

Does our trust deed comply with GS 009?

In September 2015 the Auditing and Assurance Standards Board updated Guidance Statement GS 009 on Auditing Self Managed Superannuation Fund. Paragraph 65 refers auditors to a list of consideration in examining the SMSF' governing rules and suggests procedures that should be reviewed and adapted for the specific circumstances and audit risks associated with each SMSF audit engagement.

Below is the list with how our trust deed complies with the Appendix 3 of new GS 009.

| Ref | Questions to be addressed in examining the trust deed | How our SMSF Trust Deed complies to this requirement |
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| A | ESTABLISHMENT AND EXECUTION | |
| A.1 | Is the date of establishment of the SMSF recorded? | Clause 1 and Schedule 1 |
| A.2 | Has the trust deed been <ul style="list-style-type: none"> - Properly executed? - Signed by all the members who individual trustees? - Witnessed? - Dated? - Stamped (if required)? | Auditor to check if the deed is executed / witnessed and stamped if required. |
| A.3 | Do the rules incorporate the SISA, SISR and applicable taxation rules? | Clause 3, 7 & 8 |
| A.4 | Does the deed outline the core and ancillary purposes of the SMSF? | Clause 4 |
| A.5 | Does the deed require an irrevocable election to be made to be a regulated superannuation fund or a fund subject to the SISA and SISR? | Clause 6 & 50 including holding cash contribution to apply for an ABN |
| A.6 | Does the deed have a clause which deems the appropriate legislation into or out of the deed to allow the SMSF to remain complying? | Clause 7 & 8 |
| B | AMENDMENTS TO THE DEED | |
| B.1 | Does the deed allow amendments? | Clause 201 to 204 |
| B.2 | Has the trust deed been amended since the last audit? If so: <ul style="list-style-type: none"> - Has the deed amendment been properly executed? - Is confirmation of the deed's compliance with SISA and SISR required from the solicitor or other party involved in the amendment? - Is the amendment signed off by the current trustees? - Could the amendments impact the audit? | Auditor to confirm |
| C | TRUSTEE AND MEMBERSHIP | |
| C.1 | Does the trust deed specify who may be a trustee? Either: <ul style="list-style-type: none"> - Two or more individual trustees or | Clause 25 specifies Section 17A of SIS Act Disqualified person Section 120 |

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| | - A trustee company | |
| C.2 | Does the deed specifically identify the trustee as either individuals or a corporate entity? | Clause 1, 25, 28 & Schedule 1 |
| C.3 | Are all individual trustees or directors of the trustee company required to be members? | Clause 14, 15 & 16 |
| C.4 | Does the deed permit members to be <ul style="list-style-type: none"> - A non-working spouse? - A retired person? - A child? | Clause 14, 15, 16, 54 - 58 Clause 14, 15 & 16 Clause 17 & 18 |
| C.5 | Does the deed limit the maximum number of members to 4 members? | Clause 16 |
| C.6 | Is membership open to anyone else? | Clause 14 and as long as the conditions under 17A are not breached. |
| C.7 | Do the members of the SMSF meet the definitions? <ul style="list-style-type: none"> - No member of the SMSF is an employee of another member, unless related. - No trustee receives remuneration for their services to the SMSF in their capacity as trustee. | Clause 25 Clause 25 |
| C.8 | Does the trust deed contain the trustee covenants in s.52B of the SISA? | Clause 44 |
| D | AUDIT AND FINANCIAL REPORTS | |
| D.1 | Does the trust deed require the appointment of an approved SMSF auditor? | Clause 94 - 96 |
| D.2 | Does the trust deed require the trustees to prepare a financial report annually and for it to be audited? | Clause 88 - 93 |
| D.3 | Does the trust deed require the trustees to keep the minutes and records of trustee decisions for at least 10 years and accounting records and signed financial reports for at least 5 years? | Clause 93 |
| E | CONTRIBUTIONS | |
| E.1 | Does the deed allow: <p>Concessional contributions, including:</p> <ul style="list-style-type: none"> - Employer contributions, including contributions made pursuant to a salary sacrifice agreement? - Member contributions for which a tax deduction is claimed? <p>Non-concessional contributions, including:</p> <ul style="list-style-type: none"> - Member contributions for which no tax deduction is claimed? - Eligible spouse contributions? <p>Contributions in respect of minors?</p> <p>Rollovers and transfers in?</p> <p>Government co-contributions?</p> <p>Contribution splitting to a spouse?</p> <p>Contributions by members who are under 65 and not working?</p> <p>Contributions by members who are working part-time and are over 65 and under 75?</p> <p>Mandated contributions to be accepted at any age?</p> <p>Contribution splitting arrangements pursuant to family law matters?</p> | Clause 48, 59 - 60 Clause 49, 61 – 64 Clause 48 Clause 48 Clause 50, 51, 74 - 76 Clause 48 Clause 54 – 58 Clause 61 Clause 61 Clause 61 Clause 117 - 120 |
| E.2 | Does the deed allow for <i>in-specie</i> contributions of assets to be made by members or related parties? | Clause 50, 74 - 76 |
| E.3 | Does the deed permit spouse accounts and may employers make contributions to spouse accounts? | N/A |
| E.4 | Does the deed provide a basis for rejecting excess | Clause 59 - 64 |

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| | contributions? | |
| E.5 | May excess contributions tax levied on the member be paid by the SMSF, irrespective of preservation rules and conditions of release? | Clause 88 – Div 293 Tax |
| F | BENEFIT PAYMENTS | |
| F.1 | Does the SMSF require compulsory cashing of the members balance at a specific age? | NO – only on conditions of release on request from the member Clause 125 or on death clause 184 |
| F.2 | Does the SMSF require a lump sum benefit to be paid in lieu of a pension? | NO Only if requested by the beneficiary of a death benefit pension |
| G | PENSIONS | |
| G.1 | Does the deed expressly allow for payment of pensions by the SMSF. Including <ul style="list-style-type: none"> - Account Based Pensions? - TRIS? - Allocated Pensions? - Term allocated or Market Linked or growth pensions? - Non-complying lifetime or fixed term pensions? | Clause 143 Clause 160 - 161 Clause 163 - 165 Clause 156 – 157 Clause 158 – 159 Clause 144, 166 - 168 |
| G.2 | Does the deed allow for commutation of a pension? | Clause 178 – 183 |
| G.3 | Does the deed allow for the segregation of assets to meet pension requirements? | Clause 173 - 175 |
| G.4 | Does the deed make reference to nominated beneficiaries? | Clause 169 - 172 |
| H | RESERVES | |
| H.1 | Does the deed provide rules in relation to the establishment, maintenance and operation of SMSF Reserves? | Clause 108 - 109 |
| H.2 | Does the deed require different or parallel investment strategies for each reserve account? | NO |
| I | INVESTMENTS | |
| I.1 | Does the deed provide powers to the trustees to invest the assets of the SMSF? | Clause 77 |
| I.2 | Does the deed specify specific assets/asset classes in which the SMSF may invest? | Clause 77 |
| I.3 | Does the deed prevent investments in, or loans to, related parties? | Clause 79 |
| I.4 | Does the deed require an investment strategy to be formulated, regularly reviewed, and given effect? | Clause 80 - 82 |
| I.5 | Does the deed require the investment strategy to consider if insurance is relevant to the members of the fund? | Clause 80 |
| J | BORROWINGS | |
| J.1 | Does the deed prohibit borrowings? | Clause 115 only when certain conditions are met under Section 67A and 67B of SIS Act |
| J.2 | Does the deed permit borrowing in specific circumstances, including: <ul style="list-style-type: none"> - Temporary borrowings which are required for the payment of member benefits, short term settlement of securities or superannuation contributions surcharges (no longer levied)? - Borrowings for limited recourse borrowing arrangements? | Clause 115 |

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| K | WINDING-UP | |
| | Does the deed provide for the winding-up of the SMSF? | Clause 205 - 207 |