appointed a Trustee. For example a child or a person that is not employed may become a Member of the Fund.

This Rule would also allow the Trustee to admit a spouse of a Member who is not also a Member as a Member to allow any superannuation splitting arrangement as ordered by the Family Court.

Rule

- 10.1.** The Trustee may in its absolute discretion admit a person as a Member provided:
- (a) that person or that person's Legal Personal Representative has provided the Trustee with an Application Form and has agreed to be bound by the Rules;
 - (b) admission of that person as a Member would not cause the Fund to become a Non-Complying Self Managed Superannuation Fund; and
 - (c) the person or the Legal Personal Representative of that person is eligible to act and accept appointment as a Trustee or is eligible to be and is willing to accept appointment as a director of a company which is eligible to and will accept appointment as a Trustee.
- 10.2.** Subject to these Rules and the Act the Trustee must admit a person as a Member where that person will be paid a Pension from the Fund.

Rule 11. Members have read and are bound by the Rules

Explanation

This Rule is to protect the Trustee against any claims made by a Member who claims not to understand what rights and obligations the Trustee and Member has under the Law and Rules.

Rule

By applying for membership of the Fund a Member acknowledges having read the Product Disclosure Statement and agrees to be bound by the terms of the Deed and the Rules. Subject to Rule 10.2 a Trustee may prohibit a person becoming a Member of the Fund if they are of the opinion that the person has not read and understood the Fund's Product Disclosure Statement, the Deed and the Rules of the Fund.

Rule 12. Application Form

Explanation

A person wishing to become a Member must provide the Trustee with an Application Form. The Application Form may (amongst other things) require such a person to:

- *acknowledge that the person has read the Product Disclosure Statement;*
- *agree to be bound by the Rules;*
- *be a Trustee of the Fund or a director of a company which is the Trustee of the Fund;*
- *provide such information (including medical information) to the Trustee as the Trustee requires;*
- *provide the Trustee with a death benefit nomination.*

Rule

- 12.1. A person shall not be admitted as a Member or receive a Pension from the Fund unless that person has completed an Application Form in the form required by the Trustee and has confirmed in writing that he or she has read the Product Disclosure Statement, Deed and Rules of the Fund and has agreed to be bound by the Rules of the Fund.
- 12.2. Where a person may be entitled to be paid a Pension following the death of a Member and that person does not wish to become a Member or the Trustee decides that the person should not become a Member then the Trustee is to transfer that amount as would have been added to a Member's Pension Account to fund the payment of the Pension to that person to another Complying Superannuation Fund or Eligible Rollover Fund. Any such transfer is to be made in accordance with Rule 27 and must occur within three months of the time that the person became entitled to be paid a Pension.

Rule 13. Receipt of an Application Form

Rule

- 13.1. On receipt of an Application Form from a person and after that person produces such documents and evidence, and submits to such medical examination and checks, as the Trustee may reasonably and lawfully require the Trustee may admit that person as a Member.
- 13.2. Within 6 weeks of receipt of an Application Form the Trustee shall advise the person applying for membership whether or not that person has been accepted for admission as a Member and whether or not any conditions will be attached to that person's membership of the Fund.
- 13.3. If the Trustee has agreed to accept a person as a Member but subject to conditions as to that person's membership that person can within 6 weeks of notification by the Trustee pursuant to Rule 13.2 either accept or reject that offer of membership.
- 13.4. If after six weeks a person neither accepts or rejects an offer of membership of the Fund that person shall be deemed to have rejected that offer of membership.

Estate Planning

Explanation

The assets of the Fund do not belong in whole or in part to any individual Member. As a consequence no part of the assets of the Fund can be disposed of by a Member by their Will. The assets do not form part of that Member's property. Given the new Simpler Super rules it is quite likely that when a Member dies most of that Member's "assets" will be that Member's expectation that he or she will be paid some amount by the Fund. To allow a Member to properly dispose of those "assets" the Rules allow:

- *a Member to provide the Trustee with a Non-Binding Death Benefit Nomination in which the Member may request but cannot bind the Trustee to pay Benefits payable by reason of that Member's death as that Member directs;*
- *a Member to provide the Trustee with a Binding Death Benefit Nomination in which the Member may require the Trustee to pay Benefits payable after that Member's death to a Legal Personal Representative or Dependant of that Member. However such requests are current for only a three year period;*
- *a Member to cause the Rules to amended to ensure that Benefits payable as a consequence of that Member's death are paid in a particular way. The Rule may only be varied with that Member's consent.*

- *the terms of a Pension payable to a Member to be incorporated as a Rule – as a consequence the Trustee is obliged to ensure that payments are made after that Member's death according to the terms of the Pension.*

Rule 14. Non-binding Death Benefit Nomination

Explanation

A Member might request the Trustee to pay a Benefit after the death of the Member to persons nominated by that Member. However the Member might prefer –so as to not bind the Trustee– that this direction is made more as a statement of wishes than as a mandatory order.

Rule

- 14.1.** A Member or the Legal Personal Representative of a Member may provide the Trustee with a Non-Binding Death Benefit Nomination. This Nomination may request the Trustee, at its discretion, to provide benefits on death of the Member to persons named by the Member in that nomination.
- 14.2.** Subject to the Act the Trustee must accept a Non-Binding Death Benefit Nomination.
- 14.3.** A Non-Binding Death Benefit Nomination is not binding upon the Trustee.
- 14.4.** Prior to the death of a Member the Member or the Legal Personal Representative of the Member may confirm, amend or revoke a Non-Binding Death Benefit Nomination previously given by the Member to the Trustee.
- 14.5.** A Member or the Legal Personal Representative of a Member may also direct the Trustee to act, do or carry out a particular course of action on their death or incapacity. However the Trustee is not bound by any such direction and the Trustee must not comply with that direction if it causes the Fund to become a Non-Complying Self Managed Superannuation Fund.

Rule 15. Binding Death Benefit Nomination

Explanation

The SIS Act states that if the Rules of a Fund permit it, a Member of the Fund may require the Trustee to provide any Benefits in respect of the Member, on or after the death of the Member, to the Legal Personal Representative or a Dependant of the Member. The Member does this by making what is commonly referred to as a "Binding Death Benefit Nomination".

The Trustee must accept a Binding Death Benefit Nomination. However the Trustee must first provide the Member with sufficient information for the purpose of submitting a Binding Death Benefit Nomination.

The Member may amend a Binding Death Benefit Nomination at any time provided the Trustee is notified in writing of that amendment.

A Binding Death Benefit Nomination ceases to have effect on that date three years after it was first signed or last confirmed or updated by the Member.

A Binding Death Benefit Nomination may be limited to the extent that a Member only nominates a person or persons and a proportion of the Member's Benefits to be paid to the person or each person. Accordingly a Member who wishes to have certainty about the manner in which Benefits are provided to a Dependant should consider making use of one of the other options available as detailed in Rules 16 and 17.

Warning: *Binding Death Benefit Nominations provided to the Trustee before 1 July 2007 must be reviewed in light of the new Simpler Super rules.*

Rule

- 15.1.** The Trustee must when required to do so by the Act provide a Member with that information that the Trustee reasonably believes the Member reasonably needs for the purpose of submitting a Binding Death Benefit Nomination.
- 15.2.** A Member or the Legal Personal Representative of a Member may provide the Trustee with a Binding Death Benefit Nomination or a replacement to a prior Binding Death Benefit Nomination.
- 15.3.** Subject to the Act the Trustee must accept a Binding Death Benefit Nomination and shall be bound to act in accordance with that Binding Death Benefit Nomination.
- 15.4.** A Binding Death Benefit Nomination:
- (a) must be in writing;
 - (b) must require the Trustee to provide any benefits in respect of the Member, on or after the death of the Member, to a Legal Personal Representative or a Dependant of the Member;
 - (c) must be signed, and dated, by the Member in the presence of two witnesses, being persons:
 - (i) each of whom has turned 18; and
 - (ii) neither of whom is a person mentioned in the notice; and
 - (d) must contain a declaration signed, and dated, by the witness stating that the notice was signed by the Member or the Legal Personal Representative of a Member in his or her presence.
- 15.5.** Prior to the death of a Member the Member or the Legal Personal Representative of the Member may confirm, amend or revoke a Binding Death Benefit Nomination previously given by the Member to the Trustee. A confirmation must be in writing, dated and signed by the Member or the Legal Personal Representative of the Member. An amendment or revocation of a Binding Death Benefit Nomination must be in writing and must be dated and signed by the Member or the Legal Personal Representative of the Member in the presence of two witnesses each of whom has turned 18 and neither of whom is mentioned in the notice.
- 15.6.** A Binding Death Benefit Nomination which requires a Benefit to be paid to the spouse of a Member will be deemed to have been revoked if proceedings have been commenced pursuant to the *Family Law Act 1975* or some similar foreign legislation seeking the dissolution of that Member's marriage to that spouse.
- 15.7.** Unless sooner revoked by the Member or the Legal Personal Representative of the Member who gave the Binding Death Benefit Nomination or deemed to have been revoked a Binding Death Benefit Nomination ceases to have effect after the end of the period of three years after the day it was first signed or last confirmed or amended by the Member or the Legal Personal Representative of the Member.

Rule 16. Incorporation of a Death Benefit request in the Rules

Explanation

The SIS Act states that if the Rules of a Fund permit it a Member may request the Trustee to provide any Benefits in respect of the Member, on or after the death of the Member, to the Legal Personal Representative or a Dependant of the Member provided any such request would not render the Fund to be a Non-Complying Self Managed Superannuation Fund.

These Rules permit a Member to request that the Trustee establish a Death Benefit Rule. The request if accepted will bind the Trustee to pay a Member's Benefits upon the Member's death as that Member requests.

However before accepting a Member's request to establish a Death Benefit Rule, the Trustee should assess the cash flow requirements that may be faced by the Fund in the event of any Death Benefit becoming payable upon the Member's death.

If the Trustee is of the view that the Trustee may be unable to comply with the Member's request the Trustee may, after discussion with the Member, request that the Member resubmit the request. Alternatively, the Trustee may reassess the Fund's insurance plan and increase any life insurance cover.

Warning: *Any requests for a Death Benefit Rule provided to the Trustee before 1 July 2007 should be reviewed in light of the new Simpler Super rules.*

- 16.1.** A Member or the Legal Personal Representative of the Member may provide the Trustee with a notice in writing requesting the Trustee to establish a Death Benefit Rule that requires the Trustee to pay Benefits in the event of the death of the Member in a manner and form that the Member or the Legal Personal Representative of the Member so chooses including whether the Benefit is to be a Lump Sum Benefit, a Pension Benefit or combination of both.
- 16.2.** The Trustee may accept or reject any notice referred to at Rule 16.1 and must reject it if it holds a Binding Death Benefit Nomination for that Member. If the Trustee accepts the notice the Trustee shall be bound to act in accordance with that Death Benefit Rule that is established as a consequence of it accepting the notice.
- 16.3.** A Member or the Legal Personal Representative of the Member may provide the Trustee with a notice in writing requesting the Trustee to delete or amend a Death Benefit Rule that was previously established at the request of the Member and if amended the Trustee shall act in accordance with that amended Death Benefit Rule.
- 16.4.** The Trustee shall not accept any notice referred to at Rule 16.1 or 16.3 if that would cause the Fund to become a Non-Complying Self Managed Superannuation Fund.

Rule 17. Terms and conditions of a Pension deemed to be a Rule

Explanation

Rule 48.2 states that the Trustee must document the terms and conditions set down for the payment of a Pension and notify the Member of these terms and conditions. This Rule deems that those terms and conditions to be part of the Rules.

This ensures that where for example the terms and conditions of a Pension provide for a reversion of the Pension on death of the Member to their Spouse, Dependant or Legal Personal Representative the Trustee is bound to act in accordance with those terms and conditions.

Warning: *Pension arrangements entered into prior to 1 July 2007 must be reviewed to ensure that the terms and conditions of the Pension meet the new standards set out in the SIS Regulations.*

Rule

- 17.1.** A Member or the Legal Personal Representative of the Member may in writing notify the Trustee of his or her acceptance of the terms and conditions of a Pension payable according to Rule 48 as a Rule. Upon that acceptance by the Member or the Legal Personal Representative of the Member those terms and conditions will be deemed to be a Rule unless payment of the Pension would cause the Fund to be a Non-Complying Self Managed Superannuation Fund.

Part Two: Operation and Administration of the Fund

Termination of Membership

Rule 18. Expulsion of a Member

Explanation

The object of this Rule is to allow the Trustee to expel a Member for any reason the Trustee considers necessary. The Trustee might do this if the Trustee felt that a Member's continued membership of the Fund was not in the interests of the Fund. An example might be where there is a family break down and inter personal relationships threaten the viability of the Fund.

Rule

- 18.1.** The Trustee may expel a Member as a Member of the Fund for any reason that the Trustee determines. At the same time the person must retire as Trustee of the Fund.
- 18.2.** If a Member is expelled from the Fund pursuant to Rule 18.1 the balance of the Member's Accounts is to be transferred to such other Superannuation Entity as requested by the Member and if the Trustee of the Fund has not received a transfer notification from a Member or former Member within a period of sixty days from the time the Trustee notified the Member of their expulsion, the Trustee may transfer the Member's Accounts to an Eligible Rollover Fund.

Rule 19. Ceasing to be a Member

Explanation

Normally a Member will only cease being a Member:

- *if the Member dies; or*
- *the Member is no longer entitled to receive Benefits from the Fund; or*
- *the Member ceases to be eligible to be a Trustee (or ceases to be eligible to be a director of a company which is a Trustee).*
- *The Trustee also has the power to determine that a Member should no longer be a Member (for example if two Members who are spouses separate or divorce the Trustee might decide that in the interests of the Fund one of those persons should not be a Member of the Fund).*

Rule

Unless prohibited by the Act a Member shall be deemed to have ceased to be a Member on the first to occur of the following:

- (a) the Member no longer being entitled to receive Benefits from the Fund;
- (b) the Trustee determining that the Member should no longer be a Member;

- (c) the death of the Member or if the Trustee decides otherwise, no later than the time any Legal Personal Representative of the Member remains as Trustee or director of the Trustee Company;
- (d) the date being no later than the earliest of either:
 - (i) four months from the date a Member became ineligible to be a Trustee or to be a director of a company which is a Trustee unless a Legal Personal Representative of that Member is appointed a Trustee; or
 - (ii) the date just before a Member became ineligible to be a Trustee or to be a director of a company which is a Trustee unless a Legal Personal Representative of that Member is appointed as a Trustee.

Members' Accounts

Rule 20. The Trustee must keep Members' Accounts

Explanation

The Trustee must keep an individual account for each Member. An account may be either a Member's Accumulation Account or a Member's Pension Account. More than one Accumulation account or Pension Account may be kept for each Member.

The Trustee should ensure that a record is kept of the various components of a Member's Benefit in the Fund. This will assist the Trustee in determining the taxation consequences of any Benefits paid to a Member or upon the death of the Member to a Dependant or the Legal Personal Representative of the Member. These components are:

- *The Tax Free Component comprising:*
 - *a Crystallised Segment – is a consolidation of various existing components of a Member's Benefits calculated as at 30 June 2007 including any undeducted contributions, CGT exempt component, concessional component and Post June 1994 invalidity component; and*
 - *a Contributions Segment – includes all non-assessable Contributions made from 1 July 2007, typically a Member's personal or 'non-concessional' Contributions.*
- *The Taxable Component is the balance of the Member's Benefit less the Tax Free Component and comprises:*
- *An Element Taxed in the Fund – comprising Contributions and Earnings which have been subject to Tax in the Fund; and*
- *An Element Untaxed in the Fund – uncommon in a Self Managed Superannuation Fund however this component may arise upon the death of a Member whereby the proceeds of an insurance policy on the life of the Member are received by the Trustee for payment to the Benefit of the Member's Dependents.*

Rule

- 20.1.** The Trustee must keep for each Member an account that records Contributions received, Earnings, amounts allocated to or from Reserves, Benefits paid and all other amounts that the Trustee resolves should be added to or deducted from those accounts.
- 20.2.** The balance of a Member's Account must be positive.
- 20.3.** The Trustee can keep more than one account for a Member including more than one Member's Accumulation Account and more than one Member's Pension Account.
- 20.4.** The Trustee must keep a record of the Tax Free and Taxable Components of a Member's Benefit in a Member's Account or Accounts.