

## ¶10-320 Meaning of related-party

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For an SMSF, the term “related party” is relevant for the purposes of the prohibition on the acquisition of assets by the fund (¶10-300) and the in-house asset investments of SMSF (¶10-400).

A “related party” of a superannuation fund means any of the following:

- a member of the fund or a “Part 8 associate” of a member
- a standard employer–sponsor of the fund or a Part 8 associate of a standard employer-sponsor of the fund (SIS Act s [10\(1\)](#)).

The term “member” has its ordinary meaning. In the SIS Act, a “member” includes a person who receives a pension from the fund or a person who has deferred his/her entitlement to receive a benefit from the fund (s [10\(3\)](#)).

The meaning of “member” can be modified by regulations to provide that a person is to be treated, or is not to be treated, as being a member of a superannuation fund for the purposes of the SIS Act or for specified provisions of the SIS Act (s [15B](#)).

If a superannuation interest in a fund is subject to a payment split under the family law, or a non-member spouse interest has been created under SIS Regulations reg [7A.03B](#), and before the payment split the non-member spouse was not a member, reg [1.04AAA](#) provides that the non-member spouse is treated as being a member of the fund in which the interest is held for the following purposes:

- the definition of SMSF in s [17A](#), except s [17A\(5\)](#) (¶4-100)
- the prohibition on lending to members in SIS Act s [65](#) (¶10-200)
- the in-house asset rules in SIS Act Pt [8](#) (¶10-400).

A “Part 8 associate” is defined in terms of an individual, partnership or company as the primary entity (SIS Act s [70B](#) to [70E](#)).

In broad terms, Part 8 associates are those entities that are relatives of the individual, partners, companies that are controlled or majority-owned, or entities that control the primary entity, as discussed further below.

A separate definition of a “related trust” is used to cover an SMSF’s relationship with a controlled trust (¶10-400).

A “standard employer-sponsor” is an employer who contributes to the fund (or has ceased only temporarily to contribute) for the benefit of a member or a member’s dependants wholly or partly pursuant to an arrangement between the employer and the trustee of the fund (SIS Act s [16\(2\)](#)). A typical standard employer-sponsored fund would be a company superannuation fund or an industry fund covering employees. However, where an employer allows employees to select the fund to which the employer will contribute, and the employer has no other association with the fund, the fund is not a standard employer-sponsored fund. Examples of such funds are personal superannuation funds operated by banks and life offices and certain master trusts. Note, however, that for the purposes of the in-house asset rules, the Regulator may also determine that a person is taken to be a standard employer-sponsor.

### Part 8 associate of an individual

Each of the following is a Part 8 associate of an individual (the “primary entity”), whether or not the primary entity is in the capacity of trustee (s [70B](#)):

- (1) a relative of the primary entity

(2) if the primary entity is a member of a superannuation fund with fewer than five members (ie an SMSF or a small APRA fund):

- (a) each other member of the fund
- (b) if the fund is a single member SMSF whose trustee is a company — each director of that company
- (c) if the fund is a single member SMSF whose trustees are individuals — those individuals

(3) a partner of the primary entity or a partnership in which the primary entity is a partner

(4) if a partner of the primary entity is an individual — the spouse or a child of that individual

(5) a trustee of a trust (in the capacity of trustee of that trust) where the primary entity controls the trust

(6) a company that is sufficiently influenced by, or in which a majority voting interest is held by:

- (a) the primary entity
- (b) another entity that is a Part 8 associate of the primary entity, or
- (c) two or more entities covered by (a) or (b).

The terms “company” and “partnership” have the same meanings as in the ITAA 1997. Subject to a contrary intention, a “company” means a body corporate, or any other unincorporated association or body of persons, but does not include a partnership or a non-entity joint venture, and a “partnership” means:

- an association of persons (other than a company or a limited partnership) carrying on business as partners or in receipt of ordinary income or statutory income jointly, or
- a limited partnership (ITAA 1997 s [995-1\(1\)](#)).

For the meaning of “relative”, see [¶4-120](#).

#### *Sufficient influence, majority voting interest and control*

The expressions “sufficient influence”, “majority voting interest” and “controls a trust” are relevant for the purposes of the definition of a Part 8 associate of an individual, company or partnership.

A company is “sufficiently influenced” by an entity or entities if the company, or a majority of its directors, is accustomed or under an obligation (whether formal or informal), or might reasonably be expected, to act in accordance with the directions, instructions or wishes of the entity or entities (whether those directions, instructions or wishes are, or might reasonably be expected to be, communicated directly or through interposed companies, partnerships or trusts) (s [70E\(1\)\(a\)](#)).

An entity or entities hold a “majority voting interest” in a company if the entity or entities are in a position to cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the company (s [70E\(1\)\(b\)](#)).

An entity “controls a trust” if:

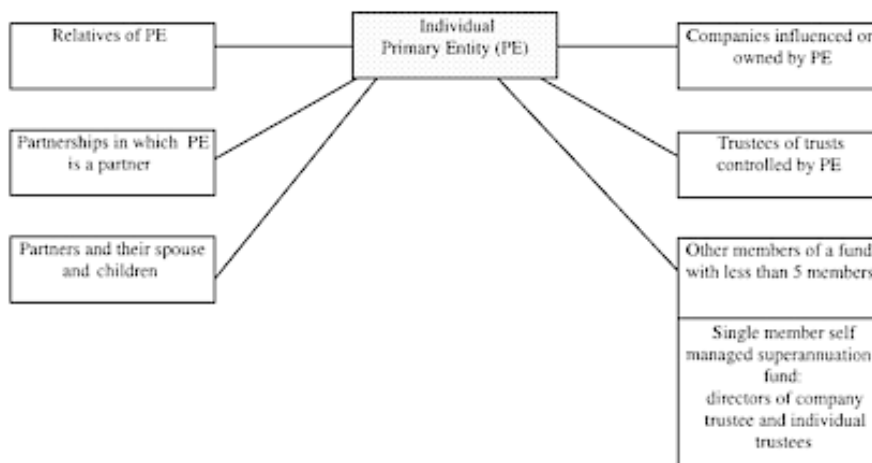
- a group in relation to the entity has a fixed entitlement to more than 50% of the capital or income of the trust
- the trustee or a majority of the trustees of the trust is accustomed or under an obligation (whether formal or informal), or might reasonably be expected, to act in accordance with the directions, instructions or wishes of a group in relation to the entity (whether those directions, instructions or wishes are, or might reasonably be expected to be, communicated directly or through interposed companies, partnerships or trusts), or
- a group in relation to the entity is able to remove or appoint the trustee, or a majority of the trustees, of the trust (s [70E\(2\)](#); *Interpretative Decision* ID 2002/697).

For the above purposes, a “group”, in relation to an entity, means:

- the entity acting alone
- a Part 8 associate of the entity acting alone
- the entity and one or more Part 8 associates of the entity acting together, or
- two or more Part 8 associates of the entity acting together.

*Part 8 associate — primary entity is an individual*

The following diagram shows the Part 8 associate of a primary entity that is an individual (ie a member or an employer-sponsor).



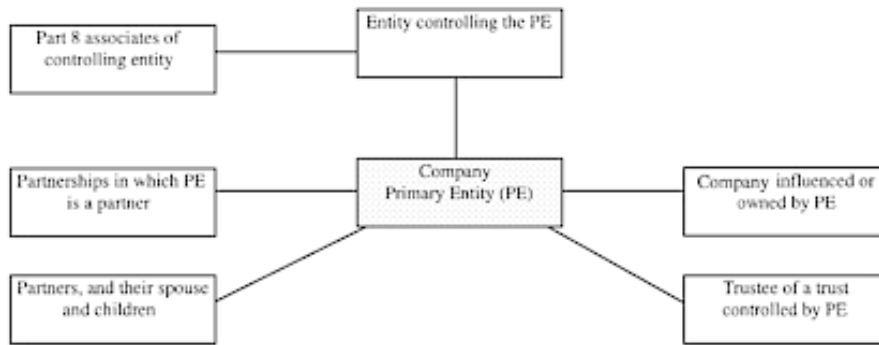
**Part 8 associate of a company**

Each of the following is a Part 8 associate of a company (the primary entity), whether or not the primary entity is in the capacity of a trustee (s [70C](#)):

- (1) a partner of the primary entity or a partnership in which the primary entity is a partner
- (2) if a partner of the primary entity is an individual — the spouse or a child of that individual
- (3) a trustee of a trust (in the capacity of trustee of that trust), where the primary entity controls the trust
- (4) another entity (the “controlling entity”) where the primary entity is sufficiently influenced by, or a majority voting interest in the primary entity is held by:
  - (a) the controlling entity
  - (b) another entity that is a Part 8 associate of the controlling entity, or
  - (c) two or more entities covered by (a) or (b)
- (5) another company (the “controlled company”) which is sufficiently influenced by, or in which voting interest in the controlled company is held by:
  - (a) the primary entity
  - (b) another entity that is a Part 8 associate of the primary entity, or
  - (c) two or more entities covered by (a) or (b)
- (6) if a third entity is a Part 8 associate of the primary entity because of (4) above — an entity that is a Part 8 associate of that third entity because of s [70B](#), [70C](#) or [70D](#).

*Part 8 associate — primary entity is a company*

The following diagram shows the Part 8 associate of a primary entity that is a company (ie an employer-sponsor).



### Part 8 associate of a partnership

Each of the following is a Part 8 associate of a partnership (the primary entity) (s [70D](#)):

- (1) a partner in the partnership
- (2) if a partner in the partnership is an individual — any entity that is a Part 8 associate of that individual because of s [70B](#) (see above)
- (3) if a partner in the partnership is a company — any entity that is a Part 8 associate of that company because of s [70C](#) (see above).

*Part 8 associate — primary entity is a partnership*

The following diagram shows the Part 8 associate of a primary entity that is a partnership (ie an employer-sponsor).

