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Self Managed Superannuation Funds
Small issues done incorrectly can have big consequences!

We are often asked by clients about the need for having a separate company for their Self Managed Superfund (SMSF) and why do they need to pay for a separate company to hold all of the assets.

One of the requirements of an SMSF is that assets of the Fund are to be kept separate from other assets that are owned by members.

Recently, the Federal Court ruled that certain assets of two members who were still bankrupt were not held in their SMSF and were therefore divisible among the creditors of their bankrupt estates. They sought to rely on s116(2)(d)(iii)(A) of the Bankruptcy Act 1966 which provides an exception to assets available to creditors for "the interest of the bankrupt in...a regulated superannuation fund". However, the court determined that they failed to show that the disputed assets were held on the terms of the SMSF for the beneficiaries of the SMSF. (Frigger v Trenfield (No 10) [2021] FCA 1500, 1 December 2021.)

This case therefore provides some important lessons for SMSF trustees on the importance of keeping records of SMSF assets and maintaining compliance for the fund.

With more and more clients looking to take more risk on investments, such as investing in bitcoin, gold, vintage cars or other collectibles, it is now more important to make sure that your structures are correct before you invest. This includes not just your SMSF, but also business and ownership structures.

Contact us now to help with your structure