



## New ASIC rules make it easier for investors to withdraw from frozen funds on hardship grounds

Responsible entities of frozen unlisted property funds now have more scope in allowing investors to withdraw on hardship grounds, via [ASIC's newly released legislative instrument](#), the *ASIC Corporations (Hardship Withdrawals Relief) Instrument 2020/778*.

The conditional relief is available to unlisted property funds, easing some statutory restrictions on REs, and making it easier for investors to withdraw funds on hardship grounds due to the COVID-19 pandemic.

Previously, hardship withdrawal relief was limited to applications made by responsible entities which were considered by ASIC on a case-by-case basis.

The Property Funds Association (**PFA**) welcomes the introduction of *per se* hardship withdrawal relief (rather than case-by-case relief) to unlisted retail property funds, which is consistent with the views expressed by the PFA in its ongoing discussions with ASIC on COVID-19 issues for unlisted property funds.

Under the new instrument, a registered fund is a “frozen scheme” where the fund has suspended investors’ ongoing or periodic right to redeem their investments on request and ceased to allow the issue of new units in the fund. This means that registered retail property funds which remain open for investment or which have dividend reinvestment plans will not be eligible for hardship under this ASIC instrument. The instrument also does not apply to unregistered wholesale property funds.

The instrument gives responsible entities the power to amend their constitutions to enable hardship withdrawals without requiring a unitholder vote, and relaxes a responsible entity’s obligation to treat all unitholders equally in respect of hardship withdrawals.

ASIC Deputy Chair, Karen Chester, said: “The hardship relief will make it easier for responsible entities of frozen funds to enable withdrawals by investors suffering hardship. However, in doing so, responsible entities will still have to act in the best interests of members. We encourage responsible entities to consider whether the relief is appropriate for their particular fund.”

The hardship relief is available to all frozen fund REs “regardless of whether the scheme was originally liquid or illiquid, as defined in the Corporations Act, provided that the RE has ceased allowing new interests in the scheme, including distribution reinvestments and issues to existing members”.

Fund investors must meet at least one “hardship criteria” to qualify for relief, including severe financial hardship, unemployment for over three months, and compassionate grounds or permanent





incapacity. The responsible entity must be satisfied that the member has met the criteria and must keep records documenting how and why a decision to allow or refuse a hardship request was made.

If eligible, investors may withdraw up to \$100,000 from the fund over a calendar year, which may occur via up to four withdrawals from the fund per calendar year.

According to ASIC's announcement, REs seeking to rely on the legislative instrument must:

- notify ASIC and scheme members of its intention to rely on the relief;
- before making a hardship withdrawal, be satisfied that it has adequate cash to fulfill future hardship withdrawal requests and continue the day-to-day operations of the scheme over the following six months;
- provide quarterly data to ASIC in the prescribed form; and
- comply with all other conditions of the relief.

If an RE cannot meet these requirements they may seek individual relief from ASIC.

### **Rolling withdrawal relief?**

Responsible entities of illiquid schemes (within the meaning of the Corporations Act) may continue to apply to ASIC for case-by-case hardship relief to allow rolling withdrawal offers to investors with administrative ease.

Further information on applying for case-by-case relief is outlined in ASIC's updated RG 136.

### **For more information:**

[ASIC's media announcement](#)

[The Legislative Instrument](#)

[Regulatory Guide 136](#) *Funds management: Discretionary powers*

[Information Sheet 249](#) *Frozen funds – Information for responsible entities*

