


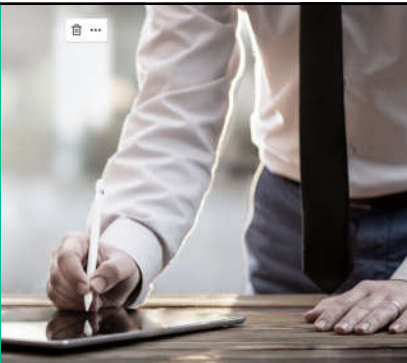
ASF Audits
Technical Seminar 2022

It's all in the execution...




Aaron Dunn
CEO, Smartier SMSF

September 2022



1




What we'll explore today...


Using a case study:

- Dealing with upgrades & appointments
 - The provision of signing documents with the electronic execution measures (Ch)
 - Obligations and requirements under the Director ID laws for existing and newly appointed directors
- Fund compliance activities
 - Current laws impacting the use of electronic signing & record-keeping for SMSFs
 - The proposed Modernising Business Communication (MBC) measures for SMSFs with signatures and record-keeping requirements

2



Meet the Joneses



Case study: Upgrades & Appointments

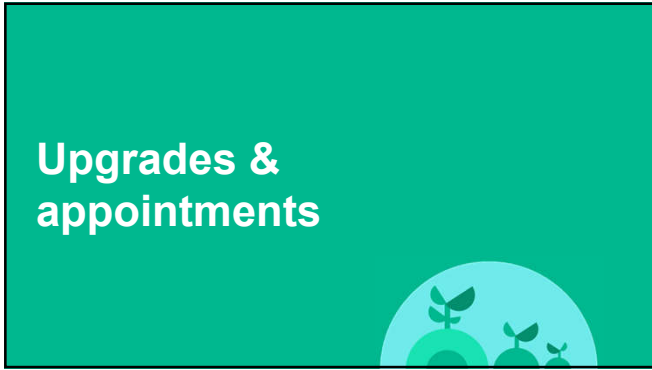
What we'll explore:

- The provision of signing documents with the electronic execution measures (Ch.)
- Obligations and requirements under the Director ID laws for existing and newly appointed directors

Bill & Uma are existing members of the Jones SMSF, which has a corporate trustee, Bucket Pty Ltd.

Chris & Kelli, along with Evan & Tina have been asked to join the Jones SMSF (total of 6 members)

3



4

§

Upgrades & appointments

Let's assume:

- The Jones SMSF agree to arrange for the amendment of the current deed and special purpose company constitution to allow for 6 members
- Chris & Kelli are already directors of a company, where they run their own marketing agency
- Evan & Tina are both PAYG salaried employees

What do we need to consider in respect to each appointment and execution of the various documents?

5

§

Director appointments

- New director ID laws started from 1 November 2021 - a unique identifier for a director that they will retain forever.
- Registration timeframes to obtain a director ID **varies** subject to the timing of the appointment as a company director (Part 9.1A, Corporations Acts 2001)

Date you become a director	Date you must apply
On or before 31 October 2021	By 30 November 2022
Between 1 November 2021 and 4 April 2022	Within 28 days of appointment
From 5 April 2022	Before appointment

Application for director ID

- Director can only ever have one DIN
- Application to be completed electronically via [AES](#) website, requiring:
 1. Setting up MyGovID
 2. Gathering documents to verify identity
 3. Complete Director ID application
- ATO does allow for phone or paper form to setup MyGovID, but significantly slower process.

NB. Different dates apply Aboriginal and Torres Strait Islanders who are directors registered under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (CATSI Act).

6

Case study – director IDs

New directors being appointed

1. Apply for director ID → 2. Constitution / Deed upgrade, with appointment of new directors → Transitional period for existing directors to obtain director ID

Ensure that the consent date is visible in minutes & other documents

Chris & Kelli are required to obtain their the director ID at least a day prior to signing their 'Consent to act as a director' (s.1272C, Corporations Act 2001)

As Evan & Tina are existing directors (prior to 1 November 2021), they must obtain their director ID before 30 November 2022.

7

Becoming a fund member / director

What needs to be considered with the appointment of the new fund members & directors?

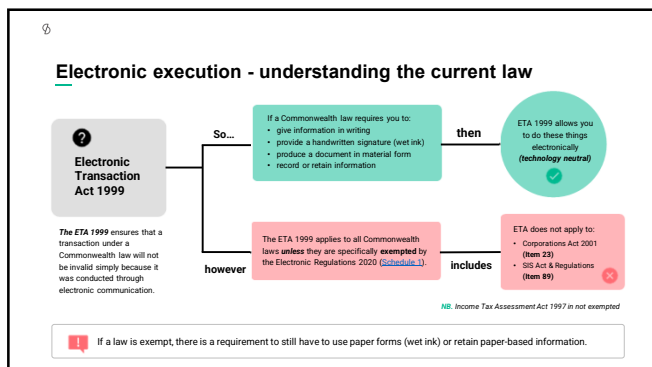
Consideration	Action
Ability to allow up to 6 members within the SMSF	The directors will need to <u>review</u> the fund's operative trust deed to ensure that it <u>permits</u> for the admission of additional members in line with the amendments made to section 17A of the SIS Act.
Ability to appoint additional directors and shareholders (although shareholding not required for s.17A of the SIS Act)	The directors will need to <u>review</u> the fund's company constitution (special purpose) to ensure that it <u>permits</u> for the additional directors to be appointed, along with additional shares being issued (or existing shareholdings altered).
Ensure the each individual is not disqualified persons to allow for their appointment as directors of Bucket Pty Ltd	Acknowledged through the 'consent to act as a director' (s.201D, Corporations Act 2001), along with the AT O trustee declaration (s.104A, SIS Act) to be signed by newly appointed individuals.

8

Becoming a fund member / director

Consideration	Action
Execution of documents for the appointment as director and shareholder of Bucket Pty Ltd	Arrange for the documents to be signed; understand the key requirements between signing documents electronically or in 'wet ink'.
Execution of documents for the addition of 4 new members of the Jones SMSF.	Arrange for the documents to be signed; understand the key requirements between signing documents electronically or in 'wet ink'.

9



10

State of play – electronic execution

- Permanent measures from 1 April 2022 in place for the electronic execution of deeds, replacing the previous temporary relief measures during COVID-19.
 - Corporations Amendment (Meetings and Documents) Bill 2021
- Section 127(1) of the Corporations Act amended to allow for companies to be able to execute certain documents (incl. deeds) and meeting related documents in a 'technology neutral manner.'

How can a document be signed?	Known as...
Signatories can physically sign different copies of the document	Split execution
Signatory #1 can print, sign and scan the document and send that document to signatory #2, who does the same	Modified split execution
Signatories can apply their e-signature to electronic versions of the document, including pasting a signature to a document, signing a PDF on a tablet, smartphone or laptop or using cloud-based signature platform – e.g. DocuSign or Adobe Sign	Electronic execution

11

Signing of documents today!

How can the various documents currently be signed by the directors/members of the Jones SMSF (and trustee company)

Signing documents	Electronic execution	Wet Ink
1. Trust Deed Upgrade / Constitution	✓	✓
2. Consent to Act as a director	✗	✓
3. ATO trustee declaration	✗	✓
4. Membership applications	?	✓
5. Trustee minutes / resolutions	?	✓

NB: Item (2) was intended to change as part of Technology Neutrality reforms underway as part of the Modernising Business Communications – Revised Law Architecture (Modernising Business Communications) Bill 2022 (Repeal).

References:

1. Electronic execution of the deed is allowed under s.127(1) of the Corporations Act (permanent measures took effect from 1 April 2022)
2. Corporations Act is currently exempt from the ETA1999 (Ch) – s.201D requires the company to be given a signed consent to act as a director of the company before being appointed.
3. SIS Act is exempt from the ETA 1999 (Ch) –s.104A requires a director to sign within 21 days to acknowledge their understanding of duties as a director of a corporate trustee of a SMSF.
4. As prescribed by the fund's trust deed that will outline the procedural aspects that must be complied with.
5. As per (4), record keeping requires to be stored for at least 10 years.

12

6

Proposed technology neutrality changes – Corporations Act

Section 127 of Corporations Act is to be amended¹ to make clear that documents will be able to be validly executed in accordance with the changes introduced by Division 1 of Part 1.2AA - Signing Documents into the Corporations Act.

Section	Details
s.110(1)	Will apply to a document (inc. deed) to be signed by a person exercising the powers of a company under s.127 (or s.128).
s.110(2)	Will also apply to a document (inc. deed) required or permitted to be signed by a person under the Corporations Act, that relates to a meeting of members of a company or a resolution to be considered by the directors/members of a company without a meeting.
s.110A	Allows a person to sign a document in physical form by hand, or by signing an electronic form of the document using electronic means.
s.110A(5)	Allows a person to sign a document in more than one capacity - must state the capacities in which the person is signing the document.
s.127	Adds a note to this section to allow for the signing requirements to be satisfied using electronic means.

Signing in more than one capacity:

Examples of when a person is required to sign in multiple capacities:

- Signature block requires signing once as Sole director, then as secretary
- Signing on behalf of two companies (e.g. SMSF trustee & bare trustee)
- Signing as director (own capacity), then as LPR for another fund member due to legal incapacity

¹ Treasury Laws Amendment (Modernising Business Communications) Bill 2022 introduced into Parliament, but lapsed due to election called.

13

6

Global communications model

The model in the Treasury Laws Amendment (Modernising Business Communications) Bill 2022 is:

Model	Application to SMSFs
<p>All documents under the Corporations Act can be signed or executed electronically.</p> <ul style="list-style-type: none"> • This includes making, varying, ratifying or discharging of contracts and executing documents (including deeds). 	<p>Yes, provides a technology neutral outcome for various SIS measures</p>
<p>All documents in Chapters 2A to 2M, 5 to 5D, 6 to 6C, 8A, 9 and Schedule 2 to the Corporations Act, other than those which are lodged with ASIC, the Registrar, or the Takeovers Panel, can be sent either electronically or in hard copy.</p> <ul style="list-style-type: none"> • sent via link and without the need for consent from the recipient 	<p>Yes, provides a technology neutral outcome for various SIS measures</p>
<p>Entities do not have to send any documents in specified chapters to members if the entity knows that the members' postal and electronic addresses are incorrect.</p> <ul style="list-style-type: none"> • An entity must attempt to contact a member to whom it is no longer sending documents due to an incorrect address in the period from 6 to 18 months following the point at which they stop sending that member documents. • After the end of that 6 to 18 month period the entity has no obligation to attempt to contact the member, provided the conditions for the relief continue to apply. 	<p>N/A</p>

14

6

Technology neutrality for SMSFs

- 2nd phase intends to modernise requirements within the SIS Act & SIS Regulations, with similar outcomes expected to proposed changes with Corporations Act.
 - Key difference with Treasury portfolio changes compared to ETA is that it won't require 'consent' to send the document, which can also include the sending of a link that satisfies the requirement of 'giving' a document.
- SMSF Association *active* in consultation with Treasury on how the technology neutrality can operate in respect to:

1 Signatures:

Written signature requirements beyond the permanent changes to the execution of company documents applied to the Corporations Act 2001.

Focus is on pain points within the SMSF sector, how often the issue arises and supporting evidence.

2 Record keeping:

The keeping of books and registers in accordance with the requirements set out in the superannuation laws.

Focus is on addressing the inconsistency in retention periods (5, 10 years); understanding the compliance burden of current requirements and how change might result from technology neutrality options being implemented.

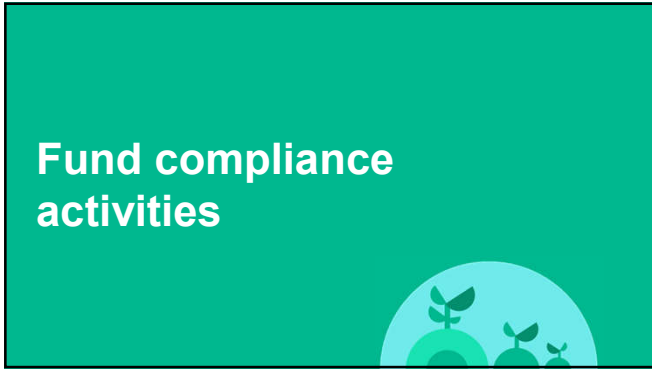
3 Communication:

Lodgment of documents, ability to attend hearings, and more that can be completed with the Regulator(s).

Focus is on challenges encountered when communicating with the Regulators as part of legislated/regulatory obligations and the current compliance burden.

15


Fund compliance activities



16

§

Fund obligations for the Joneses



Case study:
Fund compliance

What we'll explore:

- The provision of electronically signing fund compliance documents
- Understanding the electronic record-keeping requirements for SMSFs

The members need to arrange to have the fund's compliance obligations completed, including the retention of documents for prescribed timeframes.


17

§

What does the ETA currently apply to with SMSFs?

- **Solely** limited to section 35B, SIS Act – accounts & statements
 - Section 35B(3) – signing rules – at least one or two trustees/directors or at least 50% where more than two.
 - Section 35B(4) – minimum 5 year retention period of accounts & statements
 - Failure to comply will result in an administrative penalty of 100 penalty units (currently \$22,200).

ATO guidance
The use of electronic storage means is acceptable (QC 23333), so long as the document is capable of verification by the ATO and be in a form that they can access and understand.





18

6

Key takeaways

- Understand the requirements of the director ID laws to ensure individuals are obtaining these per prescribed timeframes.
- The use of digital technology will be a game-changer for SMSFs, however maintaining compliance throughout its transition is crucial.
- Government moved on some electronic execution measures during COVID-19, but still much work to do!
- Think about the need for a range documents beyond any prescribed timeframes and the policies of various organisations and government agencies.





22

Smart people learn together



Aaron Dunn
 CEO & Co-founder
 Smarter SMSF
 1300 95 94 76
<https://smartersmsf.com>
team@smartersmsf.com



23

6

Disclaimer

© Smarter SMSF Pty Ltd 2022 | ABN 40 623 209 021

Changes in circumstances may occur at any time and may impact on the accuracy, reliability or completeness of the information and we exclude liability for any decision taken based on the information shown in or omitted from this presentation. We have taken reasonable care in producing the information found in this presentation at the time of writing.

Prepared as of 5 September 2022

24